There was no material before the Tribunal to indicate that the policy guidelines should not be applied. So the Tribunal referred to paragraph 4.6.5.110 of the guide which details procedures to be adopted when assessing failed financial investments in the form of loans. In discussing the forgiving of a loan, the policy says, in the case of a loan to a company, the forgiving of a loan must occur when 'the company that borrowed the money is wound up' or 'is in in the process of winding up'.

The Tribunal noted that although there had been a winding down of the company's operations, the company has not been wound up as at the date of the hearing and was not in the process of winding up as at the date when the loan was treated as an asset by the applicant. Accordingly, the loan was to be taken into account as an asset.

> The loans in this case must be given their face value rather than any reduced rate which would recognise a component of their unrealisability ...The terms of section 1122 are clear and their application in this case means that the value of the assets of the respondents must include the loans to the company in the amount of $337,100.

(Reasons, para. 23)

The Tribunal refered to *Ling and Secretary, Department of Family and Community Services* [1999] AATA 797; *Mendes and Secretary, Department of Family and Community Services* [2000] AATA 22; and *Hughes and Secretary, Department of Social Security* (1992) 25 ALD 754.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that the rate of age pension of the respondents in the three fortnightly periods from 21 November 2001 until 7 January 2002 was to be calculated on the basis that their assets included the loan of $337,100.

[M.A.N.]

Austudy: full-time study

FERRIER and SECRETARY TO THE DFaCS (No. 2002/868)

Decided: 4 September 2002 by S.M. Bullock.

Background

Ferrier applied to the AAT for review of the rejection of her claim for Austudy. The basis for the rejection was that she could not be considered to be a full-time student as she was undertaking two part-time courses. The courses were Certificate II in Horticulture and a Certificate IV in Craft and Visual Art Practice — Business Skills. The Horticulture Course consisted of 12 hours per week while the Craft and Visual Art Practice was for six hours per week over 18 weeks. Both courses were advertised and offered as part-time courses and the applicant was enrolled in two different faculties at the Bega Campus as a part-time student of each faculty. The courses did not attract HECS fees.

The issue

The issue in this appeal was whether the applicant could be considered a full-time student counting her two part-time courses for the purpose of qualifying for Austudy.

The law

To qualify for Austudy, a person must satisfy the activity test. To satisfy the activity test a person must be undertaking qualifying study within the meaning of s.569A of the *Social Security Act 1991* (the Act). This depends on whether a person is a full-time student within s.569C. Section 569C of the Act states that a person is a full-time student, if the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period. The normal amount of full-time study is defined in s.569E of the Act. Relevantly to the applicant's case, s.569E provides:

> **569E(1)** For the purpose of this subdivision, the normal amount of full-time study in respect of a course is:
>
> (a) ...
>
> (b) if the course is not such a designated course and the institution defines an amount of full-time study that a full time student should typically undertake in respect of the course — the amount so defined; or
>
> (c) otherwise — an amount of full time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.
>
> **569E(2)** Without limiting subsection (1), the normal amount of full-time study in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

The evidence

The applicant gave evidence that she had enrolled in the two part-time courses because both courses were consistent with her plans to develop a gardening business focusing on garden art. She told the Tribunal that she needed both the horticultural knowledge to assist with propagation and the care of plants in addition to the business skills from the other course.

The applicant said that there were few opportunities to undertake full-time study in the country and where such courses were offered, their scope was very limited. The applicant told the Tribunal that she could only undertake the courses in the form available at her local TAFE college at Bega. The applicant said that she would have studied the courses full time if such courses were available.

Legal submissions

The applicant submitted that although the courses were each part time, effectively they amounted in total hours to a full-time course of study, which were in related fields and were being studied for the purpose of her establishing her own business.

The Department argued that the applicant was not a full-time student because neither course was a full-time course. The information from Bega TAFE was that the applicant was enrolled as a part-time student for each of the courses.

The Department also argued that ss.569E(1) and (2) did not allow two part-time courses to be assessed as full-time study. The subsections refer to full-time study in terms of 'the course'. The Department contended that the phrase, 'the course' relates to a singular particular course, rather than 'any' or 'more than one course'. The Department also submitted that the purposive approach to the interpretation of the legislation intends that full-time study is examined in terms of one course and that such an approach is supported by the newstart provisions that provide that students undertaking part-time study may qualify for newstart allowance.

Moreover, the Department contended that while the 'the Guide to Social Security Law' did not provide an explanation as to how to assess the enrolment of two part-time courses, it did provide instruction on how to assess study at more than one institution. The Department argued that how study of two part-time courses is to be treated could be extrapolated from this explanation. The Guide indicates that a student

may study at more than one institution and continue to be a full-time tertiary student for Austudy. However, certain requirements had to be met and it specifically excluded the adding together of subjects that did not form part of an approved course.

