**The issue**

The AAT decided that there were three essential questions which it must determine to conclude that the letter was an exempt document. These were:

- was the letter a confidential source of information;
- was it properly classified as relating to the enforcement or administration of the law; and
- would the release of the letter disclose the identity of the confidential source, or could it reasonably be expected to do so?

The AAT noted that: 'a source of information is confidential where it is provided under an express or implied pledge of confidentiality': Reasons, para. 15. The letter in question was unsigned, and there was no address. The AAT accepted that the information was provided with an implied request for confidentiality. The letter was received in confidence by the DSS. Hayes submitted that the letter did not contain confidential information because that information was false. After quoting the decision of *McKenzie v Secretary to DSS* (1986) 65 ALR 645, the AAT found that even if the information provided was false, it does not cease to be exempt under the *FoI Act*.

> 'It does not matter that the information was deliberately false or mischievous as this does not detract from the confidential nature of the letter'

(Reasons, para. 19)

The AAT accepted that the letter related to the enforcement or the administration of the law. The letter went to whether Hayes was entitled to receive a pension.

Finally, the AAT considered whether the letter would, disclose or be reasonably likely to disclose the author. The AAT concluded that it would because of the particular information, the spelling and the grammar.

**Formal decision**

The AAT affirmed the decision of the review officer that the document was exempt under the *FoI Act*.

**[C.H.]**

# Student Assistance Decisions

## *AUSTUDY: independent rate; homelessness*

**SECRETARY TO DEETYA and SHEILES**
**(No. 11141)**

**Decided:** 9 August 1996 by A.M. Blow.

The DEETYA had requested review of a majority decision at the SSAT of 15 August 1995 that Sheiles was qualified for AUSTUDY at the independent rate.

Sheiles was 17 years old at the time of the AAT hearing and did not wish to attend the hearing or be represented.

**The facts**

Sheiles applied for AUSTUDY for 1995 to undertake his HSC in Wagga Wagga. He was living with his father, his mother having left the family home and moved to Bateman's Bay. In November 1994 Sheiles left Wagga Wagga and moved to Bateman's Bay. He rented a flat which he shared with another person. In January 1995 he applied for AUSTUDY at the independent rate.

Sheiles' father had an alcohol problem, and exhibited violent disturbing behaviour. In his statement to the DEETYA, Sheiles stated that he did not like living at home with his father because he would come home drunk and yell at him in obscene and abusive language. He told the SSAT that he felt at risk and unsafe living with his father. By the time of the AAT hearing, Sheiles had moved to Sydney and was apparently working for his father. However, there was no evidence that Sheiles was living with his father again. The AAT concluded that it was unreasonable for Sheiles to continue living with his father. There was a serious risk to his well-being as a result of his father's drinking.

Sheiles' mother was boarding with a police officer in Bateman's Bay. They were friends, and the officer allowed Sheiles' mother to share his home. Sheiles stated that the officer did not want him to move in with his mother. The officer wrote two letters in support of Sheiles' application for AUSTUDY at the independent rate. The AAT found that Sheiles:

> 'could not have lived with his mother at Bateman's Bay because he did not have the permission of the owner of her home to do so, and would have been a trespasser.'

(Reasons, para. 17)

The AAT concluded that Sheiles could not live with either of his parents because of family breakdown.

**The law**

Regulation 60 of the AUSTUDY Regulations provides that AUSTUDY can be paid at the independent rate. Regulation 67 sets out the different qualifications for the independent rate. One of these is 'homelessness' as described in reg. 74. According to reg. 74:

> 'A student qualifies as independent through it being unreasonable that he or she live at home, if:
>
> (a) he or she can not live at the home of either or both his or her parents:
>
> (i) because of extreme family breakdown or other similar exceptional circumstances; or
>
> (ii) because to do so would be at serious risk to his or her physical or mental well being due to violence, sexual abuse or other similar unreasonable circumstances; and
>
> ...'

The issue the AAT had to resolve was whether the family breakdown Sheiles had explained was 'extreme family breakdown'. Sheiles continued to be on reasonable terms with his mother, and his sisters continued to live with their father in Wagga Wagga. It was submitted by the DEETYA that 'extreme family breakdown' involved sexual harassment, domestic violence, criminal activity, psychological abuse, physical neglect, extreme abnormal parental or cultural demands or such similar extreme circumstance. The AAT stated:

> 'I do not think that such a rigorous view of reg. 74 (a)(i) should be taken. The Act and the regulations are, after all, beneficial legislation. All other things being equal, any ambiguity ought to be resolved in favour of the class of persons intended to be benefited, i.e. students.'

(Reasons, para. 19)

The AAT found that Sheiles' family breakdown was so extreme that he was unable to live with either of his parents. Therefore he qualified for the homeless allowance.

The AAT noted that no stay had been applied for in relation to the SSAT decision to pay Sheiles AUSTUDY at the homeless rate. Nonetheless, the DEETYA had not paid the arrears owing to

Sheiles. According to the AAT this was disgraceful behaviour.

**Formal decision**

The AAT affirmed the decision under review.

