



Australian Government

Department of Education, Employment and Workplace Relations

Agency Appeals to the AAT – A Departmental Perspective



Outline

- Social security decision appeals process
- DEWR processes for review of appeals
- Review of DEWR social security appeals
- Principles for DEEWR appeals
- Observations on DEEWR Principles and Model Litigant Obligations



Social security appeals process

Key decisions under social security law:

- qualification for payment
- rate of payment

Most often questions of fact (evidence) at issue

Multiple layers of review of decisions

- original decision-maker (ODM) (Centrelink)
- authorised review officer (ARO) (Centrelink)
- Social Security Appeals Tribunal (SSAT)
- Administrative Appeals Tribunal (AAT)
- Federal Court etc.



Social security appeals process

Appeals constitute very small % of all decisions

- Millions of social security decisions made by Centrelink annually
- Applications for review of working age payment decisions in 2008-09:
 - Centrelink AROs: 42,800 applications
 - SSAT: 9000 applications
 - AAT: 1200 applications

Source: Centrelink litigation database



DEWR Review Processes

Prior to 2006 (pre-Welfare to Work)

- Certain SSAT and AAT decisions referred to DEWR
- Appeal decisions program/policy area w. legal advice
- Legally-focused process → identify and fix errors in decisions

2006-2008 (Welfare to Work)

- Certain SSAT and AAT decisions referred to DEWR
- Appeal decisions by DEWR committee, chaired by Secretary
- Process used to identify:
 - errors in decisions
 - shortcomings in policy application and program implementation



Review of DEEWR Social Security Appeals

Stakeholder perception → DEWR appealed too many SSAT and AAT decisions

December 2007 – Ministerial Review of DEEWR Social Security Appeals and Litigation Arrangements

March 2008 – Committee reported to Minister



Review of DEEWR Social Security Appeals

	Administrative Appeals Tribunal				Federal Court			
	Customer		Secretary		Customer		Secretary	
2005-06								
DEWR	964	82%	212	18%	10	59%	7	41%
DEST	83	94%	5	6%	0	-	0	-
FaCSIA	509	92%	44	8%	4	80%	1	20%
2006-07								
DEWR	970	72%	376	28%	14	67%	7	33%
DEST	93	87%	14	13%	0	-	0	-
FaCSIA	631	88%	84	12%	6	60%	4	40%

Source: *Report of Review of DEEWR Social Security Appeals and Litigation Arrangements*



Review of DEEWR Social Security Appeals

Findings:

- rates of appeal by DEWR higher than like agencies
- rate of withdrawal from appeals high
- majority of appeals withdrawn were instances of insufficient evidence prior to appeal
- DEWR applied similar factors to like agencies in deciding whether or not to appeal



Principles for Appeal Decisions

Report recommended principles to guide decision-making on appeals:

- Provide for honest, transparent and fair appeals processes and practices which balance relevant considerations and promote confidence in the system for all stakeholders
- Promote efficient and effective processes including time and cost considerations
- Ensure the Department's appeals and litigation arrangements are transparent and assist in administering the law and provide for a fair outcome
- Protect the integrity of the social security system



DEEWR Review Processes and application of the principles

Centrelink refers the following matters to DEEWR:

- SSAT decisions that Centrelink considers, having applied the Principles, should be appealed
- AAT decisions where the decision of the Secretary has been varied or set aside

DEEWR applies the Principles to all cases

Decision whether or not to appeal made:

- by policy/program area; or
- by Departmental committee chaired by Deputy Secretary
 - (both with legal advice)



Some statistics

Social security appeals lodged

Year	Administrative Appeals Tribunal				Federal Court			
	DEEWR*		DSP		DEEWR*		DSP	
	Customer	Secretary	Customer	Secretary	Customer	Secretary	Customer	Secretary
2006-07	479	146	584	242	10	1	10	6
2007-08	587	73	488	123	15	1	5	0
2008-09	1166	11	621	67	19	0	7	1

* Matters where the Secretary of DEWR/DEEWR is named party, *sans* DSP

Source: Centrelink litigation database



Observations on model litigant and agency practice

Model litigant obligations are prescriptive but general

- different approaches to litigation can comply with obligations



Environmental impacts on conduct of litigation

- legislation/legislative change
- resources
- program administration
- policy objectives
- etc.

Observations on model litigant and agency practice

Agency use of litigation practice

- ensure correct or preferable decisions made
- feedback on program delivery and policy outcomes
- support policy outcomes

Understanding drivers of litigation

- agency/tribunals/stakeholders discuss litigation approaches and objectives
- → more coherent outcomes





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