

visions in the Act that would empower the Secretary to require a person to provide information about his or her income from remunerative work and so no provisions of the type to which reference is made in s.630AA(1). Since that date, all such provisions are found in the Administration Act. The section would have effect if it were given the meaning I have set out in paragraph 29 above. That is to say, it would have effect if s.630AA(1) were taken as a provision of a law of the Commonwealth enacted prior to 20 March, 2000 (as it is) referring to provisions of the 1991 Act (as it does by reference to their requiring a person to provide certain information) that have been repealed (as they have been). The effect of s.244 is that those provisions then be read as referring to corresponding provisions in the Administration Act. That interpretation accords with the purposes revealed by the social security law even though, in its application in a particular case, it may be thought to lead to the imposition of unbearable hardship.

For these reasons the AAT concluded that in the circumstances of this case, s.630AA(1) should be read as applying in a situation in which Quinn has refused or failed without reasonable excuse to provide information in relation to his income from remunerative work as required by a notice given under s.68 of the Administration Act. As there was no dispute between the parties that such a notice was given and that he did fail without reasonable excuse to provide the information, it follows that his failure was an activity test breach. Again, there was no dispute between the parties as to the consequences of that activity test breach, namely that he is subject to a NSA activity test rate reduction amount of 18% for the NSA rate reduction period.

Formal decision

The AAT set aside the decision of the SSAT and substituted a decision that the original decision be affirmed.

[K.deH.]

Farm Family Restart Grant: definition of farmer

HERRICK and SECRETARY TO THE DFACS
(No. 2002/0091)

Decided: 15 February 2002 by J. Handley.

The issues

The applicant applied for a Farm Family Restart Grant under the Farm House-

hold Support Act 1992. This was rejected by the delegate of the Secretary, and the rejection was affirmed by the SSAT. The issue was whether Herrick was a farmer as defined by that Act.

The facts

Herrick and his wife were share farmers. There was an agreement between Herrick and the owners of the property that the property was to be run as a dairy farm. The agreement set out what was to be provided by the owners of the property and what was to be provided by Herrick. The owners provided the land and stock, milking facilities, a house, machinery and vehicles. Herrick provided management and labour to milk and manage the farm, his own four-wheel all-terrain vehicle (ATV) and trailer, hand tools and computer and software. Further, all costs were paid by the owners except for a limited list which were shared. Herrick obtained an overdraft of \$5000 in the first year and up to \$11,000 in the second year to meet his obligations.

The law

The Act defines 'farmer' as:

... 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.

'Farm enterprise' is defined by the Act as:

... an enterprise carried on within any of the agricultural, horticultural, pastoral, apicultural or aquacultural industries.

The issue for the Tribunal was whether Herrick had contributed a 'significant part of his ... capital to the farm enterprise'. There was no dispute that Herrick had contributed a significant part of his labour to the enterprise.

Discussion

The Authorised Review Officer decided that Herrick's contribution did not amount to a significant contribution to the capital of the farm enterprise, because he did not own the land, the cows or the machinery. The SSAT held that taking out an overdraft to pay expenses did not amount to a contribution of capital.

The Tribunal decided that a contribution to the running of the farm should be considered in the context of the expenses of Herrick, not the cost of running the farm as such. Moreover, monies

derived from an overdraft amount to 'capital' for the purposes of the Act.

I am satisfied that those expenses were significant, in the context of the [applicant's] total expenses and also in the context of the [applicant's] total income derived from the farming enterprise. In order to meet his obligations under the share farming agreement the applicant was required to incur certain items of expenditure which on his evidence could only be achieved by obtaining or having access to monies secured by the overdraft.

(Reasons, para. 32)

Formal decision

The Tribunal set aside the decision under review and decided that Herrick was a 'farmer' as defined under the *Farm Household Support Act 1992*.

[A.B.]

Family allowance: notice incorrectly given

TRIEU and SECRETARY TO THE DFACS
No. 2002/0143

Decided: 7 March 2002 by G. Ettinger and Isenberg.

Background

Trieu's claim for family allowance was rejected because information, in particular Trieu's 1997/98 tax returns, which had been considered necessary for consideration of her entitlement and had been requested, had not been provided.

Issues

The issue before the Tribunal was whether Trieu was entitled to family allowance for the period from her claim in October 1999. In order to decide the above issue the AAT was required to consider: whether the Department had validly issued a notice under s.1304 of the *Social Security Act 1991* (the Act); if the Department had not issued a valid notice under s.1304 of the Act, whether it was entitled to rely on the Trieu's failure to comply with that notice in rejecting her claim for family allowance

Legislation

The relevant legislation is contained in ss.838(1)(d) and 1304 of the *Social Security Act 1991*. The relevant parts include:

1304(1) The Secretary may require a person to give information, or produce a document that is in the person's custody or under the