

**To: Senate Legal and Constitutional Legislative Committee**

**Requested by:** Kelly Paxman, Acting Secretary    **Critical Date:** 21 January 2005

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## **Submission regarding Administrative Appeals Tribunal Amendment Bill 2004**

Centrelink has been requested by the Senate Legal and Constitutional Legislation Committee to provide a submission concerning the proposed amendments to the *Administrative Appeals Tribunal Act 1975* contained in the Administrative Appeals Tribunal Amendment Bill 2004.

Centrelink is a large organisation charged with the delivery of products and services on behalf of Government to a customer base in excess of six million Australians.

Excellence in customer service and efficiency are two of our core business priorities and to the extent that changes to Tribunal practices and procedures are consistent with those priorities those changes are supported and applauded.

### **Centrelink's Involvement at the AAT**

Centrelink staff have been conducting advocacy at the AAT on behalf of the Secretary to the Department of Family and Community Services (DFaCS) since Centrelink commenced as an organisation in 1997.

Prior to that date the Department of Social Security operated an advocacy service which was first established shortly after the Tribunal acquired jurisdiction to review social security matters in 1979.

In 2003/04<sup>1</sup> Centrelink dealt with 1,711 new cases lodged at the AAT, which was second in volume only to lodgements in the compensation division.

Centrelink is proud of but not complacent about its advocacy performance before the Tribunal and continuously seeks to work with the Tribunal and other parties to improve outcomes for the citizen.

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<sup>1</sup> From *AAT Annual Report 2003-2004* (see <http://www.aat.gov.au/CorporatePublications/annual/AnnualReport2004.htm>)

The high number of social security cases finalised each year (1,914 cases in 2003/04), the low number of cases on hand at any time (800 cases as at 30 June 2004) and a consistent record of achieving finalisation rates at or near the target (90% finalised within 12 months) are evidence of the fact that most social security matters are dealt with as expeditiously and as efficiently as possible. Our own statistics indicate that hearings are conducted in only about a third of all cases, the remainder being resolved through the existing pre-hearing processes which currently exist.

In an overwhelming majority of cases applications are lodged by unrepresented applicants. Centrelink advocates are accustomed to providing assistance to such applicants and tribunal members alike.

Over time Centrelink has evolved its own administrative processes to obtain an early outcome of cases. These procedures involve, for example, calling customers soon after lodgement, even prior to any conferences, to discuss their dispute and settlement options, if any. Extensive use is also made of the conferencing process.

Centrelink has liaison processes in place at the local AAT sites and has been working co-operatively with the Tribunal to streamline processes, make matters easier for applicants and improve general performance. We would consider the organisation to be responsive and proactive in relation to its dealings with the AAT.

## **Impact of AAT Act Amendments on Centrelink's work**

Although these amendments have been described as "the most substantial reform of the Tribunal undertaken since it first opened its doors on 1 July 1976"<sup>2</sup>, it is not expected that the amendments will have any major impact on the way Centrelink deals with its AAT cases.

### **Submission on Main Areas of Reform**

#### *(i) Changes to AAT procedures*

##### *Alternative Dispute Resolution*

To the extent that Alternative Dispute Resolution is government policy Centrelink agrees with its use and implementation.

The majority of cases in the social security division in which Centrelink advocates operate are already resolved using the existing processes, most commonly the conferencing process, or Centrelink's own pre-conference processes, designed to lead to early resolution.

The availability of a greater range of alternative dispute resolution methods is not expected to have a significant impact on Centrelink. Mediation has very rarely been used as a process for resolving disputes in the social security jurisdiction. This appears to us to be due more to the nature of the disputes - facts often not in dispute, comparatively lit-

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<sup>2</sup> Commonwealth of Australia, *Parliamentary Debates*, Senate Hansard, 17 November 2004, 2 (Senator Ian Campbell, Minister for the Environment and Heritage; from his Second Reading Speech) (see <http://www.aph.gov.au/hansard/senate/dailys/ds171104.pdf>)

the discretion in the Act, applicants largely unrepresented - rather than any reluctance on Centrelink's part to participate in other processes. It remains to be seen whether the nature of social security disputes lend themselves more readily to conciliation or case appraisal than to mediation.

In any case, Centrelink is open to participate in any means of dispute resolution. We welcome and support any mechanisms by which cases can be resolved more effectively and efficiently.

Centrelink does not expect to be affected to any great degree by the President's expanded direction making powers.

#### *Authorised Conference Registrars given Power to Make Directions*

The amendments that are likely to have the most immediate effect on the daily work of our organisation are contained in Items 108 to 110, which will allow authorised Conference Registrars to make directions in relation to procedural aspects.

At present, procedures in each case are generally a matter of discussion between the parties and the conference registrar and a timeline and other matters is generally agreed upon. In some jurisdictions this informal agreement is always followed by a formal order, issued by a member of the tribunal, whereas in other jurisdictions there is no formal direction issued. In either case, a directions hearing can be scheduled where the timeline is not adhered to.

The proposed amendments are likely to result in a greater number of formal directions being issued in certain jurisdictions where this is not currently the case. However, it is not expected that this will affect the conduct of matters to any appreciable degree. Centrelink advocates already use their best endeavours to comply with any requests, formal or informal, issued by conference registrars.

Additionally, we support any means by which the process of issuing directions can be streamlined to avoid unnecessary directions hearings, a process often causing confusion and inconvenience to unrepresented applicants.

We would support these amendments, as they recognise the fact that procedural aspects are already largely the responsibility of conference registrar.

#### *(ii) Removal of restrictive constitution provisions*

The great majority of cases in the social security division are heard by single members. We value the experience and skills of the membership of the Tribunal and have no concerns over the provisions altering the manner of constituting the Tribunal. We have no other submissions on the measures involving the changes to the constitution provisions, as amendments relating to such provisions are not expected to affect the work of the agency.

#### *(iii) Better use of ordinary members*

Centrelink welcomes the amendments contained in the Bill which will allow for greater use of ordinary members. Specifically in the social security division of the Tribunal, the experience and expertise which ordinary members of the Tribunal bring to their role is greatly valued. We have no concerns about the absence of a senior or presidential member on a multi-member Tribunal.

Particularly in smaller jurisdictions, an increased ability to use ordinary members, where a senior or presidential member would otherwise be required, may lead to an earlier resolution of matters and may assist in a more timely and efficient resolution of cases.

*(iv) The role of the Federal Court*

Centrelink has no comment in relation to the President's consent being required before a question of law may be referred to the Federal Court.

Items 173 and 174 will allow the Federal Court and Federal Magistrates Court to make findings of fact rather than remitting the matter back to the Tribunal for a determination of a factual question. Since rules of evidence apply to a court but not to the Tribunal, there may be potential for parties to both raise more factual matters and also to contest evidence more vigorously than at the Tribunal. Although, as noted above, factual matters are often not a major issue in social security appeals, the question arises whether the process will be more complex for unrepresented applicants to take their matters to the court.

*(v) Expansion of the qualification requirements for appointment as President*

Centrelink has no comments on the amendments relating to the qualification requirements for appointment as President of the AAT. The amendments are not expected to affect the operations of the agency.

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