CHILD SUPPORT

Reviewing assessments

ANTHONY GRIMES reports on new review procedures for child support.

The *Child Support Legislation Amendment Act* 1992 passed by Parliament in March and which received Royal Assent on 6 April, introduced important enhancements and tightening up of the provisions of the *Child Support (Registration and Collection) Act* 1988 and the *Child Support (Assessment) Act* 1989.

Probably the most significant amendments for consumers' access to justice were those to the Assessment Act which provide for new administrative review of assessments made under that Act. A new Part 6A permits a full review by special Child Support Review Officers (CSROs) appointed solely for that purpose.

Reviews will be able to be made of all assessments and reassessments on or after 1 July 1992.

Applications for review can be made by either party on a written application form (new s.98E) designed in the Child Support Agency (CSA) with some community consultation. The pro forma I have seen is simple and fairly straightforward comprising several 'Yes/No' questions to establish the grounds under which applicants are applying.

At present — in the absence of a private agreement — administrative assessments of child support can only be departed from by court applications under Part 7 of the Assessment Act. The only exception is the election to use current year's income under s.60 — where actual income is 15% or more below the assessed child support income — obtained by completing an 'Election' form.

Review of assessments arising on or after 1 July 1992 by a CSRO is a mandatory prerequisite to court departure (ss.115 and 116). Court cases would then only proceed if either party was dissatisfied with the CSRO's decision.

CSROs will operate as single review officers with powers to make determinations departing from an assessment; they will take into consideration the same grounds and principles (i.e. justice, equity, 'properness') as courts (s.98C). The scope of such determinations is broad as for a court (s.98D).

Process and cost

Applications are screened: if no valid grounds are given, or the CSRO considers it would not be just, equitable, or proper to depart from an assessment, the application is refused (s.98F). No formal requirement exists for CSROs to give reasons for refusal. However, CSA staff involved in setting up the new CSRO process envisage despatch of a standard letter after the CSRO has examined an application.

Section 98H(2)(a) suggests CSROs must give all applicants (which would include those who would be manifestly refused under s.98F) opportunity to appear in person. CSA staff I have consulted do not appear to have this intention, so the legislation may set up a conflict about such applicants.

Where applications are accepted, the CSRO serves a copy together with copies of any supporting documents on the other party who has the right of a written reply on an approved form (s.98G).

Parties are then to be invited to represent their cases in person or by telephone (s.98H(2)) but attendance is not obligatory (s.98H(3)). They are not allowed separate representation (s.98H(5)), though the CSA staff I have consulted envisage that friends or interpreters might accompany parties with language, literacy or understanding difficulties. In any case, the intention is to exclude legal advocates. It remains to be seen how this section will be applied and whether disadvantaged participants (in language or expression terms) will be able to have their case *fairly* heard.

CSROs may conduct further investigations on each case (s.98H(4)) but this is not mandatory (s.98H(1)). A determination can be made on the basis of the documentation alone if neither party wants to attend (s.98H(1)(a)(i)).

One hour has been scheduled as the expected time available to hear, read, decide and write decisions on each case. This is ambitious, to say the least, and indicates that the CSRO process may suffer a lack of depth and thoroughness, which in turn may adversely affect its credibility among participants.

A major objective of Parliament was to reduce the cost of reviewing assessments by giving an alternative to court review. CSRO process could go a long way to alleviating cost as the service will be free and without legal expense. The latter is an oft-cited reason why so few CSA consumers have attempted departures since the Act began. This will be welcome news to people suffering hardship as a result of inappropriate assessment and who cannot afford legal fees.

Handling applications

Widely varying estimates of between 3000 and 70 000 applications in the first year are being made. Conservative estimates of between 13 500 and 40 000 are anticipated by CSA staff. Accuracy in predicting CSA statistics has a history akin to meteorology, however.

