

Student Assistance Decisions

AUSTUDY: course of a type (1995)

SECRETARY TO DEET and
LANDER
(No. 10784)

Decided: 7 March 1996, by R.N.
Purvis.

Background

The Secretary sought review of a decision of the SSAT which set aside the decision of a delegate of the Secretary that Lander was not eligible for AUSTUDY in 1995, because the course in which he was enrolled, the Master of Arts (Psychology) (the MA(Psych)), at the University of Sydney, was not an AUSTUDY approved course.

The legislation

Subsection 7(1) of the *Student and Youth Assistance Act 1973* (the Act) sets out certain conditions for the granting of a benefit under the AUSTUDY scheme. The condition relevant to the decision under review was that contained in paragraph (c) which provides that the student must be undertaking a course of study or instruction (or part thereof) that the Minister has determined in writing to be a secondary or tertiary course. Regulation 6 of the AUSTUDY Regulations provides that, to get AUSTUDY, a student must be taking a course that the Minister has approved for the AUSTUDY scheme under para. 7(1)(c) of the Act.

The relevant written determination of the Minister was Determination No 1994/1 — Determination of Courses for the purposes of paying AUSTUDY, which was dated 5 December 1994 and commenced on 1 January 1995 (the decision, in error, refers to the commencement date as 1 December 1995). Paragraph 4 of Determination 1994/1 provides that an accredited tertiary course is a course accredited by the authority responsible for the accreditation of tertiary courses in the State or Territory in which the course is conducted or, if the tertiary institution is authorised by the law of the State or Territory in which it is located to accredit its own tertiary courses, a course conducted and accredited as a tertiary course by the institution. Paragraph 6 of Determination 1994/1 provides that, for the

purposes of s.7 of the Act, a course of a type, at an institution and of a minimum duration specified in Schedule 3, is a tertiary course. The relevant part of Schedule 3 refers to a graduate or postgraduate diploma course, for which the entry requirement is an undergraduate bachelor degree or diploma course or equivalent and which is an accredited tertiary course, at a higher education institution, of a minimum duration of 12 weeks (or part-time equivalent).

The issue

The issue before the AAT was whether the MA(Psych) was a course of a type specified in the relevant part of Schedule 3 of Determination 1994/1.

The arguments

For the Secretary, it was argued that, for the purposes of AUSTUDY, a decision maker has no power to review or question the accreditation given to a course by an institution. The accreditation of the course by the relevant institution and the credential which the student would receive on completion of the course were the means by which a course approved for AUSTUDY are identified in Schedule 3 of Determination 1994/1. The University of Sydney is authorised to accredit its own courses and its determination as to the status of a particular course is conclusive for the purposes of Determination 1994/1. As the University of Sydney accredited the MA(Psych) as a masters degree course, it does not fall within the relevant part of Schedule 3 of the Determination and is not an approved course for AUSTUDY.

Landers argued that as the Act is beneficial legislation, Parliament intended it to be administered in a flexible and not overly technical manner. The MA(Psych) course at the University of Sydney is a graduate or postgraduate course within the relevant part of Schedule 3 because it is a masters degree in name only given the entry requirements, purpose and content of the course. Comparison of these characteristics of the course with the characteristics of graduate diplomas and masters degrees as set out in the Australian Qualification Framework indicated the MA(Psych) was in the nature of a graduate diploma. In addition, the University of Sydney had taken steps to offer it as a Graduate Diploma in Psychology in 1996. It was suggested the HECS weighting given to the MA(Psych) in comparison to other

masters degrees offered in the Faculty of Arts at the University of Sydney also supported its characterisation as a graduate diploma course.

The AAT's approach

The Tribunal referred to the Second Reading Speech on the *Student Assistance Bill 1973* from the House of Representatives in support of its view that the Act was beneficial legislation which ought to be construed favourably to those whom it was intended to benefit.

The Tribunal referred to its earlier decision of *Dieter* (reported in this issue, p.39) and adopted the approach taken there. It noted that dictionary definitions of the word 'type' supported the formulation of the question as to whether the MA(Psych) was a 'course of a type' to be whether it possesses the characteristic qualities of, or the particular characteristics which distinguishes it as, a graduate or postgraduate diploma course.

Australian Qualifications Framework (AQF) guidelines developed and assented to by Commonwealth, State and Territory Ministers responsible for education and training were introduced on 1 January 1995, replacing descriptors previously used to provide guidance on qualification levels. The AQF guidelines indicated that the graduate diploma and masters degree differ in terms of the characteristics of learning outcomes and pathways to the qualification. The graduate diploma focused on broadening skills already gained while the masters degree was concerned with enhancing specific professional or vocational skills. The prerequisite for the graduate diploma was typically a bachelor degree or diploma while the masters degree typically required candidates to hold an honours bachelor degree or equivalent.

The University of Sydney Department of Psychology Postgraduate Handbook indicated that of the five postgraduate psychology courses offered in 1995, all except the MA(Psych) required a minimum of 4 years psychology training prior to admission together with evidence of individual research training at 4th year level. The MA(Psych) was designed for students with 3 years academic training in psychology. In addition, students completing the MA(Psych) would normally be required to complete a 4th year honours program prior to admission to the other postgraduate degrees.

