

CASE STUDY 1: Correcting an unintended outcome of legislation

A Disability Support Pensioner (Blind) enrolled in a university course which required the student to undertake a full year of study overseas.

People who are permanently blind do not have to satisfy the work test applied to most Centrelink benefits for people of workforce age. They are still subject, however, to the pension portability provisions, and lose the pension if they leave Australia for longer than 13 weeks, except for an emergency. Being absent from Australia for study, rather than due to an emergency, the student lost Centrelink benefits and was forced to incur travel costs for trips back to Australia, and requested reimbursement amounting to over \$5,000.

It was considered that the failure to provide for extended portability of Disability Support Pension where the person is required to study overseas as part of an approved study course was not consistent with the Government's purpose of encouraging people with disabilities to study and participate in the workforce to the best of their ability. An act of grace payment was approved on this basis, and the apparent anomaly was brought to the attention of the Minister for Families, Housing, Community Services and Indigenous Affairs, for possible legislative change.

CASE STUDY 2: Waiver of debt on grounds of inequity

In July 2008, the Child Support Agency (CSA) reviewed all receiving parent consolidated revenue debts. Approximately 8,700 customers with closed child support cases were identified as having debts dating back more than five years and had received no notification of the debt.

The CSA requested a bulk waiver of consolidated revenue debts owed by these customers. Given the age of the debts and inadequate notification to the CSA customers, the Finance delegate considered that recovery of the debt would be inequitable and approved waiver of the debts.

CASE STUDY 3: Application with dubious merits

Because criminal convictions precluded entry to Australia, a foreign national used a forged passport to obtain an entry visa, but later requested DIAC to cancel the visa, in order to be deported, and return to the country of origin. The person was detained until a valid passport and escort officers, required in view of the criminal convictions, could be arranged for the exit flight. Rather than apply for a bridging visa to allow release from detention until the passport and escorts were arranged, the person chose to remain in detention, but later complained to the Commonwealth Ombudsman and sought waiver of the debt for the cost of the escort officers used in the deportation.

The Finance delegate declined waiver of the debt, having had regard to the claimant's fraudulent conduct and informed choice to remain in detention after being advised that the cost of being escorted would be incurred.

CASE STUDY 4: Application with dubious merits

DIAC referred a request on financial hardship grounds for waiver of a litigation debt and a Refugee Review Tribunal post-decision fee on behalf of a person who had been in Australia unlawfully for almost two years and admitted to having been employed during that time. The claimant's whereabouts were known to DIAC. The Finance delegate advised DIAC that in such circumstances, waiver would not be considered.

CASE STUDY 5: Multiple applications following an unsuccessful application

Having been granted a veteran's pension for total and permanent disability (TPI Pension) before 50 years of age, a claimant withdrew money from a superannuation fund. The Fund Trustee was required by law to withhold tax, calculated at a percentage of the taxable component of the benefit payment, and remit it to the Australian Taxation Office.

A request was made for an act of grace payment to compensate for the tax paid. Although not terminally ill, the pensioner considered it inequitable not to receive the benefit of the provision that allows people who are terminally ill to access superannuation benefits before the age of 55 years without having to pay tax.

When the application for an act of grace payment was rejected, the pensioner made a series of claims, including three further act of grace applications, one request for waiver of a non-existing taxation debt, three requests under the ADJR Act for statements of reasons for the various decisions, one request under the *Freedom of Information Act 1982* for a copy of his file and sent three additional pieces of correspondence.

CASE STUDY 6: Multiple levels of review and Finance's independence

A Centrelink customer had claimed the Age Pension before registering for the Pension Bonus Scheme and a subsequent claim for the Pension Bonus payment was rejected. The decision was affirmed on appeal by an Authorised Review Officer, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal. Centrelink also rejected a claim under the CDDA Scheme.

The Finance delegate considered that the person's age, limited education and poor English language skills constituted special circumstances that warranted an act of grace payment.

CASE STUDY 7: Multiple applications in different forums

Following a tip off, the then Australian Customs Service (Customs) mentioned an Australian citizen in its alert reports, which were circulated to its officers and to State police. After an altercation with the police, the person lodged an application under the State FOI legislation and obtained copies of the reports.

When the Minister for Justice and Customs declined the person's request for \$250,000 in compensation, a claim for payment under the CDDA Scheme was lodged with Customs. When the Commonwealth Ombudsman's Office also declined a request to investigate the matter, the person applied for an act of grace payment. The then Minister declined to approve a payment, but a new claim was made following a change in government. The claimant was told that the matter would not be reconsidered without new evidence.

A further application was made under the Commonwealth FOI legislation for the papers about the requests for an act of grace payment. A copy of the file was provided without charge. In 2010, a further claim was made for an act of grace payment. As before, the claimant was advised that the matter would not be reconsidered without new evidence or considerations.

CASE STUDY 8: Agency response to identified error

In its Annual Report for 2005-2006, the Australian Taxation Office stated that due to problems with the replacement of the business system for Superannuation Guarantee during 2003-2004, the Tax Office was unable to process assessments on time. To ensure employees were not disadvantaged through lost interest as a result of this delay, it was determined that compensation would be payable. Compensation payments commenced in 2005-2006 and were completed in 2006-2007. Approximately 66,000 payments were made in the first year and 136,000 in the second year.

Compensation was paid using a standard interest rate, determined after consideration of relevant interest rates payable by the superannuation funds at that time. This rate was applied to each individual's superannuation guarantee contribution amount and in almost every case, the offer of compensation was accepted.