AAT medical practice direction

A new practice direction on "Procedures relating to medical evidence in the hearing of applications before the Tribunal" was issued by the President of the AAT on 7 August 1992. It replaced the practice direction on that subject issued on 18 June 1992, which has been revoked. The slight change to the earlier direction involved removal of a possible ambiguity regarding the granting of adjournments. The substance of the new direction, intended to be followed in all Divisions of the Tribunal but the Taxation Division, reads as follows:

> **"Callover procedures**
>
> Prior to a callover, or other procedure to list for hearing, both parties will be expected to hold discussions with a view to reaching agreement upon a suitable day or days of a week for their respective doctors, if it is intended to call oral medical evidence. Where the total anticipated evidence is capable of being heard within 5 hours, it is expected that agreement will be reached on only one day being allowed for the hearing. Where necessary, preference should be given to the ability of a treating specialist to attend. It is not appropriate that the hearing of a case be spread over two days for the sole reason that the medical practitioners do not wish to be present on the one day.
>
> The Tribunal will endeavour to find a hearing day, or days, preferred by the parties after such a discussion, provided that this does not unduly prolong the length of the case. It is expected that only in rare circumstances will medical cases be allotted 3 or more days for a hearing.
>
> Where a case has been listed for hearing, it is expected that, as a general rule and except on demonstration of special circumstances not capable of being foreseen at the time of listing, no adjournment will be granted by the presiding member on the grounds of non-availability of any particular doctor or doctors on that day or days.
>
> **Medical Reports**
>
> Subject to compliance with the time limits contained in section 66 of the *Commonwealth Employees Rehabilitation and Compensation Act 1988*, and in this Tribunal's General Practice Direction dated 11 May 1992, the lodging and serving of a medical report will make it material to be taken into account, whether or not the author of the report gives oral evidence."

Foreign language hearings

In August 1992 the Social Security Appeals Tribunal in Melbourne, which has 5 members who are fluent in Italian and 5 members who are fluent in Greek, conducted hearings in both Italian and Greek. These foreign language hearings are being given a trial run in recognition of the difficulties faced by persons with non-English-speaking backgrounds. Approximately half the SSAT's hearings in Melbourne involve medical issues and half of these require interpreters. The foreign language hearings, as well as meeting applicant's needs, deliver savings in time and interpreter costs.

Immigration – assessment of qualifications and experience

The Immigration Review Tribunal recently considered its role in reviewing decisions involving the assessment of overseas qualifications and experience, in the context of concessional family visa applications, in the case *Re Lumapas* (15 June 1992).

Ms Lumapas was a Filipino nurse who requested a review of the decision rejecting her application on an assessment of points under the Migration Regulations. Under those regulations, the "relevant Australian authority" for such assessments in relation to registered nurses was the National Office of Overseas Skills Recognition (NOOSR) within the Department of Education, Employment and Training, and possibly also, under a purported delegation of that authority by NOOSR, the Australian Nursing Assessment Council (ANAC).

Under the Department's Procedures Advice Manual, which had been adopted by NOOSR and ANAC, to be eligible for assessment by ANAC an overseas trained nurse must have qualified in a country with a similar health care delivery system to Australia's, with Canada, New Zealand, The Republic of Ireland, South Africa, the

United Kingdom and the United States of America listed as meeting that requirement. The Tribunal, constituted by Senior Member Clothier, took the view that such an assessment process seemed to offend against the obligation of NOOSR to provide an individual assessment under the regulations, and that the Tribunal's role was not limited to investigating whether a NOOSR opinion or assessment existed, but involved review of that opinion or assessment. It stated that:

"In this case, NOOSR (and ANAC) appear...to have adopted an assessment procedure for overseas trained nurses, based primarily upon their country of origin rather than upon their individual circumstances."

The Tribunal went on to examine Ms Lumapas' qualifications and experience and decided that she possessed qualifications and experience equivalent to Australian standards and adjusted her points score under that head under the regulations accordingly.

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