

necessary did change the characterisation of the course. The AAT accepted that O'Neill had abandoned the course by the end of February 1997, even though he was still at that time enrolled, as he had ceased to do any reading or studying by that time.

The AAT found that O'Neill had made a deliberately false statement when he denied he was enrolled at an educational institution. He did nothing to correct that false statement in his later 'continuation' forms. Section 1224 applies and there is therefore a debt owing to the Commonwealth.

Formal decision

The AAT set aside the decision under review and substituted the following decision:

'that the applicant has been overpaid in respect of:

- (a) Job Search Allowance paid from 21 June 1994 to 3 July 1995;
- (b) New Start Allowance paid from:
 - (i) 4 July 1995 to 31 December 1995;
 - (ii) 1 January 1997 to 28 February 1997; and
- (c) such overpayments are debts due to the Commonwealth to be recovered by the respondent'

[A.B.]

Newstart allowance: 'unemployed' and 'activity test' requirements

GOULD and SECRETARY TO THE DfaCS
(No. 19990268)

Decided: 27 April 1999 by R.P. Handley.

Background

Gould's newstart allowance was cancelled on the basis that he was not unemployed and did not satisfy the activity test. Gould had established a cooperative organisation called the Open Interchange Consortium (OIC) with the object of raising awareness of the Internet and electronic commerce, as a means of generating work for members of that organisation. Gould was the Honorary Secretary of OIC and its Public Officer. From June 1995 to June 1996, and from July 1997 to October 1997 self-employment was an approved activ-

ity for Gould's newstart allowance under the 'Self Employment Development Program'. In January 1998 his allowance was cancelled because he was working 12 to 14 hours a day for the OIC as its Secretary.

Gould argued that he was actively seeking work, through OIC, in that he was pursuing contractual engagements for himself and other OIC members.

Was Gould unemployed?

The AAT accepted that Gould was essentially using the business structure of OIC in the course of finding remunerative work for himself and others. The structure was 'a shadow' of Gould, had no independent life and was not trading.

'In the Tribunal's view, the mere fact that a person operates in the guise of another business structure of which the person is an officer, does not, for the purpose of s.593(1) mean that the person is employed and therefore disqualified from receiving NSA ... Thus the fact that the applicant used business structures in finding work for himself is not definitive.

The Tribunal finds that the Applicant was not "employed" in the ordinary meaning of the word in the period in question. He was not in paid employment. Certainly he was dedicating a significant amount of time to OIC activities, but the primary objective of this voluntary activity was to find himself (and others) remunerative work. The Tribunal therefore determines that the Applicant was "unemployed".'

(Reasons, paras 46-47)

Did Gould satisfy the activity test?

To satisfy the activity test a person must be actively seeking and willing to undertake paid work. Evidence was given by Gould that he had approached a number of organisations via their Chief Executive Officers seeking contracts. The Department had investigated these alleged contacts and could not confirm that he had in fact sought work as specified on his continuation forms. The AAT, however, found the investigations were deficient, and accepted that Gould had sought work in the manner outlined.

Gould had also looked for work in the Information Technology sections of the *Australian* and in the 'Computing' section of the Friday edition, as well as making submissions in response to advertised tenders on behalf of the Olympic Co-ordination Authority and Tourism Victoria. In those circumstances the AAT was satisfied that Gould was actively seeking and willing to undertake paid work.

Formal decision

The AAT set aside the decision under review and substituted a new decision that

Gould remained qualified for newstart allowance at all relevant times, and therefore, his newstart should not have been cancelled.

[A.T.]

Restart re-establishment grant: application after sale of farm

SECRETARY TO THE DfaCS and STAATZ
(No. 19990090)

Decided: 17 February 1999 by S.A. Forgie.

The Secretary to the DfaCS sought review of a decision made by the SSAT that Staatz was eligible for a restart re-establishment grant under the *Farm Household Support Act 1992* (the Act). These grants were intended as assistance for people who were leaving the land and leaving farming.

The issue

The issue as identified by the AAT was whether Staatz had to lodge any claim for re-establishment grant before the farm was sold.

Background

There was no dispute before the Tribunal in regard to the facts that applied in this case. Staatz was in a mixed pastoral and agricultural business partnership, 'Staatz Enterprises' with his parents and one brother. The business was conducted on land owned by Staatz's parents. The partnership rented the land from the parents and the area that was rented was two-thirds of the whole. Another brother, who was not part of the partnership Staatz Enterprises, rented the remaining third. Staatz worked full-time on the farm and all his income was derived from it.

The farm was put on the market in 1998 and the three brothers spoke to Centrelink about the sale. All three brothers understood that there would be no grant until the farm was sold. The other two brothers embarked on their plans for their future lives. They left the farm before the sale was completed, however they lodged their claims at the time they left, ie before the farm was sold. Staatz stayed on until it was sold and waited until some few days after the sale to first lodge his claim.