

# HIGH COURT OF AUSTRALIA

GAGELER CJ,  
GORDON, STEWARD, JAGOT AND BEECH-JONES JJ

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MATTHEW CHAPLIN

APPELLANT

AND

SECRETARY, DEPARTMENT OF SOCIAL  
SERVICES & ANOR

RESPONDENTS

*Chaplin v Secretary, Department of Social Services*  
[2026] HCA 22  
*Date of Hearing: 15 April 2026*  
*Date of Judgment: 17 June 2026*  
M92/2025

## ORDER

*Appeal dismissed.*

On appeal from the Federal Court of Australia

### Representation

K A O'Gorman SC with L E Hilly, T F B Farhall and G B Ayres for the appellant (instructed by Victoria Legal Aid)

S B Lloyd SC with M T Sherman and D J Rowe for the first respondent (instructed by Sparke Helmore Lawyers)

Submitting appearance for the second respondent

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.



## CATCHWORDS

### **Chaplin v Secretary, Department of Social Services**

Administrative law (Cth) – Social security – Where application of income test in Module H of Youth Allowance Rate Calculator in s 1067G of *Social Security Act 1991* (Cth) reduced rate of youth allowance in certain circumstances where ordinary income earned, derived or received – Where point 1067G-H23 of Module H provided "ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received" – Where appellant received youth allowance for 14-day instalment period beginning on Thursday and ending on second Wednesday that followed – Where appellant worked as casual employee at grocery store without fixed days or hours of work – Where appellant paid weekly by employer for hours worked during period of 7 days beginning on Monday and ending on Sunday of preceding week – Where appellant required to report gross amount "earned for work done" during each instalment period – Where youth allowance instalment period did not align with weekly payslips – Where appellant consistently and mistakenly reported net income in payslips for two preceding working weeks – Where Secretary gave notice in respect of debt which Secretary considered had arisen by operation of s 1223(1) of *Social Security Act* – Where Secretary satisfied certain ordinary income received but could not be satisfied as to fortnight in which ordinary income earned – Whether, and if so how, point 1067G-H23 required such ordinary income to be taken into account.

Words and phrases – "daily rate", "debt", "first earned, derived or received", "fortnightly instalment period", "gross income", "income test", "net income", "ordinary income", "overpayment", "rate calculator", "social security", "social security benefit", "social security payment", "social security periodic payment", "youth allowance", "Youth Allowance Rate Calculator".

*Social Security Act 1991* (Cth), ss 8, 1067G, 1223(1), 1229.  
*Social Security (Administration) Act 1999* (Cth), s 8.



1 GAGELER CJ, GORDON, STEWARD, JAGOT AND BEECH-JONES JJ. The appellant, Mr Chaplin, received youth allowance in respect of fortnightly instalment periods calculated in accordance with the Youth Allowance Rate Calculator in s 1067G of the *Social Security Act 1991* (Cth). Module H of the Rate Calculator was the "income test" by which youth allowance might be adjusted by reference to the amount of ordinary income earned, derived or received by a recipient in an instalment period. While receiving youth allowance Mr Chaplin was also working a casual job at a grocery store. The first respondent, the Secretary, notified Mr Chaplin that he had been overpaid youth allowance and thus owed a debt to the Commonwealth of Australia. The Secretary did not have access to Mr Chaplin's timesheets but did have access to his weekly payslips, which recorded the aggregate hours he worked and the aggregate income he received. The weekly payslips did not align with the fortnightly instalment periods of youth allowance. It was not always possible for the Secretary to determine if the hours worked (and the income received) fell within one instalment period or another.

2 The question is: where a decision-maker applying the income test for an instalment period before 7 December 2020<sup>1</sup> was satisfied that a person received ordinary income in a fortnight which the person had previously earned but could not be satisfied as to the fortnight in which the person had earned that ordinary income, was the decision-maker required to take that ordinary income into account or precluded from so doing and, if the decision-maker was required to take that ordinary income into account, how must or should it do so?

3 The answer is: the decision-maker was required to take the ordinary income into account in the fortnight in which the decision-maker was satisfied that the ordinary income was received. That is because point 1067G-H23, within Module H of the Rate Calculator in s 1067G, is properly construed to require the decision-maker to take into account ordinary income in the fortnight of the earliest occurrence of the ordinary income having been earned, derived or received of which the decision-maker could be satisfied at the time of making the decision.

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1 The date of commencement of items 11, 12 and 37 of Sch 1 to the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020* (Cth), amending point 1067G-H23 of s 1067G and repealing ss 1073A and 1073B and substituting ss 1073A-1073BD into the *Social Security Act*. See also item 2 of Sch 1 to the *Social Security and Other Legislation Amendment (Technical Changes No 2) Act 2025* (Cth), relevantly inserting s 1117D into the *Social Security Act*.

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## Youth allowance

### *Entitlement to youth allowance*

4 Youth allowance is a "social security benefit",<sup>2</sup> and therefore a "social security payment"<sup>3</sup> and a "social security periodic payment"<sup>4</sup> within the meaning of the *Social Security Act* and the *Social Security (Administration) Act 1999* (Cth),<sup>5</sup> which are to be read together as parts of the "social security law".<sup>6</sup>

5 The general administration of the social security law is given to the Secretary of the Department which from time to time administers it.<sup>7</sup> The Secretary is exhorted, in administering the social security law, to have regard to the desirability of achieving specified results.<sup>8</sup> Those results include "the delivery of services under the law in a fair, courteous, prompt and cost-efficient manner"<sup>9</sup> and

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2 Section 23(1) (definition of "social security benefit" para (aab)) of the *Social Security Act*.

