

## SOCIAL SECURITY

## Reporter

## Opinion

## In this Issue

Continuing  
inability to work

In the recent decision of *Hamel* (p.1082), the President of the AAT has analysed in detail the meaning of the phrase 'continuing inability to work'.

The test to determine whether impairment alone prevented a person from doing 'work for which the person is currently skilled' was objective, and in assessing the person's current skill level, reference could be made to a person's level of education and ability to speak and write English. Poor language skills and a lack of motivation might be taken into account when determining if a person's impairment prevented the person from undertaking work.

Educational and vocational training referred to in s.94(2)(b) was not on the job training but rather formal training undertaken prior to the person taking up employment. In this decision the AAT seemed prepared to continue the broad interpretation of impairment originally outlined in earlier AAT decisions such as *Panke 2 SSR 9*.

## Waiver

The Government has just introduced an amending Act into the Parliament, the *Social Security (Budget and Other Measures) Legislation Amendment Bill 1993*, which attempts to overcome the repercussions caused by the Federal Court decision of *Riddell* (1993) 73 SSR 1067 (see S. Argument's article at p.1094). The present s.1237 of the *Social Security Act 1991* is to be

repealed and replaced with s.1236A which purports to apply the new ss.1237 and 1237A to all debts whenever they occurred. The new s.1237 would incorporate much of the old 'ministerial directions' in the section and provide that debts could only be waived in particular circumstances. 'Special circumstances' is not included as a ground for waiving a debt. Section 1237A sets out the grounds for waiving part of a debt.

Once again a discretion which has been part of the *Social Security Act* for many years is to be curtailed. The grounds for waiving a social security debt will be restricted so that the tribunals and the courts will have no option but to affirm DSS decisions to raise and recover a debt, even if the person is in extreme financial hardship.

## SPP Child: Discretion

The case of *Juren* (p.1087 of this issue) is notable as being one of very few indications given by the AAT as to the criteria that are relevant to the exercise of the discretion in s.250(2). An effect of an exercise of the Secretary's discretion under that subsection is to disqualify one or more persons for sole parent pension in respect of a child. The provision itself offers no guidance as to how this 'judgment of Solomon' should be approached. The AAT in *Juren* suggests that it is a relevant consideration that an otherwise qualified person has been complicit in a breach of the terms of a Family Court custody order.

[C.H.]

## Opinion

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Editors: Peter Hanks, Pam O'Connor, Christine Heazlewood

Contributors: Peter Hanks, Regina Graycar, Denny Meadows, Jenny Morgan,  
Brian Simpson, Pam O'Connor, and  
Christine Heazlewood.

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