(a) inform the Department if:
(i) a specified event or change of circumstances occurs; or
(ii) the person becomes aware that a specified event or change of circumstances is likely to occur;
(b) give the Department a statement about a matter that might affect the payment to the person of the social security payment.

Prior to the introduction of the Administration Act on 20 March 2000, the requirement to provide information was contained in s.658 of the Act which stated:

(1) The Secretary may give a person to whom a newstart allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.

Section 630AA of the Act states:

(1) If a person:
(a) refuses or fails, without reasonable excuse, to provide information in relation to a person's income from remunerative work (the failure); or
(b) knowingly or recklessly provides false or misleading information in relation to the person's income from remunerative work (the provision of information);

when required to do so under a provision of this Act, a newstart allowance is not payable to the person.

(2) If a newstart allowance becomes payable to the person after the time it ceases to be payable under subsection (1), then:
(a) if the failure or the provision of information is the person's first or second activity test breach in the 2 years immediately before the day after the failure or the provision of information — an activity test breach rate reduction period applies to the person; or
(b) if the failure or the provision of information is the person's third or subsequent activity test breach in the 2 years immediately before the day after the failure or the provision of information — an activity test non-payment period applies to the person.

The Tribunal also referred to ss.244 and 245 of the Administration Act.

'Provision of this Act'

Hosie relied on the SSAT's interpretation of the relevant sections of both Acts. He submitted that the words 'under a provision of this Act' in s.630AA(1) of the Act are to be interpreted by reference to s.23(1) of the Act which defines 'this Act' as being 'the Social Security Act 1991 as originally enacted or as amended and in force at any time'. If it were accepted that s.244 of the Administration Act applies to s.630AA of the Act, it would effectively be ignoring the restrictive definition contained in s.23(1) of the Act.

Hosie considered it significant that other sections of the Act specifically referred to the Administration Act. In particular, he noted the definition of 'social security law' found in s.23(15) and (16) of the Act, which is mirrored in s.3(3) and 3(4) of the Administration Act.

Hosie argued that because s.244 of the Administration Act lacked specificity, it had no application to s.630AA of the Act. This meant that the Act does not contain any provisions that would empower the Secretary to require a person in Hosie's position to provide information about his earnings. As a consequence there was no basis upon which a breach could be imposed.

The Department contended that as the repealed s.658 of the Administration Act was a section under which a person could be required to give information, regard could now be had to s.68 of the Administration Act, as it is the section to which s.658 of the Act corresponds.

In relation to the definition of 'social security law' in both Acts, the Department argued that the notices issued under s.68 of the Administration Act are notices issued under the 'social security law' as defined in s.3(3) and (72) of the Administration Act and s.23(15) and (16) of the Act.

The Tribunal noted that the issue of whether the words 'a provision of this Act' in s.630AA of the Act should be interpreted as a reference to the *Social Security Act 1991* alone or include a reference to the *Social Security (Administration) Act 1999* was the subject of decision in *Secretary, Department of Family and Community Services and Mark Quinn* [2002] AATA 81. The Deputy President concluded in that case that:

> it is difficult to conclude that it would have intended that s.630AA(1) should be of no effect ...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.

(Reasons, para.18)

The Tribunal agreed with the reasoning in *Quinn* and found that s.630AA(1) should apply where Hosie had knowingly provided false information in relation to his income as required by a notice given under s.68 of the Administration Act. The Tribunal found that Hosie knowingly failed to give such information and had committed an activity test breach.

> The consequence of that action is that he is subject to a newstart allowance activity test rate reduction of 18% for a 26-week period. This would seem a harsh result given the monetary amount involved in the breach, however the Tribunal has no means of ameliorating the financial hardship that no doubt will flow from this decision.

(Reasons, para. 20)

Formal decision

The Tribunal set aside the decision under review and in substitution determined that an activity test breach and an 18% rate reduction should be imposed on Hosie's newstart allowance for the period 21 March 2001 to 18 September 2001.

[M.A.N.]

Austudy payment: allowable study time

PRIEST and SECRETARY TO THE DFaCS (No. 2002/1191)

Decided: 19 November 2002 by M.Allen.

Background

The applicant completed a four-year degree at the University of Tasmania in 1998. At the beginning of 2002 he enrolled in a Bachelor of Psychology at Curtin University. This was also a four-year degree.

It was not disputed that for the first three years of the course all the units were semester based. However, it was in respect of the fourth year, that differences arose. The applicant had contended that the dissertation component of the final year of his course was a full year unit on the basis that semester one was taken up with writing a proposal, conducting a literature review, obtaining ethics committee approval for the research and preparation for and commencement of the research and that semester two consisted of completing the research and writing up the dissertation. On that basis, the applicant contended that as he had already completed a four-year degree, he should be eligible for Austudy for a full year not for six months as the SSAT had found.

