Chapter 19

Social security and welfare rights – What role for social work?

Terry Carney and Christine Bigby*

Chapter summary

Introduction

Values and principles underpinning the Australian social security system Social security appeals

Tribunal membership

The review hearing

The social work role in advising or preparing for a review application

Assisting people to recognise that there is something not quite right, and that it is well worth seeking review

Assisting applicants to gather relevant information and understand the issues on review

Helping to develop a 'narrative picture' of the issues to be decided

Assisting to identify areas where the legislation needs to be closely examined

Assisting to identify areas of discretion or flexibility

The social work role at the administrative review hearing

As an advocate or supporter at an appeal hearing

Assisting a person to have their 'day in court'

Assisting people to plan to avoid future problems

Fragmentation and bifurcation

Review of decisions of the Child Support Agency

Conclusion

Key learning points

Questions for consideration

Additional reading

Websites

References

Notes

Chapter summary

This chapter focuses on welfare rights and advocacy, particularly decisions made for the Department of Social Services by the federal Department of Human Services (better known to the public as 'Centrelink') about income



3 What are the procedural differences that may be apparent to an applicant before the SSAT in comparison to an applicant appearing before a court? What differences in preparation for the process are suggested?

Additional reading

- Administrative Review Council, 1995, Better Decisions: Review of Commonwealth Merits Review Tribunals, Report No 39, Commonwealth of Australia, Canberra.
- Allars, M, 1996, 'Reputation, Power and Fairness: A Review of the Impact of Judicial Review Upon Investigative Tribunals', 24(2) Federal Law Review 235–82.
- Carney, T, 2006, 'Welfare to Work: Or Work Discipline Revisited', 41 Australian Journal of Social Issues 27–48.
- Grahame, T and Marston, G, 2012, 'Welfare-to-work Policies and the Experience of Employed Single Mothers on Income Support in Australia: Where are the benefits?', 65(1) Australian Social Work 73–86.
- Hugman, R and Bowles, W, 2012, 'Social Work Values, Ethics and Professional Regulation', in Lyons, K, Hokenstad, HT, Pawar, M, Huegler, N and Hall, N, The SAGE Handbook of International Social Work, SAGE Publications Limited, London, 150–62.
- Katzen, H, 1995, 'Procedural Fairness and Specialist Members of the Administrative Appeals Tribunal', 2(3) *Australian Journal of Administrative Law* 169–79.
- Lindsay, R, 2010, 'Natural Justice: Procedural Fairness "Now We see Through a Glass Darkly", 63 AIAL Forum 67–77.
- Mayes, L and Swain, P, 2005, 'Continuing Debates as to Social Security Appeals in Australia and Britain: dancing to the same tune?', 12(1) *Australian Journal of Administrative Law* 185–204.
- McDonald, C, 2006, Challenging Social Work The Context of Practice, Palgrave Macmillan, Basingstoke.
- Sutherland, P and Anforth, A, 2013, Social Security and Family Assistance Law, 3rd edn, Federation Press, Sydney.
- Swain, P, 1994, 'Natural Justice and Social Work What can Social Workers learn from Administrative Law?' *Advances in Social Welfare Education* 57–64.
- Wikeley, N, 2007, 'Child Support and the SSAT: An Anglo-Australian comparison', 21 Australian Journal of Family Law 58–86.

Websites

No claim is made as to the accuracy or authenticity of the content of the sites suggested in this chapter. Site addresses change – if the address is no longer accurate, search using keywords or the title of the organisation concerned.

Administrative Appeals Tribunal <www.aat.gov.au>

Australian legislation (State and Commonwealth) can be found at AustLII <www.austlii. edu.au>

Centrelink < www.centrelink.gov.au>

Social Security Appeals Tribunal <www.ssat.gov.au>

National Association of Community Legal Centres http://www.naclc.org.au/

National Welfare Rights Network https://www.welfarerights.org.au/organisations>

References

Adler, M, 2006, 'Tribunal Reform: Proportionate dispute resolution and the pursuit of administrative justice', 69(6) *The Modern Law Review* 958–85.

