

Senate Community Affairs Legislation Committee

Inquiry into Welfare Reform and Reinstatement of the Racial Discrimination Act

Canberra Hearing, Thursday 4 February 2010

ANSWERS TO QUESTIONS ON NOTICE

Question No: WR3

Topic: Appeal rights in relation to income management under the NTER.

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Senator Moore (Chair) asked:

Could we get something from the Department that spells out exactly what the current appeal rights are under the NTER and also what proposed appeal rights are?

Senator Boyce asked:

And who the decision maker is in each case?

Answer:

Following the passage of the *Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009* on 24 June 2009, people subject to income management under the NTER have access to full appeal rights under the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT).

Under the new scheme of income management full review and appeal rights will be available to all people subject to income management.

Outline of review and appeal rights – decisions under Part 3B of the *Social Security (Administration) Act 1999* (current income management scheme)

Background

Part 3B was inserted in the Social Security (Administration) Act 1999 (the Administration Act) in 2007 by the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (the 2007 Act).

Item 18 of Schedule 1 of the 2007 Act also inserted a new paragraph (paragraph (ka)) into existing section 144 of the Administration Act. Section 144 sets out decisions that the Social Security Appeals Tribunal (the SSAT) cannot review. The effect of paragraph 144(ka) was to preclude the SSAT from reviewing “a decision under Part 3B of this Act [the Administration Act] that relates to a person who is subject to the income management regime under section 123UB”. (Section 123UB, the current Northern Territory income management measure, sets out the circumstances in which a person becomes subject to income management because the person lives in a declared relevant Northern Territory area.)

Section 181 of the Administration Act provides that the Administrative Appeals Tribunal (the AAT) may only review a decision that has been reviewed by the SSAT. As a consequence of the limitation in paragraph 144(ka) of the Administration Act and the operation of section 181, the AAT was not able to review a decision under Part 3B of the Administration Act that related to a person subject to income management under the current Northern Territory income management measure.

Current position

Item 1 of Schedule 2 of the *Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009* (the 2009 Amending Act) repealed paragraph 144(ka), removing it from the Administration Act with effect from 24 June 2009. Item 2 of Schedule 2 of the 2009 Amending Act sets out a saving arrangement in relation to paragraph 144(ka) of the Administration Act. As a result of these amendments, a ‘decision of an officer’ (within the meaning of paragraph 140(1)(a) of the Administration Act) that was made under Part 3B of the Administration Act, on or after 24 June 2009, in relation to a person who is subject to the income management regime under the current Northern Territory income management measure is able to be reviewed by the SSAT, and by the AAT (provided that the SSAT has reviewed it first).

Proposed position under the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*

The *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* (the Bill) does not propose any restrictions on a person’s review and appeal rights.

Accordingly, the SSAT will have the capacity to review a decision of an officer (within the meaning of paragraph 140(1)(a) of the Administration Act) made under any of the proposed new provisions. The AAT will also have the capacity to review such a decision, provided that the SSAT has reviewed the decision first.

In addition to these rights, proposed subsections 123UGA(8), (9) and (10) (at item 37 of Schedule 2 of the Bill) give a person who has been determined to be a “vulnerable welfare payment recipient” under subsection 123UGA(1), the right to request that the Secretary reconsider their circumstances and either vary, revoke or decide not to change the determination that is in force in relation to the person. (A determination made under subsection 123UGA may be in force for up to 12 months in relation to a person – see paragraph 123UGA(3)(b).)

This capacity to ask for reconsideration is distinct from, and additional to, the right to seek review by the SSAT of the original decision (to make the determination). It allows a person who is subject to a determination under subsection 123UGA(1) to bring changes of circumstances and other relevant information to the Secretary’s attention while a “vulnerable welfare payment recipient” determination is in force in relation to the person, and to ask the Secretary to consider varying or bringing to an end the determination.

As a matter of administration, this reconsideration will be conducted by a delegate of the Secretary. It is intended that, for the purposes of these provisions, the delegate will be a Centrelink Social Worker.