

ying the requirement to attend the two activities. Accordingly, Ruiz did not fail to take reasonable steps to comply with his CMAA.

#### Formal decision

The AAT affirmed the decision of the SSAT that Ruiz satisfied the activity test and qualified for newstart allowance during the period under review.

[A.T.]

## Activity test: failure to comply

TEMPEST and SECRETARY TO DEET

(No. 10868)

Decided: 16 April 1996 by E.K. Christie.

Tempest appealed to the AAT about a decision to cancel payments of newstart allowance. The decision to cancel newstart allowance was made by the DEET because Tempest had allegedly failed to comply with the activity test as required in s.601(1) of the *Social Security Act 1991*.

#### The facts

Tempest had been advised by the CES of a job with a local business. The work that Tempest was to do required him to wear steel capped safety boots which cost round \$50. As Tempest did not own a pair of steel capped safety boots he inquired with the CES to see if they could provide them for him.

The CES officer at Indooroopilly CES told him that he was not eligible for boots as it was only a 6-week job. Tempest thought that if the job was offered to him, then the CES would supply the boots.

Neither Tempest nor his parents could afford to pay for work boots, so he did not turn up for work on the morning he was to start. The CES imposed a non-payment period on Tempest on the basis that he had failed to comply with the activity test.

#### Failure to comply

The AAT looked closely at whether Tempest had been advised by the CES as to his obligations under the activity test. It was unclear whether Tempest had received any more than standard advice from the CES about how the activity test worked, and what the implications of not turning up to work would be. The DEET relied on the fact that the CES generally

made people aware of the consequences of non-compliance through information brochures given at time of registration with the CES. The DEET did concede that Tempest's limited educational background and general disadvantage within the labour market, imposed a special requirement on CES to ensure that he fully understood the significance of not turning up for a job.

The AAT found that there was no activity agreement in place at the time he attended the job interview. Furthermore, the AAT found that both Tempest and the employer had been told that the CES could provide work boots if Tempest did not have a pair.

It was argued by the DEET that this was a clear non-compliance with the activity test, and that the fact that Tempest had failed an actual job start made the non-compliance a more serious kind of breach of the activity test than other examples of non-compliances with the Act. The DEET conceded that there had been conflicting advice given by separate CES offices about the provision of work boots. Notwithstanding this concession, the DEET submitted that the legislation was clear, and that Tempest had simply not taken the job offer seriously.

The AAT looked at the activity test in s.601 of the Act, noting that formal notice provisions of the Act had not been complied with in this matter. The AAT also looked to Tempest's past conduct, finding that there had been no previous problems or breaches.

The AAT considered the DSS policy guidelines which were relevant, because consideration is given to whether or not a person is unable to commence work through no fault of their own. The AAT determined that this was the case with Tempest because he had received conflicting advice on the provision of work boots, and this was a significant factor in Tempest not turning up for work. The AAT concluded that Tempest was willing to undertake suitable paid work.

The AAT considered the status of policy in the decision-making process, referring to *Re Aston and Secretary to the Department of Primary Industry* (1985) 8 ALD 366 and *Re Drake and Minister for Immigration and Ethnic Affairs* (No 2) (1979) 2 ALD 634. It concluded that policy guidelines are relevant in determining the requirements of the activity test, and that such guidelines can ensure the integrity and consistency of the decision-making processes.

The AAT also noted with concern that Tempest did not understand his obligations under the activity test, and the responsibility to inform claimants of

obligations lay directly with the DEET. In noting this, the AAT referred to *Re Wan and Secretary, Department of Social Security* (1992) 30 ALD 899.

#### Formal decision

The AAT set aside the decision under review and decided that Tempest was entitled to newstart allowance from the date it was cancelled.

[B.M.]

## Case management activity agreement: failure to comply with terms

CHRISTOPOULOS and SECRETARY TO DEETYA  
(No. 11066)

Decided: 11 July 1996 by B.G. Gibbs.

The DEETYA cancelled Christopoulos' newstart allowance on the basis that he had failed to comply with the terms of his case management activity agreement (CMAA).

#### Background

Christopoulos, who had been in receipt of newstart allowance since June 1991, signed a CMAA on 26 April 1995.

On 20 November 1995 his Case Manager referred him to a New Work Opportunities interview on 30 November 1995 at 2.40 p.m. At about 2.30 p.m. on 30 November Christopoulos informed his Case Manager that he could not attend the interview. It was rearranged for later in the afternoon. Christopoulos did not attend and was subsequently breached for failing to comply with the terms of his CMAA.

#### The evidence

The Case Manager's evidence was that Christopoulos did not attend the interviews because he could not be bothered.

Christopoulos alleged that he had been prevented from attending the interviews because he was unable to locate the keys to the steering lock of his brother's car which he was using to drive to the interview.

### The legislation

Section 39(1) of the *Employment Services Act 1994* sets out a number of approved activities which could be listed in a CMAA to assist a person to secure employment.