The Head of the Department of Psychology at the University of Sydney indicated that the MA(Psych) had been structured to meet the associate membership requirements of the Australian Psychological Society for students who had obtained a bachelor degree with a psychology major.

The Tribunal also noted that, in terms of learning outcomes, the course content of the MA(Psych) provided for the broadening of skills gained in the prerequisite bachelor degree rather than the enhancement of specific professional skills or the acquisition of a specific area of knowledge through research characteristic of master level courses.

The omission of the MA(Psych) from a major review of masters degrees within the Faculty of Arts as a result of the anticipated change to a graduate diploma in 1996, supported the conclusion that relevant bodies within the University of Sydney recognised the MA(Psych) as more in the nature of a graduate diploma than a masters degree.

The Tribunal did not find it necessary to consider the evidence as to HECS weightings as between the MA(Psych) and other masters degrees in the Faculty of Arts at the University of Sydney because, on the basis of the other evidence, it was satisfied that the MA(Psych) is a course of a type of graduate diploma for which the entry requirement is an undergraduate bachelor degree, and as such, an accredited tertiary course within the definition of paragraphs 4, 6 and Schedule 3 of Determination 1994/1 and a course approved for the purposes of paying AUSTUDY. As Lander satisfied s.7(1)(c) of the Act, he was eligible for AUSTUDY for 1995.

Formal decision

The AAT decided to affirm the decision under review.

[S.L.]

AUSTUDY: course of a type (1994)

DEET and DIETER
(No. N95/521)

Decided: 21 July 1995, by R.N. Purvis.

Background

The Secretary sought review of a decision of the SSAT which set aside the decision of a delegate of the Secretary

that Dieter was not eligible for AUSTUDY in 1994, because the course in which he was enrolled, the Master of Arts (Psychology) (the MA(Psych)), at the University of Sydney, was not an AUSTUDY approved course.

The legislation

In the 1994 academic year, the relevant Ministerial Determination was dated 16 December 1993 and the equivalent part of Schedule 3 provided 3 levels of courses; the 'associate diploma', the diploma, or a 'pre-vocational' course that is not a secondary course, with each level being of a specified duration and with its own entry prerequisites.

The issue

The issue before the AAT was whether the MA(Psych) was a course of a type specified in the relevant part of Schedule 3 of the Determination dated 16 December 1993.

Reasons

The Tribunal relied heavily on the Register of Australian Tertiary Education, issued by the Australian Education Council, which described the level of accredited awards and their associated titles through national guidelines for course classification, length and nomenclature for use by all accrediting institutions and authorities. The MA(Psych) was considered to align, in a general sense with the prerequisites in the Register for a masters degree by coursework. Although the MA(Psych) did not align with all of the prerequisites to a masters degree by research, it was represented as a masters degree by the accrediting institution, the University of Sydney. The Tribunal considered the relevant issue to be, not whether the MA(Psych) was equivalent to other higher degrees offered by the university, but whether it was a course of a type described in the Schedule.

The Tribunal considered that, because of differences in the nature of the courses and the prerequisites for each of the associate diploma, diploma, and pre-vocational course levels, and the MA(Psych), it was not a course of any of these types. Accordingly, Dieter was not entitled to AUSTUDY in respect of the course for 1994.

Formal decision

The AAT decided to set aside the decision of the SSAT and affirm the decision that Dieter was ineligible for AUSTUDY in 1994.

[S.L.]

[Contributor's note: The opposite conclusions reached by the Tribunal in *Lander* and *Dieter* is largely explained by the fact that Schedule 3 of the 1993 Determination did not include the course type 'graduate or post-graduate diploma'. This course type was added with effect from 1 January 1995, by Schedule 3 of Determination 1994/1, dated 5 December 1994.]

AUSTUDY: whether student an isolated student

NEWTON-TIGHE and
SECRETARY TO DEET
(No. 10754)

Decided: 19 February 1996 by S.A. Forgie.

Background

Newton-Tighe was a secondary school student at Casino High School. She did well in history and wanted to be a history teacher. In 1994, additional history classes were held at 8 a.m. on two mornings of each week during school term. Newton-Tighe wanted to attend these classes but the distance from her home to school restricted her ability to do so. The family home was 34 kilometres from the school. Previously Newton-Tighe had travelled on the school bus. It picked her up, 2.4 kilometres from her home, at 7.55 a.m. and arrived at the school at 8.55 a.m. There was no other means of public transport available. Her mother was unable to drive her to school, so it was decided that Newton-Tighe would live in town. The school bus was owned and operated by a private contractor. It picked up other passengers on the route.

The issues

The issue was whether Newton-Tighe was entitled to a living away from home allowance. This depended on whether her parents' principle home was 'isolated'. There was no dispute about the facts in this case, nor that Newton-Tighe was eligible for AUSTUDY. The issue related to the interpretation of regulation 78 of the AUSTUDY Regulations (the regulations).

The legislation

The relevant legislation is the *Student and Youth Assistance Act 1973* and the AUSTUDY Regulations. The regulations set out the circumstances when