Findings

The Tribunal found that the applicant could not meet the requirements of s.569C because neither course was considered by Bega TAFE to be full-time study. The Tribunal also found that she could not satisfy the normal amount of full-time study within the meaning of ss.569E(1) and (2) as she was not in either course undertaking 20 hours of study nor three-quarters of the full-time load, that is 15 hours. The Tribunal noted the Department's submission that the legislation appears to reflect that people who study part-time may be eligible for income support, not from Austudy but from newstart allowance.

In relation to the combining of the two courses, the Tribunal noted that neither the legislation nor the Guide explicitly dealt with that circumstance but noted the reference in the Guide to study in two institutions. The Tribunal concluded that the applicant was not undertaking qualifying study as a full-time student on the basis that there was no evidence of any formal recognition by the institution that the unrelated subjects could be added together or that it would constitute full-time study.

Formal decision

The decision under review was affirmed.

[G.B.]

Youth allowance: full-time study; meaning of 'the particular study period'

COLEMAN and SECRETARY TO THE DFaCS (No. 2002/772)

Decided: 5 September 2002 by J.A. Kiosoglous.

Background

Coleman began a Bachelor of Health Science in 1999 and was paid youth allowance on the basis that he was in full-time study. In the first semester of 2000 he undertook study with a workload of 8 points and in the second semester, he undertook study with a value of 14 points. The total points passed in 2000 amounted to 22 points. Coleman had no choice of subjects and had to undertake his study in this way. When Centrelink received his enrolment details for first semester 2000 it considered that his workload had become less than 75% of a normal full-time load and he was not a full-time student in first semester 2000. As a result a youth allowance debt of $1613.69 was raised and recovery sought.

Issues

The issues were whether Coleman was a full-time student in the period 28 February 2000 to 5 July 2000 and, if not, whether there were grounds to waive the right to recover all or part of the youth allowance debt.

Legislation

Section 541B(1) of the *Social Security Act 1991* provides, as follows:

> 541B.(1) For the purposes of this Act, a person is undertaking full-time study if:
>
> (a) the person:
>
> (i) is enrolled in a course of education at an educational institution; or
>
> (ii) ... or
>
> (iii) ... and
>
> (b) the person:
>
> (i) is undertaking in the particular study period (such as, for example, a semester) for which he or she is enrolled for the course; or
>
> (ii) either:
>
> (iii) in a case to which subsection (1A) does not apply — at least three-quarters of the normal amount of full-time study in respect of the course for that period (see subsection (2) to (4)); or
>
> ...

The meaning of 'normal amount of full-time study' is provided in s.541B(2) as follows:

> **541B.(2)** For the purposes of paragraph (1)(b), the normal amount of full-time study in respect of a course is:
>
> (a) if the course is a designated course of study within the meaning of Chapter 4 of the *Higher Education Funding Act 1988* — the standard student load determined in respect of the course by the institution in question under subsection 39(2) of that Act; or
>
> (b) if the course is not such a designated course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course — the amount so defined; or
>
> (c) otherwise — an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

What is the relevant period of study?

Coleman submitted that the particular period of study to be considered in assessing full-time study should be a year. He was enrolled as a full-time student in 2000 as evidenced by his course work results. The normal annual full-time study load for students was 24 points and he undertook 22 points. This was clearly more than the 75% requirement under s.541B of the Act.

Coleman argued that there was no clear legislative interpretation or policy which necessitates ignoring the year and looking only at a semester in determining the 'particular study period' for the purposes of s.541B. The phrase 'such as, for example, a semester' within s.541B(1)(b)(i) was an example, not a direction.

Coleman referred to the Federal Court decision in *Secretary, Department of Employment, Education, Training & Youth Affairs v Gray* [1999] FCA 1150 and to the Tribunal decisions of *Secretary, Department of Family and Community Services & Machan* [2001] AATA 434 and *Miller & Secretary, Department of Employment, Education and Training* (AAT 10412, 16 June 1995).

Coleman indicated that the normal university courses ran in academic years. 'The "particular period of study" in s.541B(1)(b)(i) of the Act remains a year but that the example of a semester was given in the legislation to enable a student to qualify for a benefit if, for example, he or she only had one semester to go in a particular course' (Reasons, para. 14). Coleman argued there is no conclusive definition of the 'particular period of study' requirement but that there are as many references to 'full year' in the legislation and other instruments as there are to 'semesters'.

The Department submitted it was necessary for Coleman to study for at least 9 points per semester to be classified as a full-time student (9 points per semester would be equal to 75% of a normal study load of 12 points per semester). As he was only studying for 8 points in semester one he could not be classified as a full-time student.

The Department commented that youth allowance was introduced as a