3 Section 23(1) (definition of "social security payment" para (b)) of the *Social Security Act*.

4 Section 3(1) and cl 1(1) of Sch 1 (definition of "social security periodic payment" para (a)) to the *Social Security (Administration) Act 1999* (Cth).

5 Section 3(2) of the *Social Security (Administration) Act*.

6 Section 23(17) of the *Social Security Act* and s 4 of the *Social Security (Administration) Act*. For ease of reference, provisions of the social security law, other than point 1067G-H23 within Module H of the Rate Calculator in s 1067G of the *Social Security Act* and Pt 4A of the *Social Security (Administration) Act*, are referred to in the present tense.

7 Section 7 of the *Social Security (Administration) Act*. See s 23(1) (definition of "Secretary") of the *Social Security Act*; ss 19 and 19A of the *Acts Interpretation Act 1901* (Cth).

8 Section 8(a) of the *Social Security (Administration) Act*.

9 Section 8(a)(iii) of the *Social Security (Administration) Act*.

"the establishment of procedures to ensure that abuses of the social security system are minimised".<sup>10</sup>

6 Any person who wants to be granted youth allowance must make a claim for youth allowance.<sup>11</sup> Upon a person making a claim for youth allowance, the claim must be determined by the Secretary in accordance with the social security law<sup>12</sup> by reference to criteria governing qualification for and payability of youth allowance set out in Pt 2.11 of the *Social Security Act*. The Secretary must determine to grant the claim<sup>13</sup> if satisfied that the person is qualified for youth allowance<sup>14</sup> and that youth allowance is payable to the person.<sup>15</sup> The Secretary's determination to grant the claim then has continuing effect.<sup>16</sup>

7 As a social security periodic payment, youth allowance is required to be paid to a person to whom it has been granted:<sup>17</sup> in arrears;<sup>18</sup> by instalments relating to such periods not exceeding 14 days as the Secretary determines;<sup>19</sup> and at such times as the Secretary determines.<sup>20</sup> The amount of each instalment required to be paid to the person in relation to an instalment period is the total of the amounts, calculated by reference to the applicable daily rate, payable to the person for each

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10 Section 8(a)(v) of the *Social Security (Administration) Act*.

11 Section 11(1) of the *Social Security (Administration) Act*.

12 Section 36(1) of the *Social Security (Administration) Act*.

13 Section 37 of the *Social Security (Administration) Act*.

14 See Div 1 of Pt 2.11 of the *Social Security Act*.

15 See Div 2 of Pt 2.11 and Step 13 of the method statement in point 1067G-A1 of the Rate Calculator in s 1067G of the *Social Security Act*.

16 Section 123(1) of the *Social Security (Administration) Act*.

17 Section 44(1) of the *Social Security (Administration) Act*.

18 Section 43(1)(a) of the *Social Security (Administration) Act*.

19 Section 43(1)(b) of the *Social Security (Administration) Act*.

20 Section 43(2) of the *Social Security (Administration) Act*.

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day on which youth allowance was payable to the person during the instalment period.<sup>21</sup>

8 Thus, the rate at which youth allowance is required to be paid to a person to whom it has been granted is a matter of statutory entitlement. If the Secretary "is satisfied that the rate at which [it] is being, or has been, paid is less than the rate provided for by the social security law", the Secretary is required to "determine that the rate is to be increased to the rate provided for by the social security law".<sup>22</sup> Conversely, if the Secretary "is satisfied that the rate at which [it] is being, or has been, paid is more than the rate provided for by the social security law", the Secretary is required to "determine that the rate is to be reduced to the rate provided for by the social security law".<sup>23</sup>

9 Such a determination by the Secretary, increasing or reducing the rate at which youth allowance is paid, continues in effect until the Secretary makes a further determination<sup>24</sup> or until the rate is automatically reduced including by reference to the occurrence of an event or a change of circumstances of which the person receiving the payment is required to notify the Department.<sup>25</sup>

#### *Calculation of the rate of youth allowance*

10 The daily rate of youth allowance on a given day of a given instalment period is calculated for each recipient individually. Part of that calculation requires accounting for any ordinary income first earned, derived or received.<sup>26</sup> That ordinary income, where appropriate, is accounted for as a reduction to the daily rate of youth allowance. In other words, a person may be entitled to a lower daily rate of youth allowance if they are earning, deriving or receiving ordinary income, such as wages.

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21 Section 43(3) of the *Social Security (Administration) Act*.

22 Section 78(a) of the *Social Security (Administration) Act*.

23 Section 79(1)(a) of the *Social Security (Administration) Act*.

24 Section 123(3)(a) of the *Social Security (Administration) Act*.

25 Section 123(3)(b) of the *Social Security (Administration) Act*.

26 Point 1067G-H23 of s 1067G of the *Social Security Act*.

11 Within Pt 2.11 of the *Social Security Act*, s 556 provides that "the rate of a person's youth allowance is to be worked out in accordance with the Youth Allowance Rate Calculator in section 1067G". Within Pt 3.5, headed "Youth Allowance Rate Calculator", s 1067G(1) correspondingly provides that "[t]he rate of youth allowance of a person referred to in section 556 is to be calculated in accordance with the Rate Calculator in this section".

