

Federal Court Decisions

Restart income support and re-establishment grant: farmer

PARRETT v SECRETARY TO THE DFaCS
(Federal Court of Australia)

Decided: 7 June 2002 by Madgwick J.

Parrett appealed against the AAT decision that he was not a farmer and thus not entitled to restart income support and a re-establishment grant.

The facts

Parrett owned 40% of a farm property known as *Jays*. He purchased the property in 1980 and had subsequently carried out pig production, cattle fattening and cropping on the property. In 1995 Parrett sold part of the property to settle debts and to finance improvements to the irrigation on the remaining property. He also commenced breeding dogs for sale. In 1995 Parrett began to sow a crop. He was unable to harvest the crop because of poor health. His income for that year came from dog sales and sale of assets. In subsequent years Parrett again sowed crops but these failed because of drought. His income during these years was from dog sales and asset sales. Parrett sold the remainder of his farm on 21 June 1999. He had lodged a claim for restart income support and re-establishment grant on 17 December 1997. His claim was rejected on the basis he was not a farmer.

The law

The *Farm Household Support Act 1992* (the Act) contains the qualifications for the income support and grant. Section 8 sets out the qualification criteria and includes the requirement that the person be a farmer. Farmer is defined in s.3(2) 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.

The preamble to the Act states that it is to provide income support and advice to farmers whose businesses are not profitable in the long term and to provide

financial incentives for farmers to leave farming. The objects of the Act are to provide financial assistance and advice to farmers.

The Acts Interpretation Act 1901 (the AI Act) provides assistance when interpreting legislation. Section 15AA provides:

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

The AAT decision

The SSAT had found that Parrett was a farmer and was qualified for restart income support and a re-establishment grant. However, Parrett failed to request review by the SSAT within three months of the Authorised Review Officer's decision. This meant that the date of effect of the SSAT's decision was the date Parrett requested review, which was 31 August 1999, after Parrett had sold his farm. This made Parrett ineligible to apply for the income support and grant.

The AAT found that Parrett was not a farmer. It was accepted that Parrett had a right or interest in the land used as a farm and that he contributed a significant part of his labour and capital to the farm. However, the AAT was not satisfied that Parrett derived a significant part of his income from the farm. Parrett argued that he had intended to derive a significant part of his income from the farm but had been unable to because of ill health and drought. He conceded that he had not derived any income from the farm in 1996 and 1997.

Farmer

When interpreting the definition of farmer in the Act, Madgwick J considered whether the Explanatory Memorandum, the Second Reading Speech and Centrelink's Guide to the Act were relevant. Both the Explanatory Memorandum and the Second Reading Speech referred to the Act's purpose as to assist farmers who were experiencing financial hardship and to assist farmers who wanted to leave the industry. There was a reference to 'the vulnerability of farming families to natural events and to the Act as providing income support for farming families who find themselves suffering financial hardship as a result of exceptional circumstances which are be-

yond their capacity to manage'. The Centrelink Guide referred to the person having to derive a significant part of their income from the farm and that gross income figures should be used.

According to Madgwick J it was well known that farming in most of Australia is risky, that genuine farmers have an image of being hard working but struggling economically and that those in need deserve support from the government.

The purposive approach

Madgwick J referred to s.15 of the AI Act and several High Court judgments and concluded:

It is now clear, if it were ever not, that blinkered literalism has no place in the interpretation of federal statutes. Indeed, regard to context precedes any finding of ambiguity. The 'purpose or object underlying the Act' will usually be ascertained by consideration of the statute's context.

(Reasons, para. 25)

The Court then turned to 'the question of reading words into' an Act. First a court must consider the mischief the Act was to cure; then the court must be satisfied that Parliament had overlooked a situation that it meant to deal with; and finally the court must be able to say what words the parliament would have used to correct this situation. Section 15AB(1)(a) of the AI Act enables the court to refer to extrinsic materials to confirm the ordinary meaning of a section taking into account the context and purpose of the Act. According to Madgwick J:

The view seems to have been taken that one cannot look to extrinsic material under para (1)(a) of s 15AB if the effect of such resort would be to depart from the ordinary meaning of the statutory text. However, with respect, para (1)(a) permits resort to extraneous material for the purpose of confirming ('to confirm') that the real meaning of the text is its ordinary meaning. Para (1)(a) does not prohibit sensible use of a contrary indication resulting from a lack of such confirmation after looking at the non-statutory material.

(Reasons, para. 32)

Section 15(1)(b) enables extrinsic material to be used to determine the meaning of a provision if there is an ambiguity or obscurity, or the result of the ordinary meaning of the words is absurd or unreasonable. These powers should be construed broadly.

