description of the 'the normal requirement' for admission to a course.'

(Reasons, para. 41)

So, regulation 47 cannot apply if there is more than one standard or 'normal' admission to a course. The 'normal' admission is not necessarily the only admission. There may be other less usual ways of gaining entry to the course.

An anomaly in the Regulations

Regulation 47 provides an exemption in certain circumstances to the limitations in regulation 41(1), which applies only to courses at the same level. Group A courses in regulation 38 are post graduate degree courses, a bachelor degree course which can be undertaken by graduates. Group B courses are ordinary undergraduate courses. So a student could move from a Group B course to a Group A course and be studying at a different level. The restrictions in regulation 41(1) would not apply. If this were so there would be no need for regulation 47. The AAT considered this anomaly and decided that regulation 47 was so unambiguous in its wording that it must be given its ordinary meaning and override the anomaly.

Formal decision

The AAT affirmed the decision

[C.H.]

AUSTUDY: minimum time of course; industry-based requirements

SECRETARY TO THE DEETYA and NEWING (No. 12158)

Decided: 27 August 1997 by B.H. Pascoe.

Background

Newing enrolled in a Bachelor of Applied Science degree at Swinburne University in 1991, a 4-year course in which Year 3 is constituted solely by industry-based learning. In 1992 he failed the majority of his subjects, withdrew from the course and instead in 1993 undertook a computer course. He completed the second year of the degree in 1994, undertook the industry-based year in 1995, and completed the course successfully in 1996.

Newing lodged his 1996 application for AUSTUDY on 25 March 1996, but the DEETYA determined that he was eligible only for Semester 1 of that year on the basis that by the beginning of Semester 2 of that year, he would have already spent 4.5 years in full time study. On appeal the SSAT set aside this decision and substituted a decision that he was qualified for the whole of 1996.

The law

The principal legislative issue was the interpretation of reg. 41 of the AUSTUDY Regulations, which provides:

> '41(1) A student can get AUSTUDY in a year of study for a tertiary course only if, at the relevant date, the time already spent by the student in full-time study at the level of the tertiary course, is less than
>
> (a) if the minimum time for the course is more than one year — the sum of the minimum time for the course plus:
>
> (i) half a year; or
>
> (ii) if the student is enrolled in a year-long subject — one year; or
>
> (iii) if the student's further progress in the course depends on passing a whole year's work in the course — one year ...'

The SSAT had taken the view that, where a course is semesterised, the 'relevant date' must be determined at the time of application and that, having determined at the beginning of Semester 1 in 1996 that Mr Newing was qualified for AUSTUDY, he remained so qualified unless the payment was varied or terminated according to the Regulations. There being no circumstances upon which the DEETYA was entitled to reassess Mr Newing's eligibility, the SSAT concluded that he remained qualified for AUSTUDY until the end of the 1996 year.

Minimum time

The AAT found that the SSAT view was not based on a proper interpretation of Regulation 41, and that Newing could only receive AUSTUDY in 1996 'if, at the start of a semester, the time already spent by him in full-time study at the level of such course is less than the minimum time needed to complete the course at pass level plus half a year': Reasons, para. 7. The AAT held that 'it was not a question of setting a date for cessation as at the time of his application but determining that there would be no entitlement from the start of the second semester': Reasons, para. 7.

Newing's father submitted that the year of industry-based learning should not be considered as a 'year of study', and that indeed Swinburne University allowed the year to be deferred until after completion of academic subjects, should a student so desire. The AAT considered this submission would require it to determine whether the meanings of 'minimum time to complete the course' and 'time spent in full-time study' are different. It concluded that regardless of whether the industry year was regarded as a year of study or not, Newing had spent a time equal to the minimum time for the course by the beginning of Semester 1 of 1996, and therefore his entitlement to AUSTUDY was limited to another six months.

Formal decision

The AAT set aside the decision and substituted a decision that AUSTUDY was not payable to Newing for the second Semester of 1996.

[P.A.S.]

Opinion—continued from page 161

son had completed a bachelor degree, regulation 41 would not apply because the courses were at different levels. But, the AAT said, this would mean that regulation 47 would have no meaning, and given the unambiguous wording of regulation 47, this could not be so.

Changes at the SSAT

Deirdre Fitzgerald, the Senior Member of the SSAT in Melbourne will resign from 31 December 1997. Deirdre had been the Senior Member in Melbourne since 1988 when the SSAT gained its determinative powers. She is responsible for introducing numerous innovative practices to the Tribunal, and was widely regarded as being the Tribunal's 'legal brain'. Her expertise and good humour will be missed by her staff and part-time members. Deirdre is retiring from full-time work, and the *SSR* wishes her well for the future.

[C.H.]