12 The Youth Allowance Rate Calculator in s 1067G describes a "rate calculation process".<sup>27</sup> The structure of the Rate Calculator is that it is "divided into Modules",<sup>28</sup> commencing with Module A and concluding with Module L. Most of the Modules are in turn "divided into points",<sup>29</sup> commencing with point 1067G-A1 and ending with point 1067G-K9. Each point is in substance an instruction to the user of the Rate Calculator, although the form and level of generality or specificity of the instructions will be seen to vary.

13 Module A of the Rate Calculator is headed "Overall rate calculation process". It consists solely of point 1067G-A1, headed "Method of calculating rate". Point 1067G-A1 commences with the overall explanation that "[t]he rate of allowance is a daily rate ... worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14".

14 Point 1067G-A1 then sets out a "method statement" which comprises a number of "Steps". Step 1 is: "Work out the person's maximum basic rate using Module B below." Next follow Steps which involve working out additional amounts which are subject to income or assets testing using other specified Modules or provisions,<sup>30</sup> which additional amounts are to be added to the person's maximum basic rate to arrive at the person's "maximum payment rate".<sup>31</sup> Next follow Steps which involve working out reductions applying income or assets tests using other specified Modules.<sup>32</sup> These reductions are to be subtracted from the person's maximum payment rate to arrive at the person's "provisional fortnightly

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27 Section 1062(1) and (2) of the *Social Security Act*.

28 Section 39(3) of the *Social Security Act*.

29 Section 39(4) of the *Social Security Act*.

30 Steps 1A, 2, 2A and 3. See s 1062(1)(b) of the *Social Security Act*.

31 Step 4.

32 Steps 8, 10 and 12. See s 1062(1)(c) of the *Social Security Act*.

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payment rate".<sup>33</sup> Other amounts not subject to income or assets testing are then to be added to or subtracted from the provisional payment rate to arrive at the person's fortnightly "rate of allowance".<sup>34</sup> The rate of allowance so calculated on a fortnightly basis is that which is ultimately to be divided by 14 to arrive at the applicable daily rate.

15 Step 12 in the method statement in point 1067G-A1 is one of the Steps involved in identifying the reductions that are to be subtracted from a person's maximum payment rate to arrive at the person's provisional fortnightly payment rate. Step 12 is: "Apply the income test using Module H below to work out the person's income reduction."

16 Module H of the Rate Calculator is headed "Income test". Reflecting the role that the use of Module H plays in Step 12 in the method statement in point 1067G-A1, point 1067G-H1 commences: "This is how to work out the effect of a person's ordinary income ... on the person's maximum payment rate".

17 Point 1067G-H1 then sets out its own "method statement" which comprises its own series of Steps. Step 1 is: "Work out the amount of the person's ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067G-H2 to 1067G-H25)." The amount of the person's ordinary income on a fortnightly basis worked out in accordance with Step 1 forms the foundation for working out the person's "ordinary income reduction" in accordance with subsequent Steps in the method statement. The details of those subsequent Steps need not be examined.

18 Points 1067G-H2 to 1067G-H25, to which reference is made in Step 1 in the method statement in point 1067G-H1, contain instructions which are expressed: in some cases in the form of instructions to the user;<sup>35</sup> in some cases in the form of definitions;<sup>36</sup> in some cases in the form of declarations;<sup>37</sup> in some cases

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33 Step 13.

34 Step 14. See s 1062(1)(d) of the *Social Security Act*.

35 Points 1067G-H3, 1067G-H8, 1067G-H10, 1067G-H13, 1067G-H22.

36 Points 1067G-H19, 1067G-H20, 1067G-H21.

37 Points 1067G-H14, 1067G-H14A, 1067G-H14B.

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in the form of deeming provisions,<sup>38</sup> including in two cases in the form of deeming provisions triggered by the formation of an opinion by the Secretary;<sup>39</sup> in one case in the form of an explanation;<sup>40</sup> and in another case in the form of a discretion conferred on and exercisable by the Secretary to make a determination in the event of the Secretary being satisfied of specified circumstances.<sup>41</sup>

19 Point 1067G-H23, the proper construction of which lies at the heart of the appeal, falls within the first of those categories. Point 1067G-H23 at the relevant times provided that, "[s]ubject to points 1067G-H23A, 1067[G]-H23B, 1067G-H24 and 1067G-H25 and section 1073, ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received". Each of points 1067G-H23A, 1067G-H23B, 1067G-H24 and 1067G-H25 and s 1073, to which reference is made in point 1067G-H23, is expressed in the form of a deeming provision which describes the time at which a person is "taken to receive" a specified type of payment or a proportionate part of a specified type of payment.

20 The expression "ordinary income", which appears in points 1067G-H1 and 1067G-H23, is defined in s 8(1) of the *Social Security Act*. Section 8(1) defines "ordinary income" to mean "income" that is not "maintenance income" or an "exempt lump sum". Beyond illustrating that the term "income" as further defined in s 8(1) is in "the widest terms",<sup>42</sup> the further definitions of "maintenance income"<sup>43</sup> and "exempt lump sum"<sup>44</sup> are not presently relevant.