With respect to what material can be referred to, Madgwick J commented:

The safeguards against litigation becoming delayed in a flood of extraneous material of doubtful value, appear to lie not in narrowing the kinds of material to which reference can be made but by keeping a close and sensible eye on whether, as a practical and discretionary matter, one *should* look at such material: see subs(3).

(Reasons, para. 35)

Centrelink's guide

Madgwick J doubted whether it was appropriate to refer to Centrelink's policy because it had been prepared after the statute had been enacted. The policy was not influenced by parliament but neither could it be described as self-serving by Centrelink. He concluded that because it was unclear how senior the officer was who had written the policy and because of s.15(3) of the AI Act, especially paragraph (b), the policy should not be considered. Section 15(3)(b) provides that when considering whether to refer to an extrinsic document to assist interpretation, regard should be had to prolonging legal proceedings without compensating advantage.

The purpose of the Act

The Court described the purpose of the legislation as beneficial and so it should be liberally interpreted. The result of the AAT's interpretation does not accord with the purpose and objects of the Act. The purpose of the Act was to achieve a welfare safety net for farmers. Parrett's claim failed because of factors outside his control. This result is anomalous. If a farmer derives no income for two years despite significant labour and capital contributions, the farmer would be ineligible for assistance. In contrast if the farmer earned \$1 this would be sufficient to be eligible for assistance.

Derives a significant part of income

Section 8B(c) requires the person to have been a farmer for a continuous period of at least two years. However the definition in s.3(2) does not require the period over which income is considered to be the last two years the person was a farmer. To satisfy the requirements it is sufficient if the person has farmed for at least two years and taken as a whole the person has derived a significant part of his income from farming. The AAT erred by requiring the income to be derived during the two-year period prior to the period when Parrett was being assessed.

On the contrary, s.8B only requires that, for a continuous period of which those two years were at least a part, a significant part of income was so derived, even though throughout that period, and in particular in the last

two years, such a significant income was not *continuously* derived.

(Reasons, para. 45)

The reference to two years was not meant to limit the period that could be considered when investigating a person's eligibility for the grant. It cannot have been the parliament's intention to deprive a farmer of support where that farmer had been sick or had been subjected to drought.

Madgwick J was satisfied that parliament had not dealt with a situation like this in the legislation even though this case was 'within the mischief with which the Act was dealing' according to the Explanatory Memorandum, the Second Reading Speech and the Act's purposes. Parrett would not be eligible for any other welfare assistance. If the parliament's attention had been drawn to the situation where a farmer had derived no farm income it may have modified subparagraph (c) of the definition of farmer by including the words attempts to derive income but is prevented from doing so because of ill health or seasonal factors.

The Court concluded that the term 'derives ... income' includes both actual income and intended income.

The date of effect of the decision

It had been argued before the AAT that the SSAT had misconstrued the date of effect provisions in the Act. The AAT had not decided this issue because it had found that Parrett was not a farmer. An appeal to the Federal Court is from the effective decision of the AAT of the application under review. Because the AAT did not decide the matter there was no error of law for the Court to review. The Court agreed that Parrett could seek a declaration in respect of the SSAT's decision. The matter was adjourned to allow further submissions.

Formal decision

The AAT decision was set aside and the matter listed for further direction.

[C.H.]

Compensation preclusion: whether interest is part of compensation lump sum

SECRETARY TO THE DFaCS v MOURILYAN
(Federal Court of Australia)

Decided: 3 July 2002 by Heerey, Mansfield and Hely JJ.

The Secretary appealed to the Full Court of the Federal Court against the decision of Dowsett J that the interest on an award of compensation for loss of earnings was not compensation under the *Social Security Act 1991* (the Act).

The facts

Mourilyan was injured on 2 December 1993 and received weekly payments of compensation under Queensland compensation law until 14 June 1996. He received social security payments from 27 June 1996. Mourilyan commenced common law proceedings and on 26 August 1998 the Court awarded him \$201,620.01. The judgment included an award for past economic loss with interest.

The law

The Act provides that a person is precluded from receiving a social security benefit during a preclusion period. A preclusion period is imposed where a person receives a lump sum compensation payment. The preclusion period is calculated by dividing the *compensation part of a lump sum compensation payment by the income cut-out amount*. The term compensation is defined in s.17(2) of the Act and includes a payment of damages and a payment made under a scheme of compensation under a state law 'made wholly or partly in respect of lost earnings or lost capacity to earn'. Section 17(3)(b) defines the compensation part of an award of compensation as '... so much of the payment as is, in the Secretary's opinion in respect of lost earnings or lost capacity to earn'.

Section 1184 of the Act provides that the Secretary may treat all or part of a lump sum compensation as not having been made in the special circumstances of the case.

Interest on damages for past economic loss

The Court defined the issue as calculating the correct period during which Mourilyan was not entitled to the disability support pension. It was accepted that \$115,200, the amount awarded for past economic loss, was compensation.