

# Administrative Appeals Tribunal decisions

## Unemployment benefit: work test

**BLAND and SECRETARY TO DSS**  
(No. V87/32)

**Decided:** 5 November 1987 by  
H.E. Hallowes, H.C. Trinick and  
D.M. Sutherland.

The AAT *affirmed* a DSS decision to recover an overpayment of unemployment benefit from Bland, who the DSS had decided was a full-time student while receiving unemployment benefit.

Bland had enrolled in the first year of a youth diploma in 1984. The course involved field work full-time for 2 weeks and for 1-2 days during the rest of term time. Bland discontinued his course in mid-1985, and re-enrolled at the start of 1986.

The AAT found that the work Bland had applied for while a student was casual work - to supplement his unemployment benefits - or youth work, for which he was then unqualified. He had applied for the latter to make contacts and improve his job application skills, rather than in the expectation of getting employment.

According to the AAT, Bland had a commitment to study, rather than to work; his field-work placements meant he was unavailable for full-time work; and his job-seeking efforts were not directed to finding full-time work. He had not sought work in the areas where he had experience - printing, clerical work, gardening or driving.

Bland had not told the DSS that he was enrolled as a full-time student, and there was no suggestion that this was because of an innocent mistake on his part.

The overpayment was, the AAT decided, recoverable; and the discretion to waive recovery (in the present s.186(1) of the *Social Security Act*) should not be exercised.

**SOLACI and SECRETARY TO DSS**  
(No. V87/482)

**Decided:** 18 February 1988 by  
H.E. Hallowes.

The AAT *affirmed* a DSS decision to cancel Solaci's unemployment benefit on the grounds that he was not willing to undertake suitable paid work and had not taken reasonable steps to obtain work.

The AAT noted that Solaci had rejected some job offers because of their 'inadequate' wages. He was not prepared to take jobs requiring night work. He had confined his job-seeking to jobs available through the CES.

Solaci relied on a CES pamphlet, 'You should know about the work test', which implied that a person would meet the work test in s.107(1)(c) of the *Social Security Act* by meeting CES requirements.

The AAT said that registration with the CES, a condition of eligibility for unemployment benefit under s.107(1)(d), did not necessarily amount to compliance with the work test in s.107(1)(c).

Solaci had not approached local employers nor had he replied to newspaper advertisements. Although he claimed to have applied for 5 jobs in 10 days through the CES, the CES had no record of these applications. The AAT said that there might occasionally be a failure in the CES records, but it did not accept that Solaci applied for these 5 jobs.

**GREGORY and SECRETARY TO DSS**  
(No. S87/90)

**Decided:** 14 December 1987 by  
J.A. Kiosoglous, B.C. Lock and  
D.B. Williams.

The AAT *affirmed* a DSS decision to cancel Gregory's unemployment benefit.

This review concentrated on the questions whether Gregory had been registered with the CES, as required by s.107(1)(d) of the *Social Security Act*; and, if he had not, whether his failure was due to circumstances beyond his control and therefore excusable under s.107(1A).

The AAT found that Gregory was not registered with the CES on the relevant date, because the CES had removed him from their register of job-seekers after he had failed to respond to a card from the CES.

The AAT rejected Gregory's argument that the *CES Act* did not allow the CES to de-register him: although there was no express provision in that Act, the CES had the general power to carry out its functions under the Act. The CES had developed guidelines, which were publicised, and which clearly stated that the onus was on a job-seeker to maintain registration by answering CES letters and 'phone calls. These guidelines were, the AAT said, an appropriate method to administer the *CES Act*.

The Tribunal decided that the discretion in s.107(1A) should not be exercised in Gregory's favour. His failure to maintain registration had been of his own doing. Although the notice from the CES to Gregory had been somewhat ambiguous, the general intent of the notice had been clear; and the DSS had given Gregory ample opportunity to correct his lapsed registration. Gregory had refused to take this opportunity because of his belief that the CES lacked the power to de-register him. His failure to register was not due to circumstances beyond his control.

## Overpayment: recovery

**DARKER and SECRETARY TO DSS**  
(No. V87/303)

**Decided:** 26 November 1987 by  
I.R. Thompson.

Mrs Darker had been overpaid \$21 615 in widow's pension and invalid pension, following her false statements to the DSS. The DSS decided that the overpayment should be recovered from Darker's invalid pension at the rate of \$10 a fortnight.

Darker asked the AAT to review that decision.

### The legislation

Section 181(2) of the *Social Security Act* provides that, where a person who has

been overpaid a pension is receiving a pension, then -

'that amount shall, unless the Secretary takes action under subsection 186(1) in relation to that amount, be deducted from the last-mentioned pension . . . by reducing each payment of that pension . . .'

Section 186(1) authorises the Secretary to the DSS to -

(a) write off debts . . . ;  
(b) waive the right of the Commonwealth

(i) to recover from a person the whole or a part of a debt . . . ;

(c) allow an amount that is payable by a person . . . to be paid in instalments.'

### Discretion to write off debt

Darker admitted that she had been overpaid \$21 615; but she argued that, because of her financial situation, the debt should be written off or waived under s.186(1).

It was established that Darker's basic living expenses were \$111.59 a week. Her weekly income, from her invalid pension, amounted to \$112.15.

The AAT said that an overpayment should be recovered where, as here, it had resulted from fraud - unless it would

'prevent the person from being able to maintain the lowest standard of living acceptable today in Australian society, that is to say, a standard at