

## **APPENDIX 3**

### **DEPARTMENT OF FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS RESPONSES TO MATTERS RAISED BY THE LAW COUNCIL OF AUSTRALIA<sup>1</sup>**

#### **Social Security Appeals Tribunal (SSAT)**

1. The SSAT is not an appropriate forum for inter partes disputes.

#### **Response**

The SSAT is to review administrative decisions made by the CSA, not to adjudicate inter partes disputes. A parent is objecting to a decision by the Registrar or delegate of the Registrar – they are not actually disputing with the other parent, although the other parent may be joined as a party to the review.

FaCSIA has received advice that there is no constitutional impediment to the SSAT reviewing CSA administrative decisions. It is currently an anomaly to not have these government decisions reviewable by a tribunal.

2. It is inappropriate for inter partes proceedings to be able to be initiated by telephone, as this does not require sufficient consideration of the implications of beginning the review process.

#### **Response**

SSAT review is intended to be an accessible process. Application by telephone is currently available for review of Centrelink decisions. In most cases, existing SSAT procedure has been adopted for review of CSA decisions, as these are established and tested processes that work well for a similar client group. Centrelink decisions may also involve two separated parents, for example in FTB matters. How these processes work in practice will be monitored by the SSAT and FaCSIA.

3. It should be made explicit that parties can be represented by lawyers, and that there should be provision for a party (or their representative) to question another party.

#### **Response**

There is no restriction on parents' being accompanied to SSAT hearings, including by a legal representative. This is explicitly stated in SSAT documentation, including on their website and the forms for application for review. However, the use of the SSAT

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<sup>1</sup> *Submission 13, Supplementary Information, 5.10.06, pp.2-4 (FaCSIA).*

as a review mechanism is a deliberate step away from adversarial court proceedings. Allowing cross-examination would be likely to make parents feel that they need to have legal representation, which is in conflict with the SSAT's aim of providing economical, informal and quick review. SSAT members are experienced in fact-seeking on their own initiative.

4. The SSAT should be able to make cost orders against the other party for legal representation.

### **Response**

As noted above, the use of the SSAT as a review mechanism is a deliberate step away from adversarial court proceedings to review an administrative decision. The respondent party is the CSA, not the other parent (who may be joined as an additional party). In these circumstances the awarding of costs is not appropriate.

5. There is no provision for the SSAT to test factual assertions or compel the production of evidence – this is a denial of natural justice.

### **Response**

The SSAT can test facts and require people, including the Registrar, to provide evidence through documentation or, more rarely, personal appearance. There is provision for the SSAT to pay the costs of people who are required to provide evidence.

6. Written reasons for decision should always be given.

### **Response**

Parties can request written reasons within 14 days of the oral decision and the SSAT must provide written reasons on request (s.103X of the Bill). The SSAT has indicated that it will provide full written reasons in all but the simplest cases. Parties can request written reasons where they are not given, and the possibility of requesting these will be indicated on the documentation provided. These provisions will be reviewed during 2007.