

In contrast, the earlier decision of *Sting* considered that the requirements of the Act were met with a lesser standard of information provided in a notice of decision. The AAT in that case said that the statutory provisions to which s.660K applies (in the case of newstart allowance, s.660G) use the term 'rate' of payment. In terms of satisfying requirement for a notice of a decision about a rate of payment, the legislation was sufficiently met by advising the amount to be paid without the need for particularity about the manner in which that rate was calculated. Once the total amount to be paid to a person was advised to them, this was sufficient.

The AAT decided that the reasoning in *Sting* was to be preferred. Specific comment was made by the AAT that *McAllan* appeared to be have been decided without the benefit of a consideration of *Sting*. The AAT concluded that the Act requires simply that there be a notice setting out the total rate payable. The Tribunal said:

'The notices in this case did so, by informing the respondent of the amount that had to be credited to their account each fortnight.'

(Reasons, para. 24)

In so deciding, the Tribunal was making clear reference to the submissions of the DSS, that the fortnightly review forms were a sufficient vehicle for the advice of a decision. The fortnightly review forms are a form on which newstart allowees indicate their work efforts or activities for the previous fortnight and any relevant change of circumstances in that time. As the AAT pointed out, these forms also state the amount of newstart allowance paid into an account in that fortnight.

The AAT, while acknowledging the difficulty faced by the Austins with the meagre information provided to them, said that the legislation does not require extensive information for a notice to validly exist. The AAT said that the SSAT erred in failing to distinguish between the validity of the content of the notice and the validity of the notice itself.

#### Formal decision

The AAT set aside the decision of the SSAT, and substituted the decision that arrears were not payable to the Austins.

[Contributor's note: In finding that the fortnightly review forms were notices of decision, the AAT may have extended *Sting*, where that question was not addressed.

It is understood that the Austins have appealed this decision to the Federal Court.]

[M.C.]

## Income test: savings investment account; deemed investment income

FIELDEN and SECRETARY TO  
THE DSS  
(No. 13415)

Decided: 15 October 1998 by W. Purcell.

#### Background

Fielden's husband died in 1996 and she later sold the family home and purchased another financed by a mortgage loan. The amount of the loan exceeded the amount required for purchase by \$7100, which was to be used for renovations to the new home. The balance was deposited in investment accounts with the Savings and Loan Credit Union, pending renovations. The DSS applied the relevant deeming rate of interest to the investments (the rate applied was not in dispute), as a result of which Fielden's age pension was reduced. Fielden contended that the money borrowed was a mortgage amount on which she was paying interest, that the balance would be expended within a matter of months on renovations to the home, and that had she been advised of the implications she could have withdrawn moneys from the lending institution as required to meet renovation costs. She contended that the DSS should exercise its power to disregard these amounts for pension purposes. She sought a review of the decision, but it was affirmed by the ARO and then on 13 March 1998 by the SSAT. Fielden appealed to the AAT.

#### The issue

The issue was whether the income derived from the investment of the balance of mortgage moneys should be subject to the deemed interest provisions of the *Social Security Act 1991* (the Act).

#### The law

The definitions of financial asset and financial investment are contained in s.9 of the Act which provides:

'9.(1) In this Act, unless the contrary intention appears:

...

*financial asset* means:

- (a) a financial investment; or
- (b) a deprived asset.

Note: For *deprived asset* see subsection 9(4).

*financial investment* means:

- (a) available money; or
- (b) deposit money; or
- (c) a managed investment; or
- (d) a listed security; or
- (e) a loan that has not been repaid in full; or
- (f) an unlisted public security; or
- (g) gold, silver or platinum bullion.'

Section 1076 of the Act provides that a deemed rate of interest is to be applied to income from financial assets. It was not disputed that the DSS had correctly calculated the relevant interest amount, if the deeming provisions applied. However, the Act also allows certain investments to not be regarded as financial assets for pension purposes. Section 1084 of the Act provides:

'1084.(1) The Minister may determine that:

- (a) specified financial investments; or
- (b) a specified class of financial investments;

are not to be regarded as financial assets for the purposes of section 1076, 1077 or 1078.'

#### Financial assets

The AAT determined that the moneys held in the investment account were 'financial assets', that the relevant legislation had been properly applied to these funds, and that it had no discretion to disregard the borrowed moneys held in the investment accounts. The AAT noted that Fielding had also written to the Minister seeking an exemption of the investment moneys from the deeming provisions, and that she had been advised that the outcome of her request would be notified to her by the Minister as soon as possible. If successful in this regard, the AAT noted that some arrears of pension would be payable.

#### Formal decision

The AAT affirmed the decision under review.

[P.A.S.]