

UNSW

15 SEP 1997

LIBRARY 5

Including Student Assistance Decisions

Opinion

Work for the dole

The unfortunately titled 'Work for the Dole' scheme is due to commence in October 1997. It is a pilot project, the amending legislation having included a sunset clause, which provides that the legislation will come to an end after two years. The second reading speech makes it clear that the scheme will be aimed at 18 to 24 year olds primarily who have been unemployed for at least 6 months, with priority being given to those unemployed for 12 months or more who have not been case managed. The scheme is largely promoted as voluntary, however, the amending legislation makes it clear that a person may be required to work in a program set up under this scheme in return for unemployment payment. The legislation provides for participation in such a program to be included as a term of a Newstart Activity Agreement.

A person cannot satisfy the activity test if they, without reasonable excuse, fail to commence or complete a program of work that they are required to undertake or fail to comply with the conditions of the program, such as attending at the required time or following reasonable directions given by the program sponsor. The consequences of such failure involve the imposition of an activity test deferment period during which the newstart allowance will not be payable or will be payable at a reduced rate. However, a person can 'wipe the slate clean'. If they are subject to any penalty period, that period will be

waived if the person commences a program of work for the unemployment payment.

There are some circumstances in which a person cannot be required to undertake a work program. These include where the person only receives a reduced allowance, has a medical condition which would be affected by the work proposed, or where there would be a risk to a person's health or safety. Otherwise the legislation sets out no criteria as to when and under what conditions a person may be required to be involved. If made a term of a Newstart Activity Agreement, however, the legislation sets out a number of matters which must be considered in regard to a person's capacity to comply with the agreement, such as their education, experience, skills and so forth.

An amount of \$20 a fortnight is payable to scheme participants to cover additional costs involved in their participation. A person may be required to work for up to 24 hours if aged under 21, otherwise up to 30 hours a week, for a maximum of six months. They must also continue to satisfy the remaining requirements of the activity test, in that they must continue to seek and be willing to undertake paid work. In recognition of their involvement in the program, job search requirements are to be reduced to the minimum of two employer contacts a fortnight.

Continued on p.147.

The **Social Security Reporter** is published six times a year by the Legal Service Bulletin Co-operative Ltd. Tel. (03) 9544 0974

ISSN 8017 3524

Editors: Andrea Treble, Christine Heazlewood

Contributors: Anne Anderton, Helen Brown, Mary-Ann Cooper, Christine Heazlewood, Guiseppina Hopkins, Susanne Liden, Bill Mitchell, Mary Anne Noone, Miranda Stewart, Andrea Treble and Peter Wilmshurst.

Layout: Last Word

Printing: Thajo Printing, 4 Yeovil Court, Mulgrave.

Subscriptions are available at \$40 a year, \$30 for Alternative Law Journal subscribers.

Please address **all correspondence** to Legal Service Bulletin Co-op, C/- Law Faculty, Monash University, Clayton 3168

Copyright © Legal Service Bulletin Co-operative Ltd 1997

Print Post approved PP381667/00178

In this Issue

Opinion

AAT decisions

Disability support pension: constructive trust and disposal of assets

Evans.... 134

Sickness allowance: whether money received by applicant ordinary income

Sharpe.... 134

Sole parent pension: is Australian scholarship 'income'?

Dewhirst.... 135

Disability support pension: portability to New Zealand

Farr.... 136

Overpayment: risk of suicide; whether special circumstances

Anderson.... 136

Student Assistance decisions

AUSTUDY: meaning of full-time workload

Stojanovic.... 137

AUSTUDY: the meaning of relevant date, progress in course

Ha.... 138

Actual means test: primary production

Gamlen.... 139

Actual means test: method of dealing with insurance payout and subsequent replacement of asset

Whittle.... 140

AUSTUDY: whether school fees maintenance?

Rivett.... 140

Assets: land owned overseas; whether actual means test applicable

Slade.... 141

Federal Court

Compensation payments: special circumstances

Ellis.... 142

Rent assistance: retirement village resident, meaning of 'rent'

Montgomery.... 143

Newstart allowance: Case Management Activity Agreement

O'Connell.... 143

Newstart allowance: Case Management Activity Agreement

Ferguson.... 144

SSAT decisions

Age pension: valuation of assets — granny flat interest

A.... 145

Background

.... 146

the agreement under s.45(5)(b). Whether or not a person has been taking reasonable steps to comply with their agreement does not depend on the particular failure alone, but upon matters including 'the person's attitude to performance of the terms of the agreement, attendances on other occasions, attempts to seek work and the range of information.'³

In summary, while to forget may be human, the power to forgive is within s.45(5)(b).

Mr Ferguson's matter was remitted to the AAT for consideration under s.45(5)(b), given the findings of the Court that mere forgetting was caught by s.45(6).

The decision in *Ferguson* should encourage a less narrow application of the legislation than has been seen to date in cases handled by the Welfare Rights Centre, Sydney. The effect of this decision is that people ought no longer be penalised for one-off or insubstantial failings or problems arising from mere communication difficulties where they are otherwise making a genuine attempt to comply with their agreements. The removal of the risk of penalty for minor or technical failings will enable the case manager and participant to re-focus on the provision of employment assistance rather than to operate in an atmosphere dominated by an emphasis on warnings of penalties and the lack of bargaining power of the unemployed person. The absence of this emphasis on coercive aspects of the process will result in more balanced negotiation of agreements and a greater likelihood of compliance and positive outcomes.

References

1. *Ferguson and Secretary, DEETYA* (1996) 42 ALD 742.
2. See AAT cases of *Secretary, DEETYA and Ruiz* (1996) 41 ALD 627; and *Peter Hall and Secretary, DEETYA*, unreported AAT decision of D.P. Blow, 23 April 1997.
3. This broad test is consistent with the decision of the AAT in *Goodson and Secretary, DEETYA* (1996) 42 ALD 651.

Sandra Coller

Sandra Coller is a solicitor with the Welfare Rights Centre, Sydney.

Opinion—continued from page 133

One of the difficulties envisaged is the potential conflicts which may occur in meeting obligations arising under the program or directions issued by a program sponsor, and the obligations otherwise arising in seeking work, such as attending interviews. The legislation allows for a 'reasonable excuse' when considering a person's compliance, but these issues are not otherwise dealt with.

The legislation is designed to reinforce a person's obligation to participate in work schemes in return for unemployment payment. It may incidentally offer

an unemployed person the chance to acquire new skills or enhance their opportunity of gaining work, but that is clearly not the primary intention of the provisions. The compulsory aspect of the scheme remains controversial and, as with case management, may lead to harsh consequences for some, where a person's conduct does not meet the 'reasonableness' test.

[A.T.]

TO SUBSCRIBE!

Social Security Reporter

\$40 (6 issues) per annum

Cheque enclosed \$.

Charge my Bankcard/Mastercard/Visa/American Express

Card No

Card name Expiry date

Signature

Name

Address

.....

..... Postcode

Occupation

Send to:

Legal Service Bulletin Co-operative Ltd,
C/- Law Faculty, Monash University, Clayton, Victoria 3168
tel. (03) 9544 0974 fax (03) 9905 5305
e-mail: l.boulton@law.monash.edu.au