

CITATION: *C'wealth Service Delivery Agency v Van Den Berg* [2006] NTMC 055

PARTIES: COMMONWEALTH SERVICES DELIVERY  
AGENCY

v

CRESENCIA VAN DEN BERG

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Darwin

FILE NO(s): 20429584

DELIVERED ON: 15 June 2006

DELIVERED AT: Darwin

HEARING DATE(s): 22 November 2005; 24 March 2006; 5 May  
2006

JUDGMENT OF: Ms Jenny Blokland SM

**CATCHWORDS:**

CRIMINAL LAW – KNOWLEDGE – CIRCUMSTANTIAL EVIDENCE – CONDUCT  
ON OTHER OCCASIONS

*Harriman v The Queen* (1989) 167 CLR 590

*Shepherd v The Queen* (1990) 170 CLR 573

*Chamberlain v The Queen* (1984) 153 CLR 521

**REPRESENTATION:**

*Counsel:*

Prosecution: Ms Bligh/Mr Ford  
Defendant: Self/Ms Scattini

*Solicitors:*

Prosecution: Commonwealth Director Public Prosecutions  
Defendant: NTLAC

Judgment category classification: C

Judgment ID number: [2006] NTMC 055

Number of paragraphs: 25

IN THE COURT OF SUMMARY JURISDICTION  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20429584

BETWEEN:

**COMMONWEALTH SERVICES  
DELIVERY AGENCY**

Prosecution

AND:

**CRESENCIA VAN DEN BERG**

Defendant

REASONS FOR DECISION

(Delivered 15<sup>th</sup> June 2006)

JENNY BLOKLAND SM:

**Introduction**

1. On 22 November 2005 Ms Cresencia Van Den Berg (“the defendant”), pleaded not guilty to twelve counts concerning breaches of the *Social Security Act* (counts 1 – 6) and the *Commonwealth Criminal Code* (counts 9 – 12). At the first day of the hearing Ms Van Den Berg was unrepresented having the assistance only of an interpreter (Ms Ventic) and for a short time her friend, a Ms Nicholls. I was told that Ms Nicholls may have been a potential witness so she was required to leave the courtroom early in the proceedings. At the hearing on the 22 November 2005, the prosecution called its only witness to give evidence *viva voce*, Mr Shane Ponter, an investigator for Centrelink. Tendered through him were a number of documents that comprised the bulk of the prosecution case that I will refer to in due course. At the end of the proceedings on 22 November 2005 I urged Ms Van Den Berg to speak to the Legal Aid Commission about

whether she could have representation for the duration of the hearing. She told the court that she had received advice from the Legal Aid Commission but was not being represented by them. At the resumption of the hearing on 24 March 2006, Ms Scattini appeared for Ms Van Den Berg.

2. When the hearing resumed on 24 March 2006, after Ms Van Den Berg received advice from Ms Scattini (from the Northern Territory Legal Aid Commission), she pleaded guilty to counts 9 – 12 inclusive but continued to contest counts 1 – 8. Counts 1 – 8, in summary are as follows:

Count 1 alleges that between 17 August 1999 and 22 December 1999 the defendant breached sections 1347 and 1350 of the *Social Security Act 1991* in that she knowingly obtained the Wife's Pension (Aged) which was only payable in part as she was employed with and in receipt of income from the Northern Territory News.

Count 2 contains a similar allegation between January 2000 and 20 March 2000.

Count 3 contains a similar allegation save that it is charged under sections 215 and 217 of the *Social Security (Administration) Act 1999* for the period between 19 March 2000 and 20 December 2000. I note the substance of the charge under the *Social Security (Administration) Act 1999* is the same as alleged under the (previous) *Social Security Act 1991*.

Count 4 alleges similar conduct in breach of the Social Security (Administration) Act 1999 between 27 February 2001 and 11 April 2001.

Count 5 alleges similar conduct between 8 May 2001 and 6 June 2001.

Count 6 makes a similar allegation save that the time period is between 3 July 2001 and 2 October 2001.

Count 7 makes a similar allegation save that it is charged pursuant to section 135.2(1) of the *Criminal Code (Cth)*, *knowingly obtain a financial advantage* .

Count 8 concerns a similar allegation contrary to section 135.2(1) of the *Criminal Code (Cth)* between 7 May 2002 and 14 August 2002.

The counts that the defendant entered a plea of guilty to, (counts 9 – 12), involve allegations concerning *obtaining a financial advantage* contrary to section 135.2(1) of the *Criminal Code* in relation to the Parenting Payment Single over the periods 13 August 2002 to 25 September 2002; 8 October 2002 and 12 March 2002; between 25 March 2003 and 22 October 2003; and between 21 October 2003 and 21 December 2003.

