

On the basis of the evidence, the AAT concluded that Ferguson had forgotten about his appointment when he decided to go to Western Australia. The 'forgetting' was not within his control and it was not reasonably foreseeable by him. Therefore he had not failed to comply with the CMAA. The AAT set out 5 steps a decision maker should comply with when making a decision such as this. These are:

- identify the sections of the legislation;
- the terms of that section;
- the delegation power;
- which legislative test applies; and
- the findings in relation to the particular person in relation to that test.

Formal decision

The AAT set aside the decision under review and substituted its decision that the decision to cancel Ferguson's NSA be set aside.

[C.H.]

[Editor's note: The DSS have appealed to the Federal Court.]

Newstart allowance: enrolment in a full-time course of education

LAUDER and SECRETARY to DSS (No. 10888)

Decided: 26 April 1996 by S.A. Forgie.

Lauder applied for newstart allowance in 1995. His claim was rejected by the DSS because he was enrolled in a full-time course of education. The SSAT affirmed the decision to reject his claim and Lauder applied for review by the AAT.

The facts

Lauder was an architect by profession. Having been retrenched in November 1994, he applied for newstart allowance which was granted. For the first semester in 1995, he was enrolled as a full-time student in a Diploma of Management course at the Hervey Bay Senior College. He applied for AUSTUDY which was granted. By the time he was 3 weeks into his course, he discovered, contrary to advice previously received, that he was only entitled to the single rate of Austudy as his wife was not considered a depend-

ent spouse. He lodged a further claim for newstart allowance, having maintained his registration with the CES as an unemployed person while undertaking his course.

The issue

Newstart allowance was not payable to Lauder if he was enrolled in a full-time course of education.

The law

Section 613 of the *Social Security Act 1991* states, in as far as is relevant here, that '... a newstart allowance is not payable to a person who is enrolled in a full-time course of education ...' the AAT noted that the term 'full-time course of education' is not defined in the Act. The AAT then set out the relevant guidelines of the DSS, without comment, apart from stating that they are not binding on the AAT. It then referred to the case of *Harradine v Secretary, DSS* (1989) 10 AAR 412 because it referred to the notion of full-time, although in the context of previous legislation which read 'engaged on a full-time basis in a course of education' and not 'enrolled' as in s.613.

The AAT said that the question it had to answer was to be resolved not 'by what the student does regardless of the designation of the course, but by reference to the student's enrolment in a course that is characterised as a full-time course of education ...': Reasons para. 26. The AAT agreed with the view taken in *Re Secretary, DSS v Cheary* (1993) 17 AAR 97 that, whether or not a course in which a student is enrolled is a full-time course, is a matter of degree. The designation of the course by the institution is one factor to be considered. Other factors are whether the lectures are held during normal working hours and the hours which the institution expects a student to devote to the course, apart from formal contact hours. In Lauder's case the course had been designated as a full-time course with lectures held during normal working hours. Whilst the contact hours were only 14, this had to be balanced against the institution's designation leading to the conclusion that Lauder's course was a full-time course. The AAT was satisfied that between March and June 1995 Lauder was enrolled in a full-time course of education. Therefore, pursuant to s.613 (1) of the Act, the AAT decided that newstart allowance was not payable to him during those times.

Austudy Regulations and newstart provisions

The AAT found that Lauder had experienced great difficulties in ascertaining what his benefits would be under the Austudy Regulations, and what they

would be under the Act. It said that some of the difficulties were to do with differences in language in the Act and in the Austudy Regulations, so that a student might not be able to establish that he is undertaking a full-time workload under the Austudy Regulations, and at the same time, find that he is enrolled in a full-time course of education for the purposes of the newstart provisions. This would result in a student missing out on both Austudy and newstart payment. The AAT said that the provisions of the Act and of the Austudy Regulations should be made complementary and consistent with one another.

Formal decision

The AAT affirmed the decision of the SSAT to reject the applicant's claim for newstart allowance.

[G.H.]

Cancellation of newstart allowance: unreasonable delay in entering into a CMAA

GEEVES and SECRETARY TO DEET (No. 10873)

Decided: 17 April 1996 by A.M. Blow.

A decision was taken by a delegate of the Department of Education, Employment and Training to cancel Geeves' newstart allowance on the ground that he had unreasonably delayed entering into a case management activity agreement. This decision was affirmed by the SSAT.

Background

Geeves became a participant in the case management system provided for in the *Employment Services Act 1994* (the Act) in July of 1995. In October his case manager, Employment Assistance Australia, sent him two notices requiring him to attend an interview to 'reach' and 'complete' a case management activity agreement. The AAT accepted that these terms were sufficient to constitute a requirement pursuant to s.38(3) of the Act that Geeves enter into such an agreement, and a giving of notice of that requirement and of the place and time at which the agreement was to be negotiated in accordance