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38 Points 1067G-H2, 1067G-H4, 1067G-H5, 1067G-H6, 1067G-H7, 1067G-H9, 1067G-H11, 1067G-H12, 1067G-H14C, 1067G-H15, 1067G-H17, 1067G-H18, 1067G-H23A, 1067G-H23B, 1067G-H24, 1067G-H25.

39 Points 1067G-H2 and 1067G-H23B read with s 4(2)-(6A) (definition of "member of a couple") of the *Social Security Act*.

40 Point 1067G-H23C.

41 Point 1067G-H16. See s 3A of the *Social Security Act*.

42 See *Read v The Commonwealth* (1988) 167 CLR 57 at 69.

43 See s 10 of the *Social Security Act*.

44 See s 8(11) of the *Social Security Act*.

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21 Subject to exclusions,<sup>45</sup> s 8(1) of the *Social Security Act* defines "income" in relation to a person to mean: "an income amount earned, derived or received by the person for the person's own use or benefit"; "a periodical payment by way of gift or allowance"; or "a periodical benefit by way of gift or allowance". Section 8(1) further defines "income amount" to mean "valuable consideration", "personal earnings", "moneys" or "profits", "whether of a capital nature or not". Section 8(2) expands upon those definitions by explaining that a reference to "an income amount earned, derived or received" is a reference to "an income amount earned, derived or received by any means ... and ... from any source (whether within or outside Australia)".

22 There is no dispute that, for the purposes of the definitions of "income" and "ordinary income", an "income amount" is "earned" or "derived" when the person becomes legally entitled to that income amount; the term "earned" being appropriate to refer to a legal entitlement that has arisen from the doing of work and the term "derived" being appropriate to refer to a legal entitlement that has arisen from another source.<sup>46</sup> Nor is there any dispute that an income amount can be, and often will be, earned or derived before it is received.

23 Relevantly to the circumstances giving rise to the question for determination in the appeal, s 1072 of the *Social Security Act* makes clear that a reference to a person's ordinary income for a period is a reference to the person's gross ordinary income from all sources for that period.

*Information relevant to the rate of youth allowance*

24 As the recipient of a social security payment, a person to whom youth allowance is being paid is subject to a general obligation to inform the Department of "an event or change of circumstances ... that might affect [its] payment" within 14 days of the occurrence of the event or change of circumstances.<sup>47</sup> The Secretary may also give such a person a notice requiring them to inform the Department if a specified event or change of circumstances occurs or if the person becomes aware that such an event or change is likely to occur, or to give the Department one or

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45 See s 8(4), (5) and (8) of the *Social Security Act*.

46 See *Inguanti v Secretary, Department of Social Security* (1988) 80 ALR 307 at 311.

47 Section 66A(2) of the *Social Security (Administration) Act*.

more statements about a matter that might affect the payment of youth allowance.<sup>48</sup> A person who has received such a notice becomes subject to certain automatic rate reduction provisions that come into operation where an event occurs or circumstances change such that the rate of youth allowance is to be reduced.<sup>49</sup>

25 In addition, the Secretary has a "[g]eneral power",<sup>50</sup> by written notice,<sup>51</sup> to require a person to give information or produce a document that the Secretary considers may be relevant to specified matters which include: "the question whether a social security payment is payable to a person who is receiving the payment";<sup>52</sup> "the question whether a social security payment was payable to a person who has received the payment";<sup>53</sup> and "the rate of social security payment that is or was applicable to a person".<sup>54</sup>

#### *Overpayment of youth allowance*

26 Chapter 5 of the *Social Security Act* is headed "Overpayments and debt recovery". Within Pt 5.2, headed "Amounts recoverable under this Act", s 1222A relevantly provides that an amount that has been paid by way of a social security payment is a debt due to the Commonwealth if, and only if, a provision of the *Social Security Act* expressly so provides.

27 Section 1223(1), headed "Debts arising from lack of qualification, overpayment etc.", is such a provision. Section 1223(1) provides that, subject to certain immaterial exceptions, if "a social security payment is made" and "a person who obtains the benefit of the payment was not entitled for any reason to obtain that benefit" then "the amount of the payment is a debt due to the Commonwealth by the person and the debt is taken to arise when the person obtains the benefit of

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48 Section 68(2) of the *Social Security (Administration) Act*.

49 Sections 99 and 100 of the *Social Security (Administration) Act*.

50 Section 192 of the *Social Security (Administration) Act*.

51 Section 196 of the *Social Security (Administration) Act*.

52 Section 192(b) of the *Social Security (Administration) Act*.

53 Section 192(c) of the *Social Security (Administration) Act*.

54 Section 192(d) of the *Social Security (Administration) Act*.

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the payment". Section 1223(9) makes clear that the references in s 1223(1) to a social security payment include references to a part of a social security payment.

28           There is no dispute that the debt referred to in s 1223(1) of the *Social Security Act* is a debt created by operation of s 1223(1) itself.<sup>55</sup> Nor is there any dispute that the amount of the debt that is created by operation of s 1223(1) in the event of an overpayment of an instalment of youth allowance to a person is the difference between: (1) the amount which was in fact paid to the person in arrears as an instalment of youth allowance in relation to that instalment period; and (2) the amount that was payable to that person under the social security law in relation to that instalment period calculated at the daily rate worked out in accordance with the Youth Allowance Rate Calculator in s 1067G.