Section 45(5) provides that a person is not qualified for newstart allowance if, while a CMAA is in force, they fail to take reasonable steps to comply with its terms.

Section 45(6) states that a person is taking reasonable steps to comply with the terms of a CMAA unless they fail to comply with the terms and:

- (a) the main reason for failing to comply involved a matter that was within the persons control; or
- (b) the circumstances that prevented the person from complying were reasonably foreseeable by the person.'

### The AAT findings

The AAT referred to the conflicting evidence relating to the use of the brother's car and the time a similar journey would take if public transport were used.

The AAT concluded that:

- the intended use by Christopoulos of his brother's car was a matter within his personal control; and
- the circumstances which prevented the use of the car were reasonably foreseeable as Christopoulos was aware that his brother occasionally used a steering lock.

### Formal decision

The AAT affirmed the decision under review.

[A.A.]

### GOODSON and SECRETARY TO DSS (No. 11018)

**Decided:** 2 May 1996 by T.E. Barnett.

The DSS cancelled Goodson's newstart allowance on the basis that he had failed to comply with the terms of his case management activity agreement (CMAA).

### Background

Goodson signed a CMAA in which one term provided:

'I agree to contact, attend or provide information to my Case Manager when I have information concerning this Agreement or when asked.'

Goodson's Case Manager wrote to him on 8 August 1995 requiring him to attend at her office on 14 August 1995. When Goodson failed to attend his Case Manager wrote to him again on 14 Au-

gust 1995 requiring him to attend an interview on 21 August 1995. Goodson attended that interview.

Goodson explained to his Case Manager that he had not received the first letter dated 8 August, and indicated that there had been trouble with children interfering with mail in letterboxes. He had received his newstart allowance form, and he had received the letter of 14 August 1995.

The Case Manager stated that she was under instructions to recommend a breach of the CMAA if a person failed to attend an interview because the person claimed that a letter had not been received. Those instructions also applied to the authorised review officer who confirmed the breach without further investigation into Goodson's computer record.

### The legislation

Section 39(3) of the *Employment Services Act 1994* states that a CMAA may contain terms requiring the person to attend, contact or give information to the CES or the Case Manager.

Section 45(5) provides that a person is not qualified for newstart allowance if, while a CMAA is in force, they fail to take reasonable steps to comply with its terms. Section 45(6) further defines what is meant by taking reasonable steps to comply with the terms of a CMAA.

### The SSAT decision

The SSAT had affirmed the decision by applying ss.28 and 29 of the *Acts Interpretation Act 1901* which deals with the service of a document under an Act.

### The AAT decision

The AAT stated that the *Acts Interpretation Act* had been wrongly applied because there was no requirement for service specified in the Act in this case. Although the *Acts Interpretation Act* provides for 'deemed' service, this does not stand against satisfactory evidence that there had been no 'actual' service.

The AAT accepted that the letter had not been received by Goodson, and that he could not comply with a request he did not know about.

The AAT indicated its concern at the 'blind following' of a departmental instruction by the primary decision makers. It suggested that in exercising its discretion to consider whether Goodson had taken reasonable steps to satisfy the terms of his CMAA all the circumstances should be considered. These would include Goodson's explanation and his credibility, which could have been assessed by investigating his previous record of attending interviews and responding to requests from DEETYA.

### Formal decision

The AAT set aside the decision of the SSAT and substituted the decision that the AAT was satisfied that Goodson had taken reasonable steps to comply with the terms of his CMAA. The matter was remitted to the DSS to amend its records to remove the breach of the CMAA, and the parties were granted permission to apply to the Tribunal on the question of the calculation and payment to Goodson of his entitlement pursuant to this decision.

[A.A.]

## Sole parent pension: informal request for review

**SECRETARY TO DSS and MARSH  
(No. 10993)**

**Decided:** 7 June 1996 by T.E. Barnett.

### Background

On 30 June 1993, Marsh lodged a claim for sole parent pension. On 14 July 1993 Marsh advised the DSS that she had sold her house for \$79,580. She paid \$50,000 off her current mortgage and placed \$25,000 in a Saver Account. On 20 July 93, the DSS deemed the investment of \$25,000 to be earning interest at 3.96% a year. On 14 December 1993, Marsh lodged a review form that showed her investment had reduced to \$3,651.62 and that she had earnings from employment. The DSS reduced Marsh's pension due to her earnings, but did not take into account the change in her investment.

The Department wrote to Marsh on 5 occasions between January and April 1994 advising, amongst other things, that bank interest of \$989 was taken into account when assessing her rate of pension. These letters included a paragraph discussing the 'deemed income rules' and advising her of her appeal rights.

On 4 more occasions between March 1994 and February 1995, Marsh advised the DSS that her investment had reduced to \$3651.62 and then to \$500. The DSS failed to adjust her rate of pension. On 9 May 1995, Marsh advised that she had a bank account with a debit balance of \$32,000. On 14 June 1995, Marsh queried the DSS's assessment of interest of