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- ALRC, 1998, Issues Paper 24: Review of the Adversarial System of Litigation; Federal tribunal proceedings, Australian Law Reform Commission, Sydney.
- ARC, 1995, Better Decisions: Review of Commonwealth Merits Review Tribunals, Administrative Review Council, Canberra.
- Asimow, M and Lubbers, J, 2010, 'The Merits of "Merits" Review: A Comparative Look at the Australian Administrative Appeals Tribunal', 28(2) Windsor Yearbook of Access to Justice 261–84.
- Bacon, R, 2002, 'Rewriting the Social Contract? The SSAT, the AAT and the contracting out of employment services', 30 Federal Law Review 39–68.
- Brodkin, E, 2000, 'Investigating Policy's "Practical" Meaning: Street-Level Research on Welfare Policy', Northwestern University/University of Chicago Joint Center for Poverty Research, Chicago.
- Carney, T, 1996, 'Welfare Appeals and the ARC Report: To ssat or not to ssat; Is that the question?', 4 Australian Journal of Administrative Law 21–34.
- Carney, T, 1998, 'Merits Review of "Contractual" Social Security Payments', 5 Journal of Social Security Law 18–43.
- Carney, T, 2000, Disability and Social Security: Compatible or not? Constructing Law and Disability, Australian National University, Humanities Program Conference, Canberra.
- Carney, T, 2006a, 'Neoliberal Welfare Reform and "Rights" Compliance Under Australian Social Security Law', 12(1) Australian Journal of Human Rights 223–55.
- Carney, T, 2006b, Social Security Law and Policy, Federation Press, Sydney.
- Carney, T, 2006c, 'Welfare to Work: Or Work Discipline Revisited?', 41(1) Australian Journal of Social Issues 27–48.
- Carney, T, 2010, 'Women and Social Security/Transfer Payments Law', in Easteal, P, Women and the Law in Australia, Lexis/Nexis, Sydney, 424–40.
- Carney, T, 2011, 'Social Security Law: What does the politics of "conditional welfare" mean for review and client representation?', 46(3) Australian Journal of Social Issues 233–52.
- Carney, T, 2013, Title 22.3 'Income Security', in *Laws of Australia*, Thompson Reuters, Sydney.
- Carney, T and Beaupert, F, 2013, 'Public and Private Bricolage Challenges balancing law, services & civil society in advancing CRPD supported decision making', 36(1) *UNSW Law Journal* 175–201.
- Carney, T and Ramia, G, 1999, 'From Citizenship to Contractualism: The transition from unemployment benefits to employment services in Australia', 6 Australian Journal of Administrative Law 117–39.
- Carney, T and Ramia, G, 2002, 'Mutuality, Mead & McClure: More Big "Ms" for the Unemployed?', 37(3) Australian Journal of Social Issues 277–300.
- Carney, T and Ramia, G, 2010, 'Welfare Support and "Sanctions for non compliance" in a Recessionary World Labour Market: Post-neoliberalism or not?', 2(1) *International Journal of Social Security and Workers Compensation* 29–40.
- Commonwealth Ombudsman, 2012, Annual Report 2011–12.
- Considine, M, Lewis, J, et al, 2011, 'Quasi-markets and Service Delivery Flexibility Following a Decade of Employment Assistance Reform in Australia', 40(4) *Journal of Social Policy* 811–33.
- Creyke, R, 2012, 'Tribunals "Carving out the Philosophy of Their Existence": The Challenge for the 21st Century', 71 AIAL Forum 19–33.
- Dean, H, 2004, 'Losing Appeal? The changing face of redress', 12(1) Benefits 3-7.
- Department of Finance, 2013, 'The Scheme for Compensation for Detriment caused by Defective Administration (the CDDA Scheme)' http://www.finance.gov.au/financial-framework/discretionary-compensation/cdda-scheme.html.
- Dwyer, J, 1997, 'Fair Play the Inquisitorial Way: A Review of the Administrative Appeals Tribunal's Use of Inquisitorial Procedures', 5 *Australian Journal of Administrative Law* 5–34.
- Gunders, L, 2012, 'Immoral and Un-Australian: The discursive exclusion of welfare recipients', 9(1) Critical Discourse Studies 1–13.

