

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

AUSTUDY can be paid. Regulation 60 specifies three types of living allowances: independent, away-from-home, and standard. Regulation 77 sets out who may receive the away-from-home living allowance. This includes a student who is not living with a parent and is an isolated student 'of one of the following kinds: (a) isolated home, as described in regulation 78'. The principle home of a student's parent is isolated if the criteria set out in regulation 78(1) apply.

Isolated home

Regulation 78(1) provides: 'The principle home of a student's parents is isolated if the conditions opposite one of the items in the following table apply to the home'.

The Tribunal noted that Newton-Tighe did not satisfy items(2), (3) or (5) of the table in regulation 78. It focused on items (1) and (4), which provide that the home of a student's parents is isolated if either the school is 16 km or more from the home and there is more than 4.5 km distance from public transport between the home and the school, or the distance between the home and school is more than 8 km and it is impracticable for the parents to drive the student to school. These conditions must be permanent or for 30 days or more each term.

The Tribunal noted that those two conditions turned on the phrase 'distance from public transport between home and school'. The distance between the school bus and Newton-Tighe's home was only 2.4 km, less than that required in regulation 78. But Newton-Tighe argued that she satisfied these conditions either permanently or on at least 30 school days during 1994. This was due to the fact that no school bus could collect her in time to reach her 8 a.m. lessons two days a week. This was a permanent condition and applied for more than 30 or more school days a year.

The Tribunal looked in detail at the definition of public transport and 'whether regard should be had only to public transport that operates on a schedule that can get her to and from school at a time to fit in with the school's timetable': Reasons, para. 17.

In relation to the definition of public transport, the Tribunal looked at dictionary meanings, relevant case law and in particular the *Passenger Transport Act (NSW)*. It concluded that as the provisions of the *Passenger Transport Act* apply to non-commercial contracts, and the contractor on this bus route carries passengers other than school children over a fixed route and according to a regular schedule, he is operating his bus as public transport.

The Tribunal agreed that the public transport available would not enable Newton-Tighe to attend the lessons she wanted to, and that this was a permanent position. However the Tribunal concluded that regulation 78(1) does not allow

'account to be taken of the bus schedule and whether or not it does not enable a student to use it and to reach school in time for lessons on a particular day or days. It is concerned only with the measurement of distance . . . public transport of which account is taken under sub-regulation 78(1) must be public transport which travels between the home of the student's parent or parents . . . and the school'.

(Reasons, paras 24 and 25)

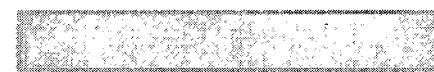
The Tribunal then considered the issue of duration. The distance may be greater than the specified distances either for a permanent duration or on at least 30 days during term time because of special weather conditions. The period of at least 30 days relates specifically to weather conditions. In relation to the duration described as 'permanent', the Tribunal considered that 'the distance of the public transport from the home must be more than the specified distances on a continuing (i.e. abiding) basis . . . more than simply on a day or two a week': (Reasons, para 29).

The Tribunal concluded that Newton-Tighe's parents' home was not a distance of either 4.5 or 8.0 kilometres or more from public transport on a permanent basis. Consequently she did not satisfy the criterion in either item (1) or (4) of regulation 78(1) and was not entitled to an away-from-home allowance.

Formal decision

The decision under review was affirmed.

[M.A.N.]



Minimum time to complete a course: concession for previous study

GRAY and SECRETARY TO DEET (No.10778)

Decided: 1 March 1996 by T.E. Barnett.

Gray sought a review of the SSAT decision that she was ineligible for AUSTUDY in 1995, as her previous studies amounted to the minimum time needed to complete a course at that level.

The legislation

Regulation 41 of the AUSTUDY Regulations refers to previous study. It states that a student can only get AUSTUDY if the time already spent studying at the same tertiary level is less than the minimum time needed to complete the course plus an additional period of 6 or 12 months. The additional period is only available for courses lasting more than a year. An additional 6 months is allowed if the student is enrolled in semester units, and an additional 12 months is allowed if the student is enrolled in full year units, or needs to pass a year's work to progress in the course.

Regulation 47 contains a concession to this rule. It provides that no account will be taken by DEET of an earlier course, if completion of that course is the normal requirement for the current course.

The facts

Gray completed a 4-year Bachelor of Arts degree in 1994. In 1995 she enrolled in a Bachelor of Arts (Music Theatre) course, and lodged an application for AUSTUDY.

She claimed that her first degree was a normal requirement for admission to the 1995 course. This, she argued, entitled her to benefit from the concession in Regulation 47. The Director of the institution where Gray had enrolled to do the 1995 course, gave evidence that students who enrolled in the course were expected to have prior work or academic experience. Of those who had enrolled 60% or 70% had graduated from other courses, but one-third did not have a prior degree.

The AAT noted that the university handbook listed the academic requirements for admission to the course as Tertiary Entrance Examination, mature age entry, TAFE qualifications or Aboriginal student entry.

The findings

The AAT found that Gray was ineligible for AUSTUDY pursuant to Regulation 41 as she had already studied for 4 years at the bachelor degree course level.

The AAT considered whether the concession in Regulation 47 applied to Gray. It reviewed the definition of 'normal requirement' and stated that it refers to:

'the usual or typical obligation that must be complied with. It refers to an obligation that is normally or usually complied with and not simply a desire or wish that may be followed.'

(Reasons, para. 13)

It was noted by the AAT that one-third of the students enrolled in the 1995 course did not have prior degrees.