

# changes to appeal process

**T**he Federal Government is proposing substantial changes to the administrative review process. Should these proposals become law, the rights of people who appeal Government decisions will be substantially reduced. Recently the Government took the first steps to bring about these changes by introducing the *Administrative Review Tribunal Bill 2000* (ART Bill) to Parliament.

If passed, the Bill would result in the amalgamation of a number of existing tribunals including the Social Security Appeals Tribunal (SSAT), the Administrative Appeals Tribunal (AAT), the Immigration Review Tribunal (IRT) and the Refugee Review Tribunal (RRT).

The proposed new Tribunal will have six divisions:

- Commercial and General Division;
- Immigration and Refugee Division;
- Income Support Division;
- Taxation Division;
- Veteran's Appeals Division; and
- Worker's Compensation Division.

Each division, subject to the core provisions of the *ART Bill*, will have its own jurisdiction and procedures, the details of which are not yet available.

The *ART Bill* does more than simply amalgamate the tribunals. It also contains a number of significant changes which would diminish the rights of people who appeal against Government decisions.

## 1. Reduce the independence of the current tribunals

The President of the proposed ART does not have to be a judge. The members of each division must be approved by the Minister responsible for the portfolio whose decisions that division reviews. The CEO can second staff from Departments and the Minister for the portfolio whose decisions are being reviewed can make practice directions which can override those issued by the President of the ART.

## 2. Limit Social Security appellants to one opportunity for external review

The current SSAT and AAT would be abolished with only one level of external review provided unless:

- (a) only one tribunal member heard the matter **and** it raised a principle or issue of general significance; or
- (b) both parties agree that the decision of the first level involved a manifest error of fact or law.

In practice, it is unlikely that consumers will be in a position to argue that their case contains an issue of "general significance" and even more unlikely that both parties will agree there has been error when one of them will have a favourable decision.

This effective reduction to a single level external review in Social Security cases means that every review must be conducted as if it were the last opportunity to correct a decision. Consequently the

internal procedures of the Tribunal must permit more detailed and slower scrutiny of matters than is currently undertaken by the SSAT and there are serious implications for the workload of Community Legal Centres and Legal Aid bodies. Further, as shown by this Bill, the Departments also seek a greater degree of intervention in the first level of appeal, which previously would only have occurred at the AAT level.

### **3. Reduced chances of cases being considered by multi-skilled/multi-member tribunal panels**

Multi-skilled/multi-member panels are more effective for unrepresented people. Such panels can use their skill mix to take into account all relevant matters from the applicant's background. Multi-member panels are better suited to testing the credibility of material without leaving an applicant with the belief that the process has been biased or unfair. Figures show a reduction in members on SSAT panels produces no significant cost saving.

### **4. Representation for consumers only where the practice directions or Tribunal permits**

Representation will be even more important for consumers in the new Tribunal than it is at present, as the Department will be an equal participant in the review with the consumer, yet this is to be severely restricted. Departmental participants however, will always be skilled in their field and, unlike consumers, will be repeat players in the review system. The absence of consumer representatives inhibits the quality of decision making and leaves the tribunal open to capture by regular Departmental participants.

### **5. A range of complex and uncertain procedures which would be difficult for a consumer to navigate**

The Bill provides great discretion and little guidance over how matters will be handled. Consumers may not receive all relevant papers. Their case might be decided "on the papers" without the opportunity for a face to face hearing. Much of the case may be handled by an inquiry officer and the scope of any inquiry or hearing might be restricted. Consumer representatives may not be permitted or their participation might be restricted.

The uncertainty means that considerable resources will be expended trying to ensure that a person is prepared for such a wide range of eventualities. While the yet to be tabled *ART Bill* might shed light on the procedures, in any event the new format is likely to be much more lengthy and inefficient than the current SSAT - AAT process. Presently most people who appeal to the SSAT are satisfied with the result even though only about one-third of decisions are changed. Only 10% appeal against SSAT decisions to the slower, but more deliberate, AAT.

## **centre urges rejection of bill**

The Welfare Rights Centre believes that the *ART Bill* has been designed without taking into account the needs of ordinary consumers or its impact on the need for legal services. We think the Bill is fundamentally flawed and that the composite features of the current SSAT - AAT process best serve unrepresented Social Security appellants and should be retained.

The *ART Bill* has been referred to the Senate Legal and Constitutional Legislation Committee for consideration. The Committee has extended the closing date for submissions to a date to be advised after the *ART (CTP) Bill* becomes available. The Committee's reporting deadline is the first sitting day in 2001. Details, including how to make submissions, are posted on the Parliament of Australia Senate homepage at [www.aph.gov.au](http://www.aph.gov.au) or can be obtained by telephoning the Committee Secretariat on (02) 6277 3560. ▲