

that sum, and that interest money is a different sum': Reasons, para. 11.

The Tribunal referred to s.1072A(2) and concluded that as s.1118(2) 'does not have the effect that these moneys of the Applicant held on deposit are ignored for the purposes of Division 1A, there is no

problem in simply applying them to the circumstances of the case of the Applicant':

Reasons, para. 14.

**Formal decision**

The decision under review is affirmed.

[M.A.N.]

## Student Assistance Decisions

### **Austudy: Waiver of overpayment; AAT jurisdiction**

**TOBEN and SECRETARY TO  
DEETYA  
(No. 10034A)**

**Decided:** 2 July 1996 by M.T. Lewis.

This matter came before the AAT under liberty to apply, following a decision by the AAT which had affirmed the decision under review, that Toben was entitled to be paid AUSTUDY at the standard rate.

**The issue**

In the present application the AAT was asked to review the issue of an overpayment of AUSTUDY.

**The facts**

An overpayment occurred because, for the period 1 January 1994 to 4 February 1994, the applicant had been paid AUSTUDY at the standard rate and also at the away-from-home rate, thus receiving 'two lots of assistance'. The amount of the overpayment was \$594.29. Recovery was sought of \$546, as an amount of \$48.29 had been waived by the DEETYA, for reasons unknown to the Tribunal. Toben sought waiver of the outstanding amount of \$546.

**Waiver and AAT jurisdiction**

The AAT said that there was no doubt that the payment at the away-from-home rate had been made in error, and that DEETYA was empowered to raise the overpayment and recover it by way of deductions from an ongoing entitlement, under s.38 of the *Student Assistance Act 1973*. The issue was whether the overpayment should be recovered.

The application for review was lodged on 8 September 1994, and the AAT applied the provisions of the Act in force at that date.

It considered s.43(1)(a) of the Act, which defines a 'recoverable amount as

a student assistance overpayment', and s.43(2) which provides for write off or waiver of the whole or part of a recoverable amount.

Although the jurisdiction of the Tribunal to review the recovery of the overpayment was not questioned by the DEETYA, the AAT said that it had to satisfy itself as to whether it had jurisdiction to review the decision.

Pursuant to s.36 of the Act, an application could be made to the Tribunal for review of a reviewable decision as defined in s.35. This meant a decision of the Student Assistance Review Tribunal (SART) which had 'either affirmed or varied a primary decision or had been made in substitution for a primary decision under s.28(1) of the Act: Reasons para.15. 'Primary decision' was defined in s.13(1) of the Act and did not include a decision made under s.42 of the Act.

Additionally subsections 20(3) or (3A) which allowed for reconsideration of decisions by a senior authorised person, or subsection 21(2) under which a person could request a review by SART, did not provide for a review of a decision made under s.43 of the Act.

The AAT concluded that a decision made under s.43 was not a primary decision as defined in s.13(1) of the Act, nor a reviewable decision as defined in s.35 of the Act. Therefore, the AAT decided that it had no jurisdiction under the Act, as then in force, to review a decision to write off or waive an overpayment. The AAT was also satisfied that no subsequent amendments to the Act had given the Tribunal retrospective jurisdiction to review the decision in question.

**Formal decision**

The Tribunal decided that it lacked jurisdiction to review a decision made under s.43 of the *Student Assistance Act 1973*

[G.H.]

**[Contributors Note:** Amendments to the Act brought about by the *Student Assistance (Youth Training Allowance) Amendment Act 1994* which commenced on 1 January 1995, instituted a new regime of review of decisions by abolishing SART and conferring jurisdic-

tion in AUSTUDY matters on the SSAT. This jurisdiction includes the review of decisions concerning waiver and write-off of overpayments]

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