

Section 1236 discusses write off of debts. The AAT heard evidence of how:

'after a lifetime of hard work and the accumulation of assets Mrs White now faces a distressing time in drought-ravaged East Gippsland on a reduced acreage with low cattle prices and she is struggling to keep her family home. A number of titles and some cattle were sold by a bank to settle debts.'

(Reasons, para.13)

The AAT decided that White's circumstances did not fall under s.1236(1A)(a) or (1B). The Tribunal was satisfied that White had no capacity to repay the debt at the current time. It decided to write off the debt until 1 July 1998, hoping that by this time the drought would break and White could consider her financial options.

#### Formal decision

The decision of the SSAT is varied to provide that:

- The payment of age pension to White be cancelled.
- White has been overpaid \$20,118.60 which is a debt to the Commonwealth.
- The debt shall be written off until 1 July 1998.

[M.A.N.]

## Practice and procedure: stay order; newly arrived migrant

SECRETARY TO THE DSS and  
PRIKHODKO  
(No. 12547)

Decided: 20 January 1998 by G. Ettinger.

The DSS sought a stay of a decision of the SSAT that special benefit be paid to Prikhodko from the date of his application to the SSAT. Prikhodko's claim had been rejected by the DSS because he was a recent migrant to Australia. Following the SSAT decision, Prikhodko was paid special benefit until 6 January 1998.

Prikhodko arrived in Australia from Russia in June 1996 with his wife and son. The only payments he had received from the DSS were rent allowance, family payment and \$20 a week each to attend English classes. Support was also provided by friends and charities. The family was receiving \$186 a fortnight and paying \$170 in rent.

#### The law

Section 739A(1) of the *Social Security Act 1991* provides that a person who enters Australia after a certain date is subject to a newly arrived resident's waiting period. However if the person had suffered a substantial change of circumstances beyond the person's control, then the waiting period does not apply.

Section 41(2) of the *Administrative Appeals Tribunal Act 1975* gave the AAT the power to stay a decision of the SSAT. According to *Dart and Director General of Social Services* (1982) 4 ALD 553, the principles to be taken into account when deciding whether a stay order should be granted are:

- whether the appeal has merit;
- whether the applicant will suffer financial hardship; and
- whether the other party (the DSS) would be prejudiced.

#### The merits

For Prikhodko to succeed with his substantive claim, he would have to show that his circumstances had changed since coming to Australia. It would be argued on his behalf that he was inadequately advised of his entitlement to social security payments in Australia before he left Russia, and therefore his circumstances had changed. Also the \$1000 he had intended bringing with him to Australia had been stolen. The DSS argued that it was Prikhodko's expectations which had changed, not his circumstances. The AAT noted that the President would shortly hand down decisions on the meaning of 'change of circumstances'.

#### Financial hardship

The AAT accepted that Prikhodko and his family suffered extreme financial hardship.

#### Prejudice to the DSS

The AAT found that the DSS would not be prejudiced by paying a benefit to Prikhodko until this matter was heard by the AAT. Before the matter was heard it was likely the President of the AAT would hand down a decision on the meaning of 'change of circumstances'. The AAT found that it would be unlikely that the DSS would be able to recover any benefit paid to Prikhodko if he was unsuccessful before the AAT.

#### Formal decision

The AAT dismissed the DSS's application for a stay order.

[C.H.]

## Newstart allowance: activity test and advertised positions

TYRIKOS and SECRETARY TO  
THE DSS  
(No. 12497)

Decided: 18 December 1996 by R.C. Gillham

Tyrikos sought review of a decision to defer payment of newstart allowance for 6 weeks because he failed to satisfy the activity test for newstart recipients under the *Social Security Act 1991* (the Act).

#### The background

Tyrikos had been in receipt of newstart allowance from February 1992 to July 1996 when the 6-week cancellation was imposed. In the period in question before the AAT, namely a fortnightly reporting period in July 1996, he had visited 2 prospective employers but found there was no advertised job available. Tyrikos then realised that in order to comply with the activity test to the DSS's satisfaction, he needed to apply for advertised jobs. He requested a new form from the regional office, but the request was refused.

Tyrikos then hand drafted his own form and approached two further prospective employers who had advertised jobs. His evidence was that he lodged the form at the office of the DSS though the form was not located. The respondent while not conceding that the form was lodged, did concede that a handwritten form in substantial compliance with the DSS's certificate would suffice to comply with the legislative requirements.

#### The issues

The issues identified by the AAT were whether Tyrikos complied with the activity test (ss.593 (1) and 601(1) of the Act), and in particular if he complied with a provision in relation to advertised job vacancies (s.601(1A)). The advocate for the DSS contended not only that the requirement to provide evidence of applications for advertised jobs was not met, but in the alternative, if it were met in substance, the positions were not genuine positions. Further, the DSS argued that Tyrikos was limiting himself in the range of jobs he was pursuing, which itself was a failure of the activity test.