**Formal decision**

The Tribunal set aside the decision under review and substituted the decision that Catto met the definition of 'farmer' in the Act and that he had been a farmer for at least two years before the date of his claim, and therefore met the requirements for FFRG.

**[P.A.S.]**

# Rent assistance: ineligible homeowner

**CROKER and SECRETARY TO THE DFaCS (No. 2001/321)**

**Decided:** 20 April 2001 by H. Hallowes.

**Background**

Croker lived in a property owned by a company that was also the trustee of the R.A. Croker Family Trust. He lived in a flat with other buildings on the site including the home of his estranged wife. He transferred his share in the company to his estranged wife on 14 July 1999 for a consideration of $1. His estranged wife became the sole director of the company. Croker claimed that he rented the property from the company. Under the trust deed, Croker was a beneficiary, the guardian and appointer.

**The issues**

The issue was whether Mr Croker was eligible for rent assistance from 14 July 1999, the date on which he resigned as a director of Crolok Tools and Dies Pty Ltd (the company).

**Legislation**

Section 1064-D1 of the *Social Security Act 1991* (the Act) provides that:

> An additional amount to help cover the cost of rent is to be added to a person's maximum basic rate if:
>
> (a) the person is not an ineligible homeowner; and
>
> ...

Pursuant to s.13(1) of the Act, an 'ineligible homeowner means a homeowner ...' and s.11(4) and (8) of the Act provide:

> **11(4)** For the purposes of this Act:
>
> (a) a person who is not a member of a couple is a **homeowner** if:
>
> (i) the person has a right or interest in the person's principal home; and
>
> the person's right or interest in the home gives the person reasonable security of tenure in the home; and
>
> ...
>
> **11(8)** If a person has a right or interest in the person's principal home, the person is to be taken to have a right or interest that gives the person **reasonable security of tenure** in the home unless the Secretary is satisfied that the right or interest does not give the person reasonable security of tenure in the home.

**Ineligible homeowner**

Croker submitted that he had never acted as appointor in his life and had no intention of doing so in the future. He paid rent to his estranged wife every four weeks.

The Department contended that as Croker was an appointor under the trust, he could exercise sufficient powers to give him reasonable security of tenure over the property. The Department referred to the case of Re *Johnston and Repatriation Commission* AAT 508, 31 May 1994, a number of other relevant Tribunal decisions and the decision of the Family Court *In The Marriage of David Latimer Shaw and Ramona Shaw* (1989) FLC 92-030

The Department argued that Croker had considerable indirect influence over any decision of the trustee (the company of which his estranged wife was the sole director), although he was precluded from appointing himself as trustee or any company which he controlled. In acting as an appointor, Croker was obliged to consider the beneficiaries, so in effect he had to consider himself and, in deciding to transfer his interest in the company to his estranged wife for $1, he must have felt confident that she would not act against his interests.

The Tribunal found that Croker was a homeowner because he had an interest in his principal home, which gave him reasonable security of tenure. The Tribunal did not foresee that he would have to leave the property where he had lived for a long time.

> He was prepared to give up his directorship of the company, and to part with his interest in the company for only $1. The Tribunal is satisfied that he has confidence that the company will act in his interests, but, if it appears that that situation will not continue, the Tribunal is satisfied that Mr Croker is astute enough to act quickly and to exercise his power as appointor.

(Reasons, para. 13)

**Formal decision**

The decision under review was affirmed.

**[M.A.N.]**

# Lump sum preclusion: special circumstances; unfairness or injustice

**SECRETARY TO THE DFaCS and HOOPER (No. 2001/243)**

**Decided:** 27 March 2001 by R.P. Handley.

**Background**

Hooper suffered work injuries between April 1985 and January 1997 when she stopped work. In July 1998 she was awarded compensation of $735,306. The economic loss component of this amount was $477,935 and $123,764 was repaid to GIO for periodic workers compensation payments made before the court order.

In October 1998 Hooper claimed age pension. Centrelink decided that she was precluded from receiving payments between 6 July 1998 and 20 January 2015.

The preclusion period was calculated on the basis of $354,220 (the economic loss component of the settlement less the amount repaid to GIO). This amount was divided by the divisor at the time of settlement ($410) and the period commenced on the day after the weekly workers compensation payments ceased (6 July 1998).

This decision was reviewed by the Social Security Appeals Tribunal (SSAT), which decided that special circumstances applied in this case to reduce the preclusion period to end on 30 June 2006.

**The arguments**

The submission presented by the Department was that the SSAT had mistakenly reduced the period by 'undertaking a balancing exercise to achieve a fair and equitable result'.

The Department conceded that Hooper's financial situation was straitened, but was not exceptional. Equally, her health was not exceptional. Hooper had unencumbered assets (house and car), she had money in a bank account and would receive further money after the settlement of costs from past legal proceedings.

The submissions presented on behalf of Hooper were that:

- There had been no 'double dipping'.