29           The debt created by operation of s 1223(1) of the *Social Security Act* is recoverable by or on behalf of the Commonwealth through a range of mechanisms.<sup>56</sup> Those mechanisms include the Secretary determining that an amount representing the whole or some part of the debt is to be deducted from any social security payment to the person by whom it is owed.<sup>57</sup> They also include the Commonwealth recovering the debt from the person in legal proceedings commenced in a court of competent jurisdiction within six years of "the first day on which an officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt".<sup>58</sup>

30           Section 1229(1) of the *Social Security Act* provides that "[i]f a debt by a person to the Commonwealth under the social security law has not been wholly paid, the Secretary must give the person a notice specifying", amongst other things, "the reason the debt was incurred"<sup>59</sup> and "the outstanding amount of the debt at the date of the notice".<sup>60</sup> The giving of the notice has the consequence under s 1229(2)

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55 See *Secretary, Department of Social Security v Alvaro* (1994) 50 FCR 213 at 218.

56 See item 2 of the table in s 1222(2) of the *Social Security Act*.

57 Section 1231 of the *Social Security Act*.

58 Section 1232(1)-(2) of the *Social Security Act*.

59 Section 1229(1)(b) of the *Social Security Act*.

60 Section 1229(1)(d) of the *Social Security Act*.

that "[t]he outstanding amount of the debt is due and payable on the 28th day after the date of the notice".

31 To give a notice under s 1229(1) in respect of a debt created by operation of s 1223(1), the Secretary must obviously form an opinion as to the existence and amount of the notified debt. Implicit in s 1229(1) is that the requisite opinion is to be formed reasonably on the basis of the information available to the Secretary at the time of giving the notice and on a correct understanding by the Secretary of the applicable law.<sup>61</sup>

32 Having the consequence for which s 1229(2) provides, the giving of a notice under s 1229(1) constitutes a "decision ... under the social security law"<sup>62</sup> which is subject to internal review under the *Social Security (Administration) Act*<sup>63</sup> and which was at relevant times in turn subject to external merits review by the Administrative Appeals Tribunal ("AAT") established by the *Administrative Appeals Tribunal Act 1975* (Cth).<sup>64</sup> The external review was two tiered, consisting of an "AAT first review" to be conducted by the Social Services and Child Support Division of the AAT<sup>65</sup> and an "AAT second review" to be conducted by the General Division of the AAT.<sup>66</sup> At each tier, the jurisdiction of the AAT was to "stand in the shoes of [the decision-maker on internal review] so as to determine for itself on the material before it the decision which [could], and which it consider[ed] should, be made".<sup>67</sup>

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61 *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 at 30 [57].

62 Section 126(1) of the *Social Security (Administration) Act*. See s 23(1) (definition of "decision") of the *Social Security Act*; s 3(3)(e) of the *Administrative Appeals Tribunal Act 1975* (Cth).

63 Part 4 of the *Social Security (Administration) Act*.

64 Part 4A of the *Social Security (Administration) Act*.

65 Division 2 of Pt 4A of the *Social Security (Administration) Act*.

66 Division 3 of Pt 4A of the *Social Security (Administration) Act*.

67 *Frugtniet v Australian Securities and Investments Commission* (2019) 266 CLR 250 at 271 [51]; *Miller v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 278 CLR 628 at 633 [14].

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33 An appeal lay on a question of law to the Federal Court of Australia from a decision of the General Division on an AAT second review.<sup>68</sup> In the event of a member of the General Division conducting the AAT second review having been a judge, the jurisdiction of the Federal Court to hear and determine the appeal was to be exercised by a Full Court.<sup>69</sup>

### Facts

34 Mr Chaplin was granted youth allowance on Friday 1 August 2014 with effect from Thursday 10 July 2014, which had been the date of his claim for youth allowance. The Secretary determined at the time of grant that Mr Chaplin's youth allowance would be paid in relation to instalment periods of 14 days beginning on a Thursday and ending on the second Wednesday that followed. In respect of instalment periods between 10 July 2014 and 24 June 2015, Mr Chaplin was paid instalments of youth allowance totalling \$2,804.02.

35 Between 10 July 2014 and 24 June 2015, Mr Chaplin also worked as a casual employee at a grocery store without any fixed days or hours of work. He was paid weekly by the employer on a Thursday at an hourly rate for the hours he had worked during the period of seven days which began on the Monday and ended on the Sunday of the preceding week. The weekly payments were recorded in weekly payslips. The payslips recorded his gross and net pay, the total number of hours worked and the rate of pay for the hours worked during the preceding week. The payslips did not record the days on which he had worked those hours.

36 At the time of the Secretary granting him youth allowance, the Secretary had given Mr Chaplin a written notice requiring him to report the gross amount he "earned for work done" during each of his youth allowance instalment periods. The notified requirement was that he report that amount for each instalment period of 14 days on the last day of the instalment period. The Secretary gave Mr Chaplin further notices in similar terms from time to time thereafter.

37 In attempting to comply with those notice requirements, Mr Chaplin consistently and mistakenly failed to report the gross amount he had earned for work done during the preceding youth allowance instalment period, being the period of 14 days which ended on the Wednesday he was required to report. What he reported instead was his net income as shown in his payslips for the preceding

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68 Section 44(1) of the *Administrative Appeals Tribunal Act*.

69 Section 44(3)(c) of the *Administrative Appeals Tribunal Act*.

two working weeks, being the two consecutive periods of seven days which ended on the preceding Sunday.

