

SSAT saved

In a major victory for client rights, the Senate has rejected the Bills which were to replace the Social Security Appeals Tribunal (SSAT) and Administrative Appeals Tribunal (AAT) with the Administrative Review Tribunal (ART). It is now unlikely that the ART proposal will proceed.

The rejection of the Bills is an acknowledgment of the concerns raised by a broad spectrum of consumer groups, lawyers, academics, representatives of Social Security recipients, veterans, students and union members. These groups and many others made critical submissions to the Senate Inquiry into the Bills and ensured discussion of the issues. Both the current and past Presidents of the AAT had criticised the ART proposal.

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ART drawbacks

The Bills would have undermined the fair, accessible and independent review afforded Social Security recipients by the current SSAT and AAT. These were to have been replaced by a complicated process in which applicants were expected to be able to put much of their case in writing and had no automatic right to be represented or appeal further to a second tier of review. The Bills would have allowed the Minister responsible for the Department which made the decision being reviewed to approve the appointment of ART members and to make practice directions about the procedures of the ART. Unlike the present SSAT, the Department would have been able to decide when and if it participated in the process and there would usually have been only one-member panels hearing cases.

As early as 1998, the former President of the AAT, Justice Matthews said:

“The proposed amalgamation constitutes such a downgrading of the merits review system as to fundamentally threaten the quality and independence of external review.”

Without producing convincing figures, the Government has contended that the new system would be cheaper. Justice O'Connor, the current President of the AAT put the alleged cost of the current tribunal process into perspective by stating that the cost of operating the four tribunals that were to be amalgamated for the next ten years was “what it has cost this country to produce one Collins class submarine”.

value of SSAT/AAT

The process of scrutinising the proposed ART Bills has led to the recognition of the strength and value of those aspects of the present SSAT and AAT which have become central to ensuring individual consumers receive fair treatment in their dealings with government. These features include: independence from ministerial and departmental interference; fair and straightforward procedures; the capacity to be represented by any person the consumer chooses; multi-member / multi-skilled panels; and access to two-tier external review as required by the special needs of certain consumer groups.

The ART failed on each of these counts and would have led to lower quality and less accountable

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decision-making not only for the individuals who appealed to it but for all people affected by government decisions, as decision-makers would soon have dropped their standards due to the lack of quality external scrutiny.

As Justice O'Connor said, the review system was "intended really to play a role that perhaps in other countries is played by rights which arise under constitutional guarantees.... we do not have a bill of rights in this country but we do have, with the current system, the capacity to have individuals complain or, to put it more positively, assert their right to question the behaviour of the executive government".

Vigilance will be required to protect these features from being eroded by lack of funding or by piecemeal changes. Already in some states the SSAT hears cases using only two members as permitted by the *Social Security (Administration) Act 2000*. ▲