3. To be successful, in relation to counts 1 – 6 the prosecution must prove beyond reasonable doubt that the defendant obtained the Wife's Pension which was not payable or only part payable; that the defendant *knew* she was obtaining the benefit and that she *knew* she was not entitled to the benefit when she obtained the payment. In relation to counts 7 and 8, (obtain a financial advantage contrary to section 135.2(1) Criminal Code), it must be proven that she *knowingly* obtained a financial advantage from a Commonwealth entity and that she *knew* she was not eligible to receive that financial advantage.

### **The Prosecution Case**

4. The essential allegation is that the defendant was in receipt of the Wife's Pension from 17 August 1999 to 14 August 2002; that during that period she was employed by the Northern Territory News and P. D. Chan Pty Ltd, ("Air Raid Arcade") and that she received throughout that period the Wife's

Pension (Age) when she was not entitled to the full pension, (albeit at times entitled to part pension) due to her income from employment. It is alleged that the defendant failed to notify Centrelink of changes in her financial circumstances as she was required to do at various times and did not notify Centrelink of changes to her income from her employers. It must be remembered that she is not charged with a particular offence concerning failure to notify, however I accept that it is a relevant factor to be assessed when assessing the defendant's knowledge of her income and her benefits, or knowledge of the impact of her income on her benefit. There is little in dispute concerning the benefits actually described, her entitlements to those benefits and her income received. The issue is whether the requisite element concerning knowledge of her entitlement to the benefit has been proven beyond reasonable doubt. As is often the way concerning mental elements, the prosecution has sought to prove those matters by reference to the circumstances of the case. This case being a circumstantial case concerning the knowledge of the defendant, I remind myself that the defendant must be acquitted if there is a reasonable hypothesis raised consistent with innocence that has not been negated beyond reasonable doubt by the prosecution.

### **Agreed Facts**

5. Certain facts were agreed at the outset (see exhibit P1):
  - The defendant received payments of the Wife's Pension between 1 September 1998 and 13 August 2002,
  - The defendant received payments of Parenting Payments (single) between 14 August 2002 and 21 October 2003,
  - The defendant worked at Nationwide News Pty Ltd t/as Northern Territory News between 4 June 1999 and 30 June 2003 (and beyond),

- The defendant received wages from the Northern Territory News as specified in the pay records before the Courts (see Exhibit P2), and that these wages were paid weekly into the National Australia Bank Account (see Exhibit P4),
  - The defendant was issued with a payslip each time she was paid.
  - The defendant worked at P. D. Chan Pty Ltd t/as Air Raid City Lodge between 20 March 2001 and 8 April 2001,
  - The defendant received wages from Air Raid City Lodge as specified in the pay records provided by that employer (Exhibit P3),
  - The defendant was paid those wages from Air Raid City Lodge on a weekly basis in cash.
6. The benefits that have been received are readily proven and are set out in tables comprised in Exhibit P15. The defendant's particular entitlements to those payments that calculate whether or not there has been an over payment are set out in Exhibits P18 and P12. These are detailed records and there is little or no contradiction concerning them. I find the facts contained concerning the level of overpayments readily proven beyond reasonable doubt. As there is no issue that the Commonwealth Services Delivery Agency is Commonwealth entity, I find that element relevant to counts 7 and 8 proven.

### **Evidence relevant to the defendant's state of mind**

7. The evidence relevant to knowledge, as mentioned, is by its nature circumstantial. It relies on the documents tendered before the Court and on historical matters around the documents and to a degree, some interpretation. Mr Ponter primarily gave the evidence introducing the documents and being cross-examined about relevant issues concerning their

interpretation raised by the defendant. Mr Ponter explained, (which is not in dispute), that eligibility for a Wife's Pension required being female, being an Australian resident and being a partner of a person in receipt of a pension from Centrelink. He said the reporting obligations were minimal. He said that maybe every two years there would be an income and assets test but he said that in the case of Ms Van Den Berg as it concerned an Aged Pension, there would have been *minimal forms*. Mr Ponter said that the defendant's obligations were to advise Centrelink within 14 days of any changes. He said relevant changes could be anything from changing address to changing marital status, if children had left her care, or matters concerning income such as commencing work, rent, or going overseas. He said the circumstances contemplated could be vast but that Centrelink should be notified within 14 days. He also detailed the obligations concerning Parenting Payment (Single), (that related to charges which at a later date the defendant pleaded guilty to), and drew the Court's attention to forms that comprised the regular review forms for that benefit. Mr Ponter explained the contents Exhibit P12 