38 Information that Mr Chaplin's gross income between 10 July 2014 and 24 June 2015 had exceeded the amount he had reported came to the attention of the Secretary only in April 2019 as a result of a communication from the Australian Taxation Office. On the basis of that information, the Secretary on 1 October 2019 made a decision under s 1229(1) of the *Social Security Act* to give Mr Chaplin a notice in respect of a debt which the Secretary considered had arisen by operation of s 1223(1) in the amount of \$911.98.

39 The decision under s 1229(1) of the *Social Security Act* was subsequently affirmed on internal review. There occurred at the instigation of Mr Chaplin an AAT first review in which the Social Services and Child Support Division of the AAT decided to set aside the decision that had been made on internal review and to remit it for reconsideration.

#### **AAT Second Review**

40 Following the AAT first review, there occurred at the instigation of the Secretary an AAT second review in which the General Division of the AAT (constituted by Kyrou J as President and Senior Members Kennedy and Trotter) ("AAT 2") decided to set aside both the decision of the Social Services and Child Support Division and the decision on internal review and, in effect, to substitute a decision to give Mr Chaplin a notice under s 1229(1) of the *Social Security Act* in respect of a debt considered by the General Division of the AAT to have arisen by operation of s 1223(1) in the amount of \$806.16.<sup>70</sup>

41 Though the making of the original decision under s 1229(1) of the *Social Security Act* had been prompted by Mr Chaplin having been found to have underreported his ordinary income by reporting his net income instead of his gross income, the principal issue before AAT 2 concerned how the gross income he was then known to have received was to be worked out on a fortnightly basis in determining its effect on his maximum payment rate using Module H of the Youth Allowance Rate Calculator for the purpose of working out his income reduction.

42 The issue arose in circumstances in which two matters were common ground between Mr Chaplin and the Secretary. The first was that Mr Chaplin had become legally entitled to, and had therefore earned, the ordinary income which

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70 *Re Secretary, Department of Social Services and FTXB* (2024) 184 ALD 29.

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he later received from his casual employment on each of the days on which he had worked. The second was that the evidence before AAT 2 concerning the days on which Mr Chaplin had worked (which was confined to his payslips and his testimony based on incomplete recollection) was insufficient to enable AAT 2 to reach a state of satisfaction as to the 14-day instalment period into which some of those days had fallen.

43           The uncertainty was as to whether some days on which Mr Chaplin had done work for which he had been paid had been within the 3-day period from Monday to Wednesday at the end of one instalment period or within the 4-day period from Thursday to Sunday at the beginning of the next instalment period. In respect of hours Mr Chaplin had worked in the 7-day period commencing Monday 4 August 2014 and ending Sunday 10 August 2014 for which Mr Chaplin was known to have received gross payment of \$473.55 on Thursday 14 August 2014, for example, it was impossible to tell on the evidence whether Mr Chaplin had worked those hours in the last 3 days of the 14-day instalment period which ended on Wednesday 6 August 2014 or in the first 4 days of the 14-day instalment period which commenced on Thursday 7 August 2014.

44           Competing solutions were propounded by the Secretary and Mr Chaplin. Both solutions accepted that point 1067G-H23 required the ordinary income that AAT 2 could be satisfied that Mr Chaplin had earned in a particular 14-day instalment period to be taken into account in that period. The competing solutions differed as to what, if anything, point 1067G-H23 required AAT 2 to do with the ordinary income that AAT 2 could be satisfied that Mr Chaplin had received but could not be satisfied that he had earned in a particular 14-day instalment period.

45           The Secretary argued that point 1067G-H23 required such ordinary income to be taken into account in the fortnight in which AAT 2 was satisfied that Mr Chaplin had received it. In the example given, on the Secretary's approach, the whole of the amount of \$473.55 which Mr Chaplin was known to have received on Thursday 14 August 2014 in respect of the hours he had worked between Monday 4 August 2014 and Sunday 10 August 2014 was to be taken into account in calculating his income reduction for the instalment period which commenced on Thursday 7 August 2014.

46           Mr Chaplin argued that point 1067G-H23 compelled the conclusion that such ordinary income was not able to be taken into account at all because AAT 2 could not be satisfied as to the particular 14-day instalment period in which that ordinary income was earned. In the example given, on Mr Chaplin's approach, none of the amount of \$473.55 which Mr Chaplin was known to have received on Thursday 14 August 2014 in respect of the hours he had worked between Monday

4 August 2014 and Sunday 10 August 2014 was able to be taken into account in calculating his income reduction for any instalment period.

47 Departing from what had been common ground between the parties, AAT 2 took the view that Mr Chaplin did not become entitled to the ordinary income subsequently paid to him and therefore did not earn that ordinary income until the Sunday of each working week. This led AAT 2 to treat point 1067G-H23 as requiring all of the ordinary income to be taken into account in the fortnight in which that Sunday fell.

48 Taking all of the ordinary income found to have been received by Mr Chaplin between 10 July 2014 and 24 June 2015 into account in that manner, the amount of the debt calculated by AAT 2 to have arisen by operation of s 1223(1) – \$806.16 – coincided with the amount which AAT 2 would have calculated to have arisen by operation of s 1223(1) had it adopted the approach of the Secretary – \$806.16.

