

Comment

The integration of Australia's immigration and social security programs has not been free from difficulties: restrictive residential rules and limits on the portability of pensions and benefits prevent many people, encouraged to migrate to Australia in order to meet our labour needs, from obtaining full coverage from income security schemes.

One of these difficulties was illustrated in *Hung Manh Ta* (1984) 22 SSR 247, where the AAT said that a refugee could not qualify for family allowance for his children, because those children were still living in Vietnam (waiting for entry to Australia under the family reunion program): the refugee did not have 'custody, care and control' of his children, the AAT said.

That difficulty was also raised in *Al Halidi* (p.303), where the AAT decided that an invalid pensioner could not be paid extra pension for his children because those children were still living overseas. Although the pensioner was making regular and (given his pension income) substantial payments for the children's maintenance, he did not have 'custody, care and control' of his children, an essential requirement if he was to qualify for extra pension. The AAT said that migrant parents separated from their children could rarely qualify for income security payments for those children - a result which, the AAT admitted, was difficult to reconcile with the '4 year rule', which appears to permit payment of extra pension, benefit or family allowance for overseas children for a maximum of 4 years. That inconsistency, the AAT said, should be resolved by amendment of the *Social Security Act*.

It is, therefore, unfortunate that the Government appears to have ignored the opportunity presented by the current amending legislation (given a 1st reading on 15 May 1985) to remedy this problem. The approach taken in that legislation is discussed at p.304 of this issue.

Also noted in this issue is the decision in *Teller* (p.298), where the AAT adopted an approach to German restitution payments different from that taken in *Artwinska* (1985) 24 SSR 287. According to this more recent decision, restitution payments made to victims of Nazi persecution fall within the basic definition of 'income' in the *Social Security Act*; and should be taken into account when assessing the rate of pension payable to an age pensioner. The AAT accepted that any part of the restitution payment which covered property loss would not be income (because of the specific exemption in para.(cc) of the definition of income).

This issue of the *Reporter* carries notes on 15 invalid pension decisions: the AAT continues to devote a large part of its resources to this aspect of Australia's income security programme and to struggle with the difficult distinctions which the idea of 'permanent incapacity for work' involves - medical and other factors, labour market considerations, the peculiar sensitivities of applicants, (described as the 'egg-shell skull' problem in *Jackson-Smale* (p.304)), and 'burden of proof' problems which are particularly important where medical evidence is so often in conflict.

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The *Social Security Reporter* is published six times a year by the Legal Service Bulletin Co-operative Ltd.

Editor: Peter Hanks Reporting: Peter Hanks, Jenny Morgan Administration and reviews editor: Brian Simpson
Typesetting: Jan Jay, Karen Wernas Layout: Peter Robinson

The *Social Security Reporter* is supplied free to all subscribers to the Legal Service Bulletin. Separate subscriptions are available at \$15 a year (one copy), \$24 a year (two copies) or \$30 a year (three copies).

Please address all correspondence to Legal Service Bulletin, C/- Law Faculty, Monash University, Clayton 3168.

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