

Reporter

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Opinion

Green v Daniels revisited

Readers with a sense of history will remember the land-mark decision in *Green v Daniels* (1977) 13 ALR 1, where the High Court held that the Government could not deny unemployment benefits to school leavers by simply announcing a policy change; the DSS was obliged to apply the eligibility criteria set out in the *Social Security Act*, without 'superimposing' an additional criterion.

In the light of that decision, it is difficult to see how the DSS could have hoped to succeed in its appeal in *Diepenbroeck* (p.948). The DSS attempted to persuade the AAT that it could, as a matter of general policy, refuse to pay a newstart training supplement to anyone under 21 — but s.644 of the *Social Security Act* 1991 makes no mention of age and confines the Secretary's discretion to the level of payment (taking into account only the claimant's expenses). Not surprisingly, the AAT declined the DSS's invitation to 'take account of Government policy' — the policy, the AAT said, was unlawful.

The parallels with *Green v Daniels* have been further underlined by the passage of amending legislation, which has written the 21 age limit into s.644 — but only for future claims for the allowance.

Recovery of fraudulently obtained payments

The decisions in *Kalwy* and *Ponsford* (950) open up an interesting issue: will a person, who has participated in a scheme

to defraud the DSS, be indebted to the Commonwealth under s.1224 of the *Social Security Act* 1991 (formerly s.246(1) of the *Social Security Act* 1947)? This provision declares that amounts paid by way of pension, benefit or allowance in consequence of false statements etc. are a debt to the Commonwealth; but the provision does not identify the debtor.

These 2 decisions indicate that, in addition to the specific power to obtain repayment orders following conviction under the *Proceeds of Crimes Act* 1987, s.29B of the *Crimes Act* 1914 and s.1351 of the 1991 Act (formerly s.239(7) of the 1947 Act), the DSS can use the recovery powers in s.1224 of the 1991 Act — even where there has been no conviction.

Strict compliance with procedures

The general consequences of the decision in *Doravelu* (p.961) for DSS administration will bear watching. If, as the AAT decided, the Secretary must comply strictly with the procedural steps spelt out in the *Social Security Act* when issuing notices with potential penal consequences, the DSS will need to exercise considerably more care in dotting i's and crossing t's than most mega-departments find achievable.

[P.H.]

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