### **The Full Court**

49 On appeal by Mr Chaplin from the decision of AAT 2 to the Full Court of the Federal Court, neither party sought to defend the solution adopted by AAT 2. The Full Court (Thawley, Hespe and Kennett JJ) was unanimous in holding that the solution adopted in AAT 2 involved an error of law and that the parties had been correct that Mr Chaplin earned ordinary income from his casual employment on the days on which he worked.<sup>71</sup> There is no challenge to that holding.

50 However, the Full Court dismissed Mr Chaplin's appeal on the basis of the majority (Thawley and Hespe JJ) finding this error of law to have been immaterial.<sup>72</sup> That was because "[t]he only conclusion available to [AAT 2] was

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71 *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44 at 49 [16], 81-82 [178]-[180] (applying *Automatic Fire Sprinklers Pty Ltd v Watson* (1946) 72 CLR 435 at 465), 90-91 [221].

72 *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44 at 87 [205]. Compare *Hyundai Automotive Distributors v Australian Customs Service* (1998) 81 FCR 590 at 599-600.

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to be satisfied that Mr Chaplin was entitled to \$806.16 less than he received, and that this was a debt to the Commonwealth by force of s 1223(1)".<sup>73</sup>

51 In so finding, the majority accepted Mr Chaplin's argument that point 1067G-H23 was incapable of application if and insofar as the AAT could not be satisfied of the 14-day instalment period in which he had earned the ordinary income found to have been received by him. The majority nevertheless considered the expression "where appropriate" in Step 1 of the method statement in point 1067G-H1 to indicate that point 1067G-H1 requires ordinary income to be allocated to a 14-day period even if point 1067G-H23 is incapable of application to that ordinary income. The ordinary income was accordingly to be allocated in accordance with point 1067G-H1 to the 14-day instalment period in which Mr Chaplin had received it.<sup>74</sup>

52 In dissent, Kennett J emphasised that the entitlement to be paid youth allowance and the existence and amount of a debt in the event of an overpayment of youth allowance arose by operation of the social security law. His Honour considered this context to require the Youth Allowance Rate Calculator to be construed to yield a "single correct answer" which would not "wax and wane" according to the material available to a decision-maker.<sup>75</sup> Point 1067G-H23, on this construction, operated of its own force to produce the result that ordinary income that was in fact earned before it was received was required to be taken into account in the overall working out of the rate of a person's youth allowance in, and only in, the fortnight in which it was in fact earned.<sup>76</sup>

53 On his Honour's construction, if a decision-maker using the Rate Calculator has found that ordinary income was earned before it was received but is unable to determine when that ordinary income in fact was earned, that means that the decision-maker is incapable of being satisfied of the operation of point 1067G-H23. This has consequences as the giving of a notice under s 1229(1) in respect of a debt considered to have arisen by operation of s 1223(1) requires

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73 *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44 at 87 [206].

74 *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44 at 84-85 [195]-[198].

75 *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44 at 92 [231], 94 [239].

76 *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44 at 94 [241].

satisfaction on the part of the Secretary in the first instance, and on the part of the AAT on review, of the existence and amount of the notified debt. The inability of AAT 2 to be satisfied on the material before it as to the 14-day period in which Mr Chaplin had earned ordinary income that he had subsequently received has the consequence that, on his Honour's construction, AAT 2 was unable to take that ordinary income into account in arriving at a state of satisfaction as to the amount of the debt.<sup>77</sup>

### **The appeal to this Court**

54 On Mr Chaplin's appeal by special leave to this Court from the decision of the Full Court, the parties adhered essentially to the positions they had taken before AAT 2.

55 Mr Chaplin relied on the dissenting reasoning of Kennett J in support of his argument that point 1067G-H23 brought ordinary income into account in the 14-day period in which that income was in fact first earned, derived or received and not otherwise. He advanced specific criticisms of aspects of the reasoning of the majority which had led the majority to consider point 1067G-H1 to apply independently of point 1067G-H23.

56 By notice of contention, the Secretary argued that point 1067G-H23 brought ordinary income into account in the earliest 14-day period in which a decision-maker using the Rate Calculator could be satisfied on the material available to the decision-maker at the time of the decision that the income had been either earned or derived or received as applicable. The Secretary relied on the reasoning of the majority, invoking point 1067G-H1 only in the alternative.

57 The contention of the Secretary as to the proper construction of point 1067G-H23 is to be preferred, and the appeal is therefore to be dismissed.

### **The proper construction of point 1067G-H23**

58 That a person to whom youth allowance has been granted has a statutory entitlement to be paid youth allowance at the rate calculated in accordance with the Youth Allowance Rate Calculator, and has a statutory debt to the Commonwealth in the event of overpayment, does not mean that the Rate Calculator must be interpreted to yield a rate of payment which is wholly

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77 *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44 at 95 [244], 96 [251].

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independent of any thought or action on the part of the Secretary (or another decision-maker standing in the shoes of the Secretary or otherwise applying the statutory provisions). As has been seen, Module H itself contains several instructions the application and implementation of which are expressed to turn on the formation of an opinion or the exercise of a discretion on the part of the Secretary.<sup>78</sup> The consequence is simply that the rate of youth allowance applicable to an instalment period is capable of conclusive determination only by a court applying the Rate Calculator on the basis of the admissible evidence before it, including any evidence of the formation or exercise of any relevant opinion or discretion on the part of the Secretary.