If there is very high or moderate demand, delays longer than getting a matter into court could be expected. In the meantime, the offending assessment will continue. No provision exists for temporarily setting it aside while awaiting review. This may generate hardship for some time, which in turn could lead to cynicism as to the equity of the whole process. Maybe CSA's Enforcement Section

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will adopt a pragmatic approach where such cases fall into arrears while awaiting review.

CSRO support staff will prioritise applications to ensure valid applications are heard with a minimum of delay. Applications without grounds, or where equity, justice or 'properness' would be compromised will be selected for 'fast-tracking' to final rejection. While an expected efficiency measure, this raises the question whether disadvantaged people with literacy language or expression problems will be rejected without a chance to explain themselves. Will s.98H(2)(a) still operate in these circumstances?

Another concern is the CSA's intention to 'fast track' difficult or complex cases into court. From the legislation, it is not clear how such cases would be processed, though it is likely that 'rejections' under s.98F may be made. While this might mean that cases involving complex financial arrangements to avoid child support liability would receive much closer scrutinising, it could be seen as an inappropriate use of the section. It could be seen as 'ducking the issue', and it could be more appropriate for CSROs to use their investigative powers more widely. While that would protract some cases, it would seem to accord with Parliament's intention: if such 'fast tracking' had been intended, CSROs would probably have been given a specific discretion. Moreover, it might defeat the objective of more just and equitable access to the law.

Administration

Initially CSROs were to be selected from the hundreds of community applicants who responded to national advertisements with many to be employed on a sessional basis. Rumour has it that a small number only will be appointed on a full-time basis from among Tax Office personnel. This may jeopardise their independence; which would undermine the credibility of the process.

Support staff selected from CSA in each State will process and prioritise applications and arrange hearings.

Location of CSROs at time of writing is undecided. Suggestions vary from locating near other tribunals (e.g. SSAT) to emphasise independence from government departments, but would-be neighbours are concerned at the security risks occasioned by the acrimonious nature of some child support disputes. There are also suggestions that rural and regional areas could receive CSROs 'on circuit' at local courts. Residents of those areas would welcome such an improvement of access, though the venues may limit the intended informality of hearings.

At the time of writing there are no available application forms and no receiving point for enquiries. Bewildered enquirers are frequently referred by bewildered CSA staff to agencies such as the funded project where I work. The anticipated delays may be a reality, especially at the inception of the CSRO process.

Like all government initiatives, this one will work better if it is well resourced, and well thought out, before its inception. If well used, the Child Support Review Officer process has the propensity to rebuild community confidence in the Child Support Scheme. If not, it will widen the Scheme's credibility gap in the public's eyes even further.

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CRIMINAL LAW

The confession

PETER WILMSHURST discusses an unusual inquiry involving a confession to a murder 19 years after the event.

Some interesting aspects of human behaviour and the reasoning of juries are raised in a May 1992 Report of an Inquiry held under s.475 of the *Crimes Act* 1900 (NSW) into the 'Pohl affair'; the inquiry being conducted by McInerney J of the NSW Supreme Court.[1]

The background

In November 1973 'Ziggy' Pohl was convicted of the murder by strangulation of Joyce Pohl, his wife, at their home in Queanbeyan on 9 March 1973.

Pohl was sentenced to life imprisonment and an appeal to the Court of Criminal Appeal was dismissed in August 1974. Pohl was released on licence on 25 February 1983 and discharged from this licence on 24 February 1988.

The report noted:

> The Crown case was circumstantial and from the time he was first spoken to by police Pohl denied any involvement with his wife's murder. He continued to assert his innocence whilst in prison and after his release. [p.1]

Much of the original case depended on the reconciliation of accounts of events and the condition of the Pohl's house on the morning of the murder, the resolution of which was left to the jury.

The principal variation was between Pohl and his sister-in-law, Margaret Pohl, who visited the house sometime after the murder but before Pohl's arrival back home when, as he claimed, he discovered his wife's body.