Australian Valuation Office (AVO) at $170,000. At the times these valuations were undertaken, neither valuer was aware that permission by the local Shire Council had been given to Clarke to subdivide the land into four blocks. However, the SSAT accepted the AVO's valuation of the land. Subsequently the applicant supplied a revised estimate of value to the Department, which was rejected. The Department contended that only a valuation provided by a registered valuer could be accepted.

Discussion

It was not disputed that the value of the property would affect the rate of DSP to be paid to Clarke. The sole issue was the appropriate value for that property.

The Tribunal noted the evidence of local sales and assessments of comparability between those properties and the several blocks of land held by the applicant. It accepted that '... it is not the law that an opinion by a Real Estate Agent familiar with the particular market can be ignored' (Reasons, para. 14) and it did not consider that the Department's policy of only accepting the opinion of a registered valuer could be followed blindly.

The Tribunal noted that, although the subdivision of the property was in progress, a prospective buyer would face considerable costs to complete the subdivision, to allow for the issue of new titles, and the like. The Tribunal noted the fundamental test of valuation contained *in Spencer v the Commonwealth of Australia* [1907] 5 CLR 418 at 432. The key question was '... [w]hat would a man desiring to buy the land have had to pay for it on that day to a vendor willing to sell it for a fair price but not desirous to sell?'

Applying this test, the Tribunal determined that the total value of the land did not represent what a 'prudent purchaser' would be willing to pay, and that the appropriate value of the land was that supplied by the local estate agent, as that valuation made some allowance for the costs of subdivision.

Formal decision

The Tribunal determined that the appropriate value of the land for DSP purposes was $125,000.

[P.A.S.]

Newstart activity agreement: breaches; requirement to comply with legislative provisions

SECRETARY TO THE DFaCS and ALDERTON and SECRETARY TO THE DEPARTMENT OF EMPLOYMENT, WORKPLACE RELATIONS & SMALL BUSINESS (No. 2001/208)

Decided: 20 March 2001 by H.E. Hallowes.

Background

Alderton was provided with 'intensive assistance' by Employment National. She signed an agreement with the Salvation Army Employment Plus in May 1999 to attend their office every Monday and Wednesday. Alderton was 'breached' for failing to comply with this condition in June 1999. The DFaCS claimed that Alderton had two previous activity breaches and imposed a non-payment period. The SSAT had set aside the decision on the basis there was no valid agreement between Alderton and the Secretary to the DFaCS (the Secretary).

The issues

The issues were:

- whether there was an agreement between Alderton and the Secretary;
- whether the agreement was in a form approved by the Employment Secretary;
- whether there a failure by Alderton to comply with the activity test; and
- whether this was her second or third activity test breach ?

Legislation

The relevant legislation is contained in s.593(1) (qualification for newstart allowance), s.601(5) (failure to comply with terms of agreement), s.604(1C) (nature of newstart activity agreement), s.605(1), s.606 (newstart activity agreements), s.626(1) (when newstart allowance not payable) and s.630A (non-payment for eight weeks).

Approved form of agreement

Section 604(1C) of the *Social Security Act 1991* (the Act) states:

> A Newstart Activity Agreement is a written agreement in a form approved by the Secretary and the Employment Secretary. The agreement is between the person and the Secretary.

The Tribunal noted that the agreement form was headed 'Department of Employment, Workplace Relations and Small Business' but that there was no identification on the bottom of the form as to when it was generated and who may have approved the form. The Tribunal also noted that by virtue of:

> subsection 23(1) of the Act, Employment Secretary means 'the Secretary to the Employment Department' and pursuant to the same subsection Employment Department means 'the Department of Employment, Workplace Relations and Training'. However, the Department of Employment, Education and Training ceased to exist on 1 May 1998 when the Department of Employment, Workplace Relations and Small Business came into existence. It appears to be an oversight that the above definitions in subsection 23(1) of the Act have not been amended to reflect this change.

(Reasons, para. 10)

The Tribunal decided that s.19B(2) and (3) of the *Acts Interpretation Act 1901* were applicable and that the Governor-General had:

> made orders and directions under s.19B on 21 October 1998 such that the Tribunal is satisfied that the relevant provisions of s.604(1C) have been complied with regarding the approval of the form by the appropriate Secretaries.

(Reasons, para. 11)

Agreement between Alderton and the Secretary

The Tribunal also considered whether the appropriate delegation had been made from the Secretary to Salvation Army Employment Plus. The Tribunal concluded that Instruments No 779 and 780 dated 1 December 1998 delegated the Secretary's powers under s.605 and s.606 to specified officers within the Department of Employment, Workplace Relations and Small Business.

Employment Plus negotiated an agreement with Alderton which was then approved by the relevant officers of that Department. The Tribunal was satisfied that the provisions of s.604(1C) were met and Alderton had an agreement with the Secretary.

The Tribunal expressed concern that the above documents had not been before the SSAT and consequently the SSAT had decided there was no valid agreement. The Tribunal drew attention to the:

> care which must be taken in the preparation of documents and in the application of legislation to a person's circumstances so that additional administrative review costs are not incurred as a result of insufficient information being placed before a primary review body.

