



17 March 2008

Secretary
Department of Education, Employment and
Workplace Relations
GPO Box 9880
Canberra ACT 2601

Dear Ms Paul,

Re: Draft principles for social security litigation

Thank you for the opportunity to comment on the Departments' draft principles for decision-making in regard to social security appeals and litigation.

ACOSS welcomes the initiative to develop these principles so that decisions by the Department in this area are consistent, reasonable, and reflect the Government's 'model litigant' obligations.

In our view the principles should support and enhance the merits review process through the Social Security Appeals Tribunal and reflect the *beneficial character* of social security legislation. These are important protections for the low income people who rely on the income support system, and who appear in person before the Social Security Appeals Tribunal but often have great difficulty in negotiating the wider legal system.

We therefore welcome references in the draft principles to 'recognising the role of the tribunals' and 'considering the circumstances of the recipients and the impact an appeal would have on them and the family'.

We are in broad agreement with the suggestions put to you by the National Welfare Rights Network and National Legal Aid to improve the current draft. In particular, we suggest that two threshold tests covering the issues outlined below should apply before a decision to appeal is made.

The first threshold test is that an appeal is warranted and likely to succeed because a decision by the tribunal is either outside the scope of the proper exercise of its discretion or contained an error of law.

The second threshold test is that an appeal is the most effective and efficient way to proceed, taking account of the cost of appealing, the likely impact on the recipient and their family, the likely impact on the broader social security system, and the alternatives available.



We also suggest that the principles should specifically refer to the beneficial character of social security legislation. Further, we suggest that they should require the Department to conduct litigation in a timely manner to avoid disadvantaging clients, including withdrawing appeals or limiting their scope at the earliest opportunity where the Department decides that a current appeal is either inappropriate or unlikely to succeed. Finally, it would be desirable for the principles to require the Department to consider financial assistance to clients in cases where the Department appeals to the Federal Court of Australia.

We would most appreciate receiving a copy of the principles once finalised. Should your Department have any queries about this submission, please contact either myself or our Senior Policy Officer Peter Davidson at this office.

Yours sincerely

Andrew Johnson
Executive Director