

### Applicant's evidence

McLean told the Tribunal that it had always been her practice to lodge three-monthly review forms with Centrelink on time and accompanied by the relevant payslips. She questioned how the overpayment error could have arisen as she knew that she would have given Centrelink all of her payslips and provided all the relevant information on her forms. She told the Tribunal that the error should have been dealt with closer to the time it arose, particularly when the information she required to refute it, for example, her payslips, was still available and Centrelink had copies of those payslips and the forms lodged by her.

She told the Tribunal that she had two children who were generally in good health with the exception of asthma that was controlled by medication. She also told the Tribunal that she had a \$5000 credit card debt because she would often pay her bills with her credit card and although she was up to date with her bills, her credit card debt remained outstanding.

### Discussion

The Tribunal noted that the most significant special circumstance surrounding the debt was the time that elapsed before the debt was raised. The Tribunal noted that the period began in May 1995 but that the debt was not raised until April 2001, some six years later. There was also a delay in raising the overpayment, following the data-matching exercise. The Tribunal commented that the frequency with which the DFACS undertook data-matching exercises and the speed with which it acted on information yielded by those exercises was a matter for the DFACS.

The Tribunal went on to acknowledge the difficulties faced by McLean in meeting an allegation of debt after the elapse of six years, and decided that this factor should be taken into account in considering whether special circumstances existed. The Tribunal noted that the substantial delay meant that McLean could not access any records, including payslips, about the income she declared and the forms she completed had been destroyed. The Tribunal also commented that the lapse in time meant that any advantage she may have had arising from the overpayment had long since passed and that she had to meet the liability for the overpayment a time long after the effect of that advantage had ceased.

The Tribunal concluded that the length of the delay in raising the debt in this case was unusual and had a significant effect on the applicant's ability to meet the

contentions made against her and to absorb the burden of repayment. The Tribunal decided, taking all matters into account, it was appropriate to waive 50% of the debt raised against the applicant.

### Formal decision

The Tribunal set aside the decision under review and substituted a new decision that, given the special circumstances of the case, recovery of the amount of 50% of the debt owed by McLean to the Commonwealth should be waived.

[G.B.]

## Overpayment: waiver due to special circumstances

**MORGAN and SECRETARY TO  
THE DEPARTMENT OF  
EDUCATION, SCIENCE AND  
TRAINING  
(No. 2003/391)**

**Decided:** 30 April 2003 by  
D.W. Muller.

### Background

Morgan borrowed a pair of binoculars from the Batchelor Institute of Indigenous Tertiary Education (BIITE) in the year 2000. On 2 February 2001, BIITE offered Morgan a place in the Bachelor of Applied Science (Natural and Cultural Resource Management) course, which he accepted. On 12 February 2001, Morgan claimed ABSTUDY payments, and told Centrelink that he would be starting his course on 5 March 2001. Centrelink's letter to Morgan, outlining his obligations and detailing his ABSTUDY payments was returned to Centrelink unopened.

On 5 March 2001, BIITE wrote to Morgan, informing him that his failure to return the binoculars had caused him to incur a debt of \$155, which represented the cost of the item. The BIITE policy was that students with outstanding debts to the institution would not be allowed to re-enrol unless the debt was settled by the re-enrolment date. The re-enrolment date for Semester 1 2001 was 31 March 2001.

On 18 April 2001, Morgan arranged for BIITE to take amounts from his bank account to cover this debt. No deductions were made as a result of those arrangements. Also on that date, BIITE

informed Morgan that he was not enrolled in the course.

Morgan informed Centrelink that he was not enrolled in the course on 23 April 2001, and his ABSTUDY payments were suspended from that date. An overpayment of \$1603.93 was raised on 9 May 2001.

The binoculars were found on 21 July 2001 and returned to BIITE.

### The issues

The AAT agreed that Morgan was not enrolled in an acceptable course at a recognised institution during the payment period, and that there was a valid ABSTUDY debt.

However, the Tribunal decided to waive the debt under s.43F of the *Student Assistance Act 1973*, which provides:

43F Waiver in special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
  - (i) making a false statement or false representation; or
  - (ii) failing or omitting to comply with a provision of this Act; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.

The AAT found that Morgan did not knowingly make a false statement to Centrelink: at the time of his claim, he understood that he was validly enrolled with BIITE, and he advised Centrelink within days of being told that he was not so enrolled.

The AAT found that Morgan did not understand the consequences of his failure to return the binoculars by 31 March 2001. The failure of BIITE to advise him of the critical date, to fully explain the repercussions of their policy regarding unpaid debts and enrolment and the consequences of that policy with respect to his ABSTUDY payments, amounted to special circumstances.

### Formal decision

The Tribunal found that the circumstances were sufficiently unusual and special to warrant the exercise of the discretion to waive the debt.

[E.H.]