59           The Youth Allowance Rate Calculator is not framed in terms of an outcome. It is framed in terms of a process: as a set of instructions to the user. Implicit in those instructions is that the user is, or at least may be, a decision-maker who is required to implement them in order to calculate a person's rate of payment of youth allowance for a purpose under the social security law and who must for that purpose form an opinion or make a finding (as required) as to the occurrence of such events or the existence of such circumstances that render an instruction applicable.

60           There is a broad range of purposes for which a decision-maker might be required to calculate a person's rate of payment of youth allowance under the social security law. These purposes include not only the recognition and recovery of past overpayments but the determination and redetermination of ongoing payments. This, combined with the exhortation to the Secretary to deliver services under the social security law in a prompt and cost-efficient manner, tells against an instruction in Module H being construed to require the decision-maker to undertake extensive inquiries in order to form an opinion about its application. Importantly, those same considerations combine to tell in favour of a construction which would permit a decision-maker to ascertain the application of an instruction on the basis of the information provided by the person pursuant to the person's continuing reporting requirements. That this is so, however, does not enable the person to benefit from the non-provision of relevant information which the person ought to have provided in accordance with those requirements or the provision of incorrect information (as in the present case). Obtaining further information in such a case is authorised by s 192 of the *Social Security (Administration) Act* and,

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78 See points 1067G-H2 and 1067G-H23B read with s 4(2)-(6A) (definition of "member of a couple") of the *Social Security Act* and point 1067G-H16.

on the receipt of such information, it is to be expected that such further information will be brought to bear on decisions made under the *Social Security Act*.

61 It will be recalled that: (1) Step 1 in the method statement in point 1067G-H1 instructs the user to "[w]ork out the amount of the person's ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067G-H2 to 1067G-H25)";<sup>79</sup> and (2) point 1067G-H23, where not rendered inapplicable by reason of the applicability of any of points 1067G-H23A, 1067G-H23B, 1067G-H24 or 1067G-H25 or s 1073, gave the user the more specific instruction that "ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received".<sup>80</sup>

62 It will also be recalled that the threshold requirement for the application of the specific instruction in point 1067G-H23 was the existence of "ordinary income". By definition, relevantly, "ordinary income" was an "income amount" that was "earned" or "derived" or "received" by the person.<sup>81</sup>

63 For the specific instruction in point 1067G-H23 to have had application, the decision-maker undertaking the rate calculation process must therefore have been satisfied of the existence of an income amount that the person had either earned or derived or received. The specific instruction that the income amount of which the decision-maker was satisfied was "to be taken into account in the fortnight in which it is first earned, derived or received" was an instruction that the decision-maker take that income amount into account in a particular fortnight.

64 The specific instruction in point 1067G-H23 was evidently designed to have the result spelt out in the explanatory memorandum for the progenitor of point 1067G-H23<sup>82</sup> that, "in general, ordinary income [would be] income-tested in

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79 See [17] above.

80 See [19] above.

81 See [20]-[21] above.

82 See point G9 within Module G in Pt 2 of Sch 1 to the *Student and Youth Assistance Act 1973* (Cth), as inserted by s 36 of the *Student Assistance (Youth Training Allowance) Amendment Act 1994* (Cth) (in the context of the "youth training allowance").

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the fortnight when the person becomes entitled to it, regardless of when he or she receive[d] it".<sup>83</sup>

65 But what if the decision-maker, being satisfied that an income amount had been received by a person to whom youth allowance had been granted and being satisfied that the person had become entitled to the income amount before receiving it, was unable to be satisfied as to the fortnight in which the person had become entitled to receive it (that is, the date on which the ordinary income was first earned, as opposed to received)? Could it really be thought to have been contemplated by the legislative design that the decision-maker would not be permitted to bring that income amount into account at all, such that income known by the decision-maker to have been received would be disregarded in the application of the "income test" simply because the decision-maker was unable to ascertain with precision when that income had been earned? We are unable to accept that it could.

66 The imperative terms of the specific instruction in point 1067G-H23 that "ordinary income is to be taken into account", as reinforced by the imperative terms of the general instruction in Step 1 in the method statement in point 1067G-H1 to "[w]ork out the amount of the person's ordinary income on a fortnightly basis", were wholly inconsistent with such an income amount being left out of account altogether. Coherence with the imperative that ordinary income be taken into account dictates that the specific instruction in point 1067G-H23, that "ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received", be construed to require that ordinary income which the decision-maker was satisfied met the description of having been earned or derived or received be taken into account in the rate calculation process in the fortnight in which the decision-maker could be satisfied that the ordinary income first met the description of having been either earned or derived or received as applicable on the material available to the decision-maker at the time of the decision.

67 Where the decision-maker could be satisfied that an income amount had been received but could not be satisfied as to when that income amount had been earned or derived, point 1067G-H23 instructed the decision-maker to take that income amount into account in the fortnight in which the decision-maker was satisfied that it had been received.

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83 Australia, House of Representatives, *Student Assistance (Youth Training Allowance) Amendment Bill 1994*, Explanatory Memorandum at 142.

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68           That was the instruction which point 1067G-H23 required AAT 2 to implement. Had AAT 2 implemented that instruction, AAT 2 would have made the same decision as in fact it made. Its acknowledged error of law was therefore immaterial.

**Disposition**

69           The appeal is to be dismissed. Each party is to bear its own costs.