

further into error by frustrating the applicant's two separate attempts to repay the overpayment does not, in my view, change the essential character of the payment as received by the applicant. It was, and remained an amount paid contrary to the Act and which the applicant knew had been paid to him contrary to the Act.'

(Reasons, para. 24)

The DSS had been recovering the debt of \$384 by instalments, and the debt amounted to \$119 at the date of the AAT hearing. The AAT decided it was not cost effective to recover this debt and waived it pursuant to s.1237AAA(1) of the Act.

Formal decision

The AAT set aside the decision under review and waived the remainder of the debt.

[B.M.]

Practice and procedure: joinder of parties

SCOTT and SECRETARY TO DSS
(No. 11188)

Decided: 24 July 1996 by J. Dwyer.

Mrs Scott had asked the AAT to review the decision of the SSAT to affirm a DSS decision not to grant her a disability support pension (DSP). On 24 May 1996 her husband, Scott asked to be joined as a party to the proceedings.

The law

The application by Mr Scott to be joined as a party was made under s.30 (1A) of the *Administrative Appeals Tribunal Act 1975*. That section provides:

'Where an application has been made by a person to the Tribunal for a review of a decision, any other person whose interests are affected by the decision may apply in writing, to the Tribunal to be made a party to the proceeding, and the Tribunal may, in its discretion, by order, make that person a party to the proceeding.'

The AAT decided that there were two steps to this process. The first involved the AAT deciding whether Scott was a person whose interests were affected by the decision, and the second, whether it should exercise the discretion to join Scott as a party to the proceedings.

Person whose interests are affected

Scott submitted that there were financial and medical reasons why his interests were affected by this decision. His financial interests were affected because he and his wife were forced to live on his

DSP which was paid at the married rate. Mrs Scott had been receiving the special benefit but it had been cancelled. The financial pressure meant that stress was being placed on Scott which affected his heart condition. The DSS argued that Scott was in no different position than any other partner of a recipient of a social security benefit.

The AAT quoted from the decision in *Control Investments Pty Ltd and Australian Broadcasting Tribunal* (1980) 3 ALD 74, and stated that to determine whether a person's interests had been affected required consideration of that person's particular interest. 'The interest affected need not be a legal interest but there must be some definable relevant interest': Reasons, para. 11. The interest in any particular case would be influenced by the type of decision under review. The AAT concluded that Scott was a person whose interests were affected by the decision not to grant his wife a DSP. The interest was not legal but Scott's financial interests were affected.

The discretion

The AAT cited *Control Investments* for the proposition 'a finding by the Tribunal that a person is an interested person does not necessarily mean that the person is entitled to be joined as a party to the proceeding': Reasons, para. 13. The duty to join a person as a party to a proceeding will be limited by the AAT's duty to provide a fair hearing and to deal with matters as expeditiously as possible. A person will only be joined if the person's interests are substantial and significantly different from the other party to the proceeding. The AAT concluded in this case that Scott's interests were substantially similar to his wife's. Scott could still be called as a witness for his wife and he could explain his particular situation.

Formal decision

The AAT refused Scott's application to be joined as a party to the proceedings.

[C.H.]

Freedom of information: 'dob in' letter

HAYES and SECRETARY TO DSS
(No. 11221)

Decided: 6 September 1996 by J.A. Kiosoglous.

Hayes sought review of a decision of a Freedom of Information Review Officer of 4 April 1995, which had exempted from release a certain document pursuant to s.37(1)(b) of the *Freedom of Information Act 1983* (the *FoI Act*).

Hayes had been granted access to all documents on his file except those pertaining to a letter which had accused him of breaching the provisions of the *Social Security Act 1991*. Hayes was in receipt of a disability support pension and the letter alleged that Hayes went overseas without notifying the DSS, and that he was possibly not medically qualified to receive the pension. There was an allegation that Hayes undertook activities such as painting and car repairs for family and friends, and that he may have received undeclared income.

The law

Section 37(1) of the *FoI Act* provides:

'A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- (a) ...
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or ...'

An officer of the DSS had determined that the anonymous letter should be exempt from release under the *FoI Act* because the release of the letter in its original form would probably identify the author because of the handwriting, the information provided, and the spelling and grammatical style used. This also meant that a typed copy of the document could not be released because of the nature of the information, the spelling and the grammatical style.

The DSS investigated the allegations some 21 months after the letter had been received. The investigation concluded that the allegations were incorrect.

The AAT found that the *FoI Act* provided no protection to Hayes, who was the subject of malicious and wrongful allegations. These allegations had caused him considerable distress, were anonymous, and appeared to have been written for the purpose of causing him problems.