(Reasons, para. 13)

Failure to comply with activity agreement

Alderton confirmed she signed an agreement to attend Employment Plus every Monday and Wednesday. She advised the Salvation Army that she could not attend on 2 June 1999 but then did not attend as requested the following day. She was unable to give a reason for this non-attendance.

Previous breaches

The decision under review was the imposition of an eight-week non-payment penalty because this was said to be Alderton's third activity test breach. The Tribunal noted there was no evidence before it about Alderton's previous breaches and requested such evidence. Following the hearing the DFaCS submitted documentation which showed that one breach had been waived. The Tribunal said:

> The breach with which the Tribunal was concerned, being Ms Alderton's failure to attend Employment Plus on 3 June 1999, was a second breach within the two year period commencing 9 December 1998 and that therefore a rate reduction of 24 per cent of NSA for 26 weeks should be imposed on her rather than an 8 week non-payment period under sections 644A and 644AE of the Act. This concession by the party joined highlights the errors which may occur if decision-makers on review do not satisfy themselves that each provision under the Act has been complied with. No assumptions should be made.

(Reasons, para. 21)

Formal decision

The decision under review was set aside. The matter was remitted to the Secretary to the DFaCS for reconsideration in accordance with directions that Ms Alderton failed to take reasonable steps to comply with her Newstart Activity Agreement on 3 June 1999 and she therefore did not satisfy the activity test under paragraph 593(1)(b) of the Act. It was Ms Alderton's second activity test breach and an activity test breach rate reduction period applied to Ms Alderton under s.626(1A) of the Act.

[M.A.N.]

Farm Family Restart Grant: definition of 'farmer'

CATTO and SECRETARY TO THE DFaCS (No. 2001/354)

Decided: 1 May 2001 by B.G. Gibbs.

The issue

The sole issue to be determined by the Tribunal was whether Catto was a 'farmer' within the *Farm Household Support Act 1992* (the Act).

Background

Catto ceased work and claimed disability support pension in July 1993. He transferred to age pension in February 1995. He lodged a claim for Farm Family Restart Grant (FFRG) on 22 July 1999. He advised at that time that no crops had been planted on his farm since 1992, that his stock had been sold and his leases relinquished, and that his son was running stock on the remaining lease. The SSAT determined in July 2000 that the Department's rejection of his claim for FFRG was correct, on the basis that he was not a 'farmer' within the Act.

The law

Section 8B of the Act sets out the qualification for farm help income support. In particular, the section requires that the person be a 'farmer' and that the person must have '... been a farmer for a continuous period of at least two years immediately before the period [in respect of which the claim for farm help income support is lodged] ...' (s.8B(c)).

Section 3(2) of the Act defines 'farmer' to mean:

> ... a person who
>
> (a) has a right or interest in the land used for the purposes of a farm enterprise; and
>
> (b) contributes a significant part of his or her labour and capital to the farm enterprise; and
>
> (c) derives a significant part of his or her income from the farm enterprise.

The issue for the Tribunal was whether Catto fell within these legislative provisions for the two years prior to his claim for FFRG.

Did Catto contribute a significant part of his labour and capital to the farming enterprise?

In 1997 Catto owned a farm made up of two parcels of land. In May 1997 he entered an agreement with his son Glenn that they would both farm the property by growing lucerne and running ewes for sale. A pump would be installed on the property to increase its viability. Glenn would receive the gross proceeds from the farming activities, would meet all expenses associated with the property, and then he and Catto would disperse any net funds. On behalf of Catto, Glenn paid some $7800 in outstanding rates over the property.

Catto was limited in the physical work he could do due to pain associated with his hips. Nevertheless the evidence to the Tribunal was that Catto and Glenn had together rebuilt the pump on the property in August 1997; that they had together actually farmed the property in 1998-99, including planting, watering, cutting and raking the lucerne; they had jointly worked on spreading of fertiliser and on weed control efforts; and jointly contributed to various activities associated with raising of sheep. Evidence was tendered of expenditure by Catto on purchase of farming plant and equipment over some years, and of the proceeds of sale of lucerne, wool and lambs in 1998 and 1999. Catto estimated that overall he contributed about 40% and Glenn about 60% of the labour on the farm. Catto argued that he did no other labour for reward (other than work the farm, to the extent that he was able) and that thus all of his labour was contributed to the farm enterprise. He further argued that his labour component was significant if a notional value was attributed to the hours he worked on the farm.

The Tribunal accepted that Catto had a 'right or interest' in the land, and accepted the evidence that he contributed a significant part of his labour and capital to the farming enterprise.

Did Catto derive a significant part of his income from the farming enterprise?

Catto submitted that the sale of lucerne, ewes and lambs had generated income to be shared jointly between himself and his son and that the gross amount earned exceeded his age pension entitlement. The Tribunal accepted that he earned a significant part of his income from the farming enterprise. In this respect the Tribunal noted that the Centrelink Manual stated at paragraph 3.1.5 as follows:

> (a) When determining an application gross income figures should be used; and
>
> (b) Where the farm is not generating a sufficient level of income to meet the living costs of the farm family, the labour contribution or effort becomes paramount.