

CHAPTER 5:

REGULATING FOR JURISDICTION: AN INAPPROPRIATE DELEGATION?

Introduction

5.1 The Administrative Review Council (ARC) raised the issue of the appropriate legislative instrument in which the jurisdiction of a tribunal should be defined.

5.2 As noted in Chapter 1, there are two provisions in the *Superannuation (Resolution of Complaints) Act 1993* where, in order to ascertain the jurisdiction of the Tribunal, the regulations need to be consulted. These are subsections 14(2) and 14(5). The majority of this report deals with the regulations that prescribe 'excluded subject matter' referred to in subsection 14(5). The issue of the appropriate legislative instrument for the definition of jurisdiction is also relevant to regulations that may in the future prescribe an 'excluded complaint'.

5.3 The ARC has as part of its function, the mandate to inquire into the adequacy of the law and practice relating to the review by the courts of administrative decisions, and to make recommendations to the Minister as to any improvements that might be made in that law or practice.⁷⁵

5.4 The ARC has submitted to the committee that because the complete ambit of the Tribunal's jurisdiction is not complete on the face of the Act, it is necessary for users of the Tribunal to have access to delegated legislation. The ARC contends that this may cause unnecessary uncertainty for users of the Act.

5.5 The ARC, therefore, has submitted that all exemptions from the jurisdiction of the Tribunal should be specified in the Act, possibly by way

⁷⁵ Section 51, *Administrative Appeals Tribunal Act, 1975*

of a schedule. If it is necessary to use regulations as a convenient short term mechanism, 'excluded subject matter' and 'excluded complaints' should be identified in the Act in due course.⁷⁶

5.6 In evaluating the evidence in relation to the appropriate legislative instrument for exclusions, the committee has examined the legislation that prescribes the jurisdiction of the Social Security Appeals Tribunal (SSAT). Section 1250 of the *Social Security Act 1991* sets out the non-reviewable decisions. There is **no** delegation of authority to prescribe by regulation decisions that cannot be reviewed by the SSAT. Any decisions that are not to be reviewed by the SSAT must be set out in the primary legislation and pass through Parliament.

⁷⁶ SISREG Sub No 22