

SOCIAL SECURITY

Opinion

Equitable interests

The Federal Court in *Kidner* (p.1132) has re-affirmed the view of Einfeld J in *Kintominas* (1991) 63 SSR 891 that the DSS is required, when assessing the value of a person's assets under the assets test, to include only the value of assets beneficially owned by the person.

The assessment of beneficial or equitable interests continues to arise in a variety of forms and in novel contexts. In *Langton* (p.1115) an applicant's assets for purposes of the benefits assets test was adjusted to allow for the proprietary equity of a co-owner who makes improvement to property held in co-ownership with another. In *Reyes* (p.1116) the AAT considered whether a husband was a 'homeowner' for the purposes of payment of rent assistance. He had transferred to his wife his interest in the home subject to retaining a right to a share in the proceeds of sale. And in *Kidner* the Federal Court remitted the matter to the AAT to consider whether *Kidner's* sons held a beneficial interest in land either under a part-performed oral agreement for sale, or under a constructive trust arising from their improvements to the land undertaken in reliance on the agreement.

Cancellation of pension overseas

Section 1218 provides that a person ceases to be qualified for age pension at the end of six months if the person leaves Australia without obtaining a departure certificate. Section 1219 provides for the issue of a certificate where

a qualified pensioner, while still in Australia, notifies the DSS of a proposed departure 'as required by a recipient notification notice'.

Awaiting hearing in the AAT are a number of appeals by pensioners who failed to notify the DSS of a proposed departure and had their pensions cancelled after six months' absence. An issue raised in these appeals is whether the disqualification in s.1218 depends upon the pensioner having been given, prior to departure, a valid recipient notification notice. The AAT had previously held that the requirements in the Act for the giving of certain notices had to be complied with strictly: *Carruthers* (1993) 76 SSR 1100, *Doravelu* (1992) 67 SSR 961.

No clear consensus on the matter has yet emerged in the AAT. In *Glover* (p.1122) the AAT decided that although the notice issued to Glover was defective, the invalidity did not affect the operation of s.1218 which automatically terminated his entitlement after six months' absence.

A different panel of the AAT in *Peretti* (p.1123) disagreed with the view expressed in *Glover* that s.1218 operated independently of s.1219. However the point did not have to be decided because the AAT found that the notice issued to the Perettis was valid. The use of a plain English form of wording instead of that prescribed in the Act did not prevent the notice from being in strict compliance with the Act.

[P.O'C.]

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