**[C.H.]**

# Relevant period for reassessment of AUSTUDY and financial supplement

**SECRETARY TO DEETYA and WARREN (No. 11130)**

**Decided:** 6 August 1996 by E.K. Christie.

The DEETYA sought review of a decision of the SSAT setting aside a decision made by the DEETYA to raise a debt of $1066.34, being an overpayment of AUSTUDY to Warren during the 1994 year, arising as a result of a reassessment of her entitlement due to changed financial circumstances.

**The facts**

In the 1994 academic year Warren had been paid AUSTUDY at the full rate, that is $6296 a year, on the basis of parental income for the 1992-93 financial year. On 10 February 1994, Warren surrendered $3000 of her AUSTUDY grant in order to receive a Financial Supplement loan of $6000 and her entitlement was adjusted accordingly.

Following an increase in parental income in 1993-94, Warren's AUSTUDY entitlement was reassessed, and the grant was reduced for the period 1 October 1994 to 31 December 1994 to $330.44.

**The issue**

The issue before the AAT was the correct method to be used when reassessing Warren's entitlement and the resulting debt. The DEETYA argued that the AUSTUDY grant was to be determined on the whole of the 1994 year. Based on an approved AUSTUDY grant of $6296 Warren was entitled to a grant of $4709.06 for the period 1 January 1994 to 30 September 1994. When parental income changed later that year, Warren was entitled to an AUSTUDY grant of $330.44 for the period 1 October 1994 to 31 December 1994. Her annual entitlement was therefore $5039.50, less the $3000 surrendered for a Financial Supplement, leaving a net figure of $2039.50. As she had received $3105.84 in AUSTUDY grant in 1994, Warren had been overpaid the sum of $1066.34.

It was submitted on behalf of Warren, however, that the question of AUSTUDY overpayment should be restricted to the period following review of changed financial circumstances, that is, to the period 1 October to 31 December 1994. As a result the debt amount should be either:

- $640 being the amount actually paid to Warren in that period,
- $330.44 representing the difference between the amount paid and the amount to which Warren was actually entitled during the period, or
- $467.46 representing the amount paid during the period less an adjustment of $172.99 for trade-in of the AUSTUDY grant for a Financial Supplement.

The AAT noted that s.12A of the *Student and Youth Assistance Act 1973* clearly provides that the payment of a Financial Supplement reduces a person's AUSTUDY entitlement. Under s.12H AUSTUDY entitlement for a year or part of a year is reduced by an amount equivalent to one-half of the amount of the Financial Supplement paid to the person.

The DEETYA's AUSTUDY Policy Guidelines state that where a student's AUSTUDY grant is reassessed, this may affect a student's Supplement entitlement. The Guidelines state:

> 'If SUPPLEMENT payments have commenced and reassessment reduces the student's maximum possible SUPPLEMENT amount because the amount of the grant has decreased, then:
>
> - if the reduced rate of Grant is sufficient to cover the amount traded in for SUPPLEMENT, the SUPPLEMENT continues as before;
> - if the reduced rate of Grant is not sufficient to cover the amount traded in for Supplement, then the accepted SUPPLEMENT amount is lowered to the maximum recalculated amount.'

The AAT accepted that following reassessment, although Warren's entitlement was substantially reduced from 1 October to 31 December 1994, her total yearly grant of $5039.50 would still be sufficient for her to trade in $3000 of grant to obtain the $6000 Financial Supplement she was actually paid. The effect of s.12H of the Act and regulation 12C of the AUSTUDY Regulations, which enables the Secretary to amend or replace an existing determination regarding entitlement to living allowance where information is received indicating that the existing determination is not correct, was that any overpayment was required to be assessed over the entire year. As a result, over the whole of the 1994 year, Warren had been overpaid an amount of $1066.34 representing the difference between her actual net entitlement of $2039.50 and the amount actually paidto her in 1994, being $3105.84.

**Formal decision**

The AAT set aside the decision of the SSAT and substituted a decision that an amount of $1066.34 was a debt owed by Warren to the Commonwealth.

**[A.T.]**

# Claim forms, waiver

**SECRETARY TO DEETYA and LE (No.11028)**

**Decided:** 19 June 1996 by J. Handley.

**The facts**

Le sought review of a decision of the DEETYA to raise and recover an overpayment of AUSTUDY benefits of $4337.50. The overpayment had been raised through a data matching exercise with the Commissioner for Taxation. The DEETYA found that Le had income from 2 sources during the 1989 year, being income from employment with Smorgon Consolidated Industries until 24 February 1989 and with Greer Wire Industries from 20 November 1989 till 14 February 1990. On 3 March 1989, Le had also applied for and received AUSTUDY benefits for the 1989 academic year on the basis that he was enrolled in full-time study. At the hearing before the AAT, Le conceded that he had received the income from employment, however, he contended that no overpayment existed and alternatively, that any overpayment should be waived.

**The evidence**

Evidence before the AAT consisted of Le's claim form for AUSTUDY benefits. In answering question 20 on the claim form, Le ticked a box that indicated he did not expect to receive income other than AUSTUDY for the period specified in the previous question 19, that is, 1 January 1989 till 31 December 1989. Further at the second part of question 20, Le answered that the amount expected to be received in 1989 was 'Nil', despite that fact that he was not required to provide an answer to this second part as he had already indicated that he would not receive any income in the period.

The AAT took oral evidence from Le who described his difficulty with the