

liable for a debt to the Commonwealth, especially in circumstances where the magnitude of the debt was increased by delay and inadequate procedures on the part of the Commonwealth.

#### Formal decision

The decision under review was varied so that 50% of the debt was waived because of special circumstances pursuant to ss.1237AAD of the Act. The matter was remitted to the Secretary on that basis to determine the amount of the debt that was outstanding and an appropriate recovery plan.

[S.P.]

## Waiver: administrative error, good faith and special circumstances

**SCHULZE and SECRETARY TO  
THE DFACS**  
(No. 2004/705)

**Decided:** 30 June 2004 by D.G. Jarvis.

#### Background

Schultze was overpaid parenting payment partnered between November 2001 and March 2003 and a debt was raised of \$9557.83. The amount of the debt was varied to \$6029.53 which was confirmed by an authorised review officer and in turn by the Social Security Appeals Tribunal, which found that there was no basis on which the debt could be waived.

#### The issue

The issues in this appeal were whether the debt should be waived:

- under the 'administrative error' provisions of the *Social Security Act 1991*, or
- under the 'special circumstances' provisions of the *Social Security Act 1991*.

#### The evidence

Schultze's evidence was that he incorrectly made non-allowable deductions from his wife's income and consequently provided Centrelink with a lower income figure than her actual income. He conceded the debt was caused by his error.

However, he told the Tribunal that he provided income figures on 22 October

2001 in relation to family allowance and that Centrelink took no action to adjust the rate of parenting payment he received.

He also completed a parenting payment review form on 12 February 2002, but did not fully answer the questions.

Centrelink reassessed parenting payment by reference to this form and assumed income on the basis of a 2001 profit and loss statement attached to the form.

#### The Department's submissions

On behalf of the Department it was argued that the overpayment for the period 22 October 2001 to 12 February 2002 was caused solely by the administrative error of Centrelink; however payments were not received in good faith.

The Department argued that payments made after 12 February 2002 resulted partly from Centrelink's error and also Schultze's error in failing to complete the form correctly. Consequently, there were no grounds to waive any part of the debt, after 12 February 2002, on the basis of administrative error.

#### Administrative error waiver

The Tribunal dealt with the second portion of the debt that arose as a result of administrative error. It agreed with the Department's submission that although Centrelink mistakenly used incomplete information, Schultze also contributed to the overpayment and consequently the debt had not arisen due to sole administrative error on the part of Centrelink.

In relation to the first portion of the debt, the issue was whether the money was received in good faith. The Tribunal referred to the cases of:

- *Secretary, Department of Employment, Education, Training and Youth Affairs v Prince* (1997) 50 ALD 186
- *Haggerty v Department of Education, Training and Youth Affairs* (2000) 31 AAR 529
- *Jazazievaska v Secretary, Department of Family and Community Services* (2000) 65 ALD 424.

The Tribunal found that Schultze would have expected a reduction in his pension to flow from the increased estimate of income. He also had an objective basis for this on the grounds of previous experience of a pension overpayment. Although the payments were paid to a bank account which was managed by his wife the Tribunal found that Mr and Mrs Schultze had 'reason to know' based on

past experience and knowledge that the parenting payment partnered pension rate should have changed, and yet they did not check this. This failure to monitor Centrelink payments amounted to indifference or recklessness on his part. The Tribunal therefore concluded that he did not receive payments in good faith.

#### Special circumstances waiver

The Tribunal then considered special circumstances waiver. It first considered the issue of whether Schultze or another person knowingly made a false statement or failed to comply with the Act. The Tribunal found that although Schultze was indifferent or reckless in the management of Centrelink obligations, he did not knowingly fail to advise Centrelink in relation to income.

The Tribunal then considered the circumstances of the case and found that Schultze was injured as a result of a bike accident and was limited in some of the tasks he could perform. As a result of this injury his earning capacity through part of 2002 and 2003 was reduced. The Tribunal also found that two administrative errors occurred during the period of the overpayment.

The Tribunal concluded that it would waive the amount of \$2500 on the basis of the combination of errors made by both Schultze and Centrelink, and the hardship caused to Schultze as a result of his bicycle accident.

#### Formal decision

The AAT set aside the decision under review, and substituted a decision that the amount of \$2500 be waived on the grounds of special circumstances.

[R.P.]

## Member of a couple while assurance of support in force

**STANISZEWSKI and  
SECRETARY TO THE DFACS**  
(No 2003/ 644)

**Decided:** 22 December 2003 by  
O. Rinaudo.

#### Background

Staniszewski married on 26 March 2002. His wife had arrived in Australia on 22 February 2002 and was subject to a two-year newly arrived resident's wait-