SOCIAL SECURITY

Reporter

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Comment

Consolidated index

This issue concludes 4 years of publication for the *Reporter*. To mark our survival (and growth) we publish a consolidated index to our first 22 issues.

AAT decisions

Several problems recur amongst the decisions noted in this issue of the *Reporter*. These include the question of whether full time tertiary students can qualify for unemployment benefits. Three decisions emphasise that the answer involves an assessment of the student's intention – is she committed to her course to the exclusion of full time work? *Kontogeorgos* and *Martens* succeeded because they were prepared to drop their course if they found work; but *Bouris* failed because she was committed to resuming her course at the end of the summer vacation. The last of these decisions also asserts that, despite the wording of s.107(1)(c), the work test involves an assessment of a person's willingness to work over the long term and not just over 'the relevant [2 week] period' – an assertion which might not survive critical scrutiny.

Backpayment of handicapped child's allowance, continues to occupy much of the AAT's attention. Some decisions (*Mrs M* and *Cox*) show that the DSS runs a hard line in opposition to claims for backpayment. Other decisions indicate that the AAT is divided over a point first raised in *Corbett* (1984) 20 *SSR* 210: once a person has shown 'special circumstances' to support backpayment of the allowance, must she show something extra to justify the exercise of the Director-General's discretion? *Bygrave* provides clear evidence of the difference of opinion; but the more liberal approach to extra 'discretionary' factors is also apparent in *Cox* and *Mrs M*.

To say that the Australian social security system embodies outdated values is not profoundly original: much of the Act dates from the 1940s. In *Harley*, the AAT politely suggested that the denial of widow's pension to men was difficult to reconcile with contemporary social attitudes – and impossible to reconcile with 2 international treaties signed by Australia. That second point is even stronger since the Government has (after the decision in *Harley*) withdrawn its reservation to Article 26 of the International Covenant on Civil and Political Rights.

Relatively novel invalid pension issues are still being raised before the Tribunal. *Monteleone* took up a point raised in *McDonald* (1984) 21 *SSR* 241 – that a disabled woman might not be incapacitated for work because her other responsibilities would, in any event, keep her out of the workforce. This is an extraordinary argument which should be confronted before it assumes some respectability.

Yusuf raised the following question: if an immigrant comes to Australia with a disability, can it be said that his incapacity for work occurred outside Australia? The AAT's answer to this question was not convincing: how can we say that a man was incapacitated for work *before* coming to Australia when he had worked full-time up to the time of his arrival here and when the critical factor (deafness) in his incapacity was of no practical significance except in the Australian work environment?

P.H.

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