

SOCIAL SECURITY

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In this Issue

**Overpayments:
relevance of conviction**

In determining whether an overpayment debt is recoverable from a person, what weight should the SSAT and the AAT give to the fact that the person has been convicted of offences in relation to obtaining the payments? Following the decisions of Hill J and the Full Court of the Federal Court in *Ridley* (pp.1065-6) and Einfeld J in *Mariot* (p.1067), it is clear that the tribunals are not bound by the findings on which the conviction was based. They can hear evidence and determine the relevant issues afresh, but according to the Full Court in *Ridley* must give 'some weight' to the conviction.

But in what circumstances would the tribunals, which are required to make findings only on the balance of probabilities, wish to depart from a criminal court's finding of guilt beyond reasonable doubt?

The tribunals may be faced with a different set of issues to those involved in the offences of which the person was convicted. For example, the determination of liability for an overpayment debt under s.246(1) of the *Social Security Act 1947* or s.1224 of the *Social Security Act 1991* requires finding a false statement or breach of the Act, receipt of a payment without entitlement, and a causal nexus between the two. Prosecutions for social security frauds are brought under ss.1344-1347 of the 1991 Act (s.239(1) of the 1947 Act), or in more serious cases under s.29A-D *Crimes Act 1914* (Cth). Not all of these offences require that a payment without entitlement have occurred as a result of the defendant's conduct.

In some cases the issues involved in the criminal proceedings may correspond more closely to those raised by the administrative review. For example, if a criminal court has ordered the defendant to pay reparation to the

Commonwealth, the court must be taken to have found that the amount of the order was the amount paid by the DSS in consequence of the conduct in respect of which the person was convicted.

A reparation order for \$40,405 had been made against Denise Ridley following her conviction, yet the AAT found that there was no overpayment debt. Although Mrs Ridley had made false statements to the DSS about her living arrangements, the question of liability turned on whether she was living as a *de facto* wife. The AAT found that she was not, and was therefore entitled to the payments of widow's and sole parent pensions that she had received.

The AAT had not erred in the weight it had given to the conviction, according to the Full Court. The AAT had been unable to ascertain the evidence led at the hearing of the criminal charges or the findings on which the conviction and reparation order were based.

The Full Court's decision gives to tribunals the task of assessing the weight to be accorded to a conviction. To do this, the tribunals may need to enquire as to the circumstances of the conviction, including whether the defendant had legal representation, what plea was entered and what evidence was heard.

Waiver directions invalid

On 8 July 1991, the Minister issued directions limiting the circumstances in which social security debts may be waived. The Full Federal Court on 3 June 1993 in *Riddell v Secretary to DSS* (p.1067) has decided that the directions were not a valid exercise by the Minister of the power conferred by s.1237(3). The cases of *Saracik*, *Summers*, *Lea*, *Delgas*, and *Thick* (reported in this issue) were decided before *Riddell*.

[P.O.C.]

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