The issue

The issue to be decided in this matter was whether the applicant was eligible

to receive Austudy for the whole of 2002, rather than for the first semester only. This required an assessment of what was the allowable study time for the applicant's current course. This in turn depended on whether the final year subject could be considered a full year unit and, if so, whether the year-based subject must be 'in the current year' rather than in the future year for s.569H(3)(b) of the *Social Security Act 1991* (the Act) to apply.

The law

The progress rules for full time tertiary students are set out in s.569H which relevantly provides:

> **569H(1)** A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:
>
> (a) in the case of a person who is enrolled in the course — on the day on which the person enrolled in the course; or
>
> (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course — on the day on which enrolments in the course are next accepted;
>
> the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.
>
> **569H(3):**
>
> The allowable study time for a course undertaken by a full time student ... is:
>
> (a) ...
>
> (b) if the minimum amount of time needed to complete the course as a full time student is more than 1 year and:
>
> (i) the student is enrolled, or intends to enrol, in a year long subject; or
>
> (ii) the student's further progress in the course depends on passing a whole year's work in the course;
>
> the minimum amount of time plus 1 year; or
>
> (c) in any other case — the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

The Tribunal identified that the crucial question in this case was whether the applicant's situation on the day he enrolled fell within s.569H(3)(b) or (c). There being no dispute that the minimum amount of time needed to complete his Curtin course was four years, the allowable study time would be five years under s.569H(3)(b) or 4.5 years under s.569H(3)(c).

Findings

The Tribunal found that the proper interpretation of s.569H(3) is that the year-based subject or the years work progress test in s.569H(3)(b) must refer to the current enrolment period — not some future period of study.

With respect to s.569H(3)(b)(i), the Tribunal found that the reference to 'intends to enrol' is a reference to the situation dealt with in s.569H(1)(b) — where the person has not yet enrolled in the course but intends to do so — and concluded that it was not relevant to the applicant's current situation because he was not enrolled in a year long subject on his enrolment date.

As regards s.569H(3)(b)(ii), the Tribunal considered that the 'further progress' referred to is progress beyond the current enrolment period and therefore found that as the applicant's current enrolment was for semester-based subjects only his further progress in the course did not depend on passing a whole year's work in the course.

The Tribunal went on to consider, in the event it was wrong in its view, whether the fourth year dissertation units could be considered to be a year-based subject. The Tribunal found it could not be, for these reasons:

- the two discrete units identified in the course outline were to be undertaken in different semesters, each making their own contribution to the credit points that a student must gain to complete the course;
- within a stream, the two units are assessed separately on a semester basis, even though some of the work carried out in semester one may influence the final grade earned for the dissertation in semester two;
- a student would not be permitted to proceed to the second dissertation semester without making satisfactory progress in the first, even though this may be unlikely to occur very often;
- a student can take a 'break' between the two semesters, thus breaking the connection between the two subjects — at least in a temporal sense.

(Reasons, para. 25)

The Tribunal concluded that the applicant's situation fell within s.569H(3)(c) — which extended the minimum time for his course by half an academic year.

Formal decision

The AAT affirmed the decision under review.

[G.B.]

Special benefit: residence requirements; NZ citizens cannot claim special benefit

FILIPOVSKI and SECRETARY TO THE DFaCS
No. 2002/1148

Decided: 7 November 2002 by J. Dwyer.

Background

The Filipovskis, who are New Zealand citizens, arrived in Australia in July 2001 and claimed special benefit in August 2001. They moved to WA to assist their daughter who suffers from rheumatoid arthritis and depression. The Filipovskis expected to offer emotional help while being supported financially by the daughter, but due to her deteriorated condition she was unable to this. The daughter was unemployed. The Filopovskis were in their seventies and in extreme financial hardship with no way of supporting ourselves. Their initial claim for special benefit was refused as they did not meet the Australian residence requirements.

The issue

The issue was whether the Filipovskis were entitled to claim special benefit.

Legislation

Section 30 of the *Social Security (Administration) Act 1999* states:

> A claim for special benefit may only be made by a person who:
>
> (a) is in Australia; and
>
> (b) satisfies one of the following subparagraphs:
>
> (i) the person is an Australian resident;
>
> (ii) the person has a qualifying residence exemption for special benefit;
>
> (iii) the person holds a visa determined by the Minister to be a visa to which this subparagraph applies.

Section 729(2)(f) of the *Social Security Act 1999* (the Act) provides:

> **729(2)** The Secretary may, in his or her discretion, determine that a special benefit should be granted to a person for a period if:
>
> ...
>
> (f) the person:
>
> (i) is an Australian resident; or
>
> ...