TRIBUNAL WATCH

Social Security Appeals Tribunal Annual Report 1989-1990

The Annual Report of the Social Security Appeals Tribunal (SSAT), which acts as the first tier of external review of social security matters, notes that:

- 7291 Applications were finalised during the year to 30 June 1990. This reduced the number of applications on hand from 1869 to 1227.
- 25% of the finalised applications resulted in decisions of the Department of Social Security being set aside and nearly 42% affirmed the Departments decision.
- The average time required to finalise an application was reduced by over 1 month to 12 weeks.
- 971 SSAT decisions were the subject of applications to the AAT. 631 were finalised during the year to 30 June 1990 by the AAT, with the SSAT decision standing in 73% of cases.
- The Tribunal now has a membership of nearly 220 and an annual expenditure of approximately $3,900,000.
- Tribunal members noted a number of anomolies in the terms of the *Social Security Act 1947* or injustices arising from its operation. These are noted at pages 25-27 of the Report.

SSAT National Secretariat : new premises

The National Secretariat and the Victorian Office of the SSAT recently moved to new premises. The premises which are located at the 14th Floor, 624 Bourke Street were opened by Senator Richardson, Minister for Social Security on 23 November 1990.

The new telephone number for the National Secretariat is (03)600 1021 and the fax number is (03)600 1024. There has been no change in the postal address.

Administrative Appeals Tribunal Annual Report 1989 – 1990

The first Annual Report of the AAT which has been responsible for its own administration since 1 January 1990, has been tabled in Parliament. The report notes that:

- the Tribunal membership stands at 90, of whom 15 are Judges.
- The Tribunal now has jurisdiction under more than 230 enactments.
- In the year to 30 June 1990 the Tribunal received 4198 new applications and finalised 22,271 cases.
- The Tribunal has reduced the backlog of cases, particularly those in the taxation division, from over 55,000 in 1988 to 5219 at 30 June 1990.

Veterans' Review Board Annual Report 1989-1990

The Veterans' Review Board (VRB) Annual Report notes that:

- 7712 applications were finalised in the year to 30 June 1990, reducing the number of outstanding applications from 9527 to 8716.
- On average, applications were heard within 10 weeks of lodgment.
- Approximately half of the decisions concerning assessment of pension increased the rate of pension, approximately one quarter of entitlement decisions granted a pension.
- 998 applications for review of VRB decisions were made to the AAT. Of the 177 AAT applications which proceeded to a decision during the year ended 30 June 1990, 107 varied or set aside the VRB decision.

Immigration Review Tribunal: Criteria to be applied in Close Family Visitor Visa application

In *Re Saulog* (Immigration Review Tribunal - 9 November 1990) the IRT considered an application by a Filipino citizen for an entry visa to Australia to visit his family. It used the case as an opportunity to discuss what the law requires to prove *bona fides* in immigration cases.

The Tribunal concluded that in the absence of special legislative provisions the person who sought the visa had a 'common sense burden' to place all of the relevant facts before the decision-maker. The decision-maker had then to consider whether the facts supported the application on the basis that the facts are more likely than not to

be correct.

The Tribunal made reference to the Canadian Immigration Act as an example of a special legislative provision which requires Canadian officials to presume that any person seeking entry to Canada is seeking to enter for permanent residence. It concluded that Australian decision-makers are not entitled to presume that an applicant for a visitor visa is seeking to enter Australia permanently or is lacking *bona fides*, in the absence of evidence which might fairly point towards that view.

In this case it appeared that the decision-maker had used locally developed guidelines to assist in determining the *bona fides* of the application. The Tribunal questioned whether all of the guidelines were appropriate.

It also discussed the concerns faced by immigration officials, when considering applications made by nationals of a country which has a statistically higher rate of over-staying visas while in Australia. It concluded that the risk of over-staying determined statistically for nationals of specific countries could form part of the background for decision-makers but could not preclude entry in particular cases when there was no demonstrable evidence of bad faith.

On the basis of the Mr Saulog's evidence the Tribunal set aside the decision and granted his visa. [P.G.]

Immigration Review Tribunal - Adoption visa

The Immigration Review Tribunal's decision in *Re Arce-Phillips Rojas* (12 October 1990) concerned an application by an Australian citizen resident in Chile, Ms Juliet Phillips, to bring her adopted baby daughter back to Australia.

Where an Australian citizen who has been residing overseas for more than 12 months adopts a child overseas and wishes to bring the child back to Australia, before issuing a visa the Minister must be satisfied that, among other things, the adoptive parent has lawfully acquired 'full and permanent parental rights' by the adoption.

Ms Phillips' application was rejected on the basis that she had not acquired such rights. It appeared that in Chilean law there was a form of adoption called 'full adoption' and Ms Phillips had not been granted such an adoption. Instead she had been granted a decree of simple adoption by the Chilean courts. A 'full adoption' was available under Chilean law only to married persons, and Ms Phillips was unmarried.

The Tribunal noted that 'full adoption' in an overseas country might mean more, or less, than full adoption in Australia. It said that the words 'fulland permanent parental rights' in the Migration Regulations should be given their meaning in Australian law. This meant that the Tribunal had to conclude that the Chilean adoption decree would be recognised under Australian law.

The Tribunal noted that the effect of a simple adoption under Chilean law was to place the child substantially in the position of a natural child of the adopter to the exclusion of the rights of custody and control which the natural parents formerly possessed. The Tribunal concluded that the Chilean adoption would be recognised under the relevant Australian law, in this case that of Queensland and that Ms Phillips had therefore acquired 'full and permanent parental rights' as required by the Migration Regulations. All other requirements having been met, the Tribunal set aside the decision and substituted a decision that such an adoption visa should be granted. [P.G.]

Simple English and Student Assistance

The *Student Assistance Act 1973* is quite simple in conception and leaves the detailed scheme for AUSTUDY to be spelt out in the Regulations. However, as Mr Justice Stephen said in *Re Moodie; Ex Parte Emery* (1981) 34 ALR 481 at 489-90, 'the price paid for the Act's economy of language lies in the complexity of regulations which concern the grant of benefits, ... [which] have been amended on more than 40 occasions in their six years of existence ... No applicant is likely to gain from them any clear impression of his entitlement to a benefit and this case suggests that even those who have to administer the scheme have great difficulty understanding it.'

In response to this and similar criticisms, the Government engaged Associate Professor Robert Eagleson of the University of Sydney to assist in redrafting the legislation in plain English. New AUSTUDY Regulations in plain English came into effect on 1 January 1991, and may be expected to assist administrators and students alike in understanding the AUSTUDY scheme.