- Harris, M and Partington, M, 1999, Administrative Justice in the 21st Century, Hart Publishing Oxford
- Henman, P, 2002, 'Myths of Welfare Reform', 37(1) Australian Journal of Social Issues 71–84.Henman, P, 2004, 'Targeted!: Population Segmentation, Electronic Surveillance and Governing the Unemployed in Australia', 19(2) International Sociology 173–91.
- Henman, P and Adler, M, 2001, 'Information Technology and Transformations in Social Security Policy and Administration: A review', 54(4) *International Social Security Review* 23–47.
- Henman, P and Adler, M, 2003, 'Information Technology and the Governance of Social Security', 23(2) Critical Social Policy 139–64.
- Koller, S, 2000, 'Adjudication Procedures in the ART A Client Perspective', 27 AIAL Forum 31–4.
- Lantz, S and Marston, G, 2012, 'Policy, Citizenship and Governance: The case of disability and employment policy in Australia', 27(6) *Disability & Society* 853–67.
- Lens, V, Augsberger, A, et al, 2013, 'Choreographing Justice: Administrative law judges and the management of welfare disputes', 40(2) *Journal of Law and Society* 199–227.
- Marston, G and McDonald, C, 2006, *The Political Tensions and Street-level Dimensions of Employment Services in Australia*, Road to Where? The Politics and Practice of Implementing Welfare-to-Work 2006 National Conference, Brisbane.
- McClure, P, 2000, Final Report: Participation Support for a More Equitable Society, Reference Group on Welfare Reform, Canberra.
- McClusky, M, 2003, 'Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State', 78 *Indiana Law Journal* 783–876.
- McDonald, C, 2006, Challenging Social Work: The context of practice, Palgrave Macmillan, Basingstoke.
- McDonald, C and Chenoweth, L, 2009, '(Re) Shaping Social Work: An Australian case study', 39(1) *British Journal of Social Work* 144–60.
- McDonald, C and Marston, G, 2006, 'Room to Move? Professional discretion at the front-line of welfare-to-work', 41(2) *Australian Journal of Social Issues* 171–82.
- Petersson, S, 1999, 'Gender-neutral Drafting: Recent Commonwealth developments', 20(1) Statute Law Review 35–65.
- Ramia, G and Carney, T, 2010, 'The Rudd Government's Employment Services Agenda: Is it Post-NPM and Why is that Important?', 69(3) *Australian Journal of Public Administration* 263–73.
- Sanders, W, 2004, 'Indigenous Australians and the Rules of the Social Security System: Universalism, Appropriateness and Justice', 63(3) *Australian Journal of Public Administration* 3–9.
- Saunders, P, 2002, 'Mutual Obligation, Participation and Popularity: Social Security Reform in Australia', 31(1) *Journal of Social Policy* 21–38.
- Sossin, L and Green, S, 2011, 'Administrative Justice and Innovation: Beyond the Adversarial/Inquisitorial Dichotomy' http://ssrn.com/abstract=1948761>.
- SSAT, 2007, Social Security Appeals Tribunal Annual Report 2006–2007, National Office Social Security Appeals Tribunal, Melbourne.
- SSAT, 2012, *Social Security Appeals Tribunal Annual Report* 2011–2012, National Office Social Security Appeals Tribunal, Melbourne.
- Sutherland, P and Anforth, A, 2013, *Social Security and Family Assistance Law*, Federation Press, Sydney.
- Swain, P, 1998, 'Maintaining the Hallmarks ... the Social Security Appeals Tribunal Comes of Age', 33(1) *Australian Journal of Social Issues* 77–90.
- Swain, P, 2003, 'Filleting the Kipper Whither the SSAT?', 11(1) Australian Journal of Administrative Law 34-43.
- Swain, PA, 2005, "No Expert Should Cavil At Any Questioning": Reports and assessments for courts and tribunals', 58(1) *Australian Social Work* 44–57.

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- Thornton, S and Marston, G, 2009, 'Who to Serve?: The Ethical Dilemma of Employment Consultants in Nonprofit Disability Employment Network Organisations', 44(1) *Australian Journal of Social Issues* 73–89.
- Walsh, T, 2003, 'Breaching the Right to Social Security', 12(1) Griffith Law Review 44-63.
- Walsh, TK and Marston, G, 2010, 'Benefit Overpayment, Welfare Fraud and Financial Hardship in Australia', 17(2) *Journal of Social Security Law* 100–25.
- Waters, N, 1995, 'Internal Review and Alternative Dispute Resolution: The hidden face of administrative law', in Cole, K (ed), *Administrative Law and Public Administration Form vs Substance*, Proceedings of the 1995 Administrative Law Forum, Australian Institute of Administrative Law.
- Wikeley, N, 2007, 'Child Support and the SSAT: An Anglo-Australian comparison', 21(1) Australian Journal of Family Law 58–86.
- Wolffs, T, 2004, 'External Review of Child Support Agency Decisions: The case for a tribunal', 43 AIAL Forum 55–72.

Notes

- * Phillip Swain was lead author on the first three iterations of this chapter; the late Professor Loula Rodopoulos co-contributed to the chapter in the second edition of *In the Shadow of the Law* (2002). Their contributions to the genesis of this revised chapter are gratefully acknowledged.
- 1 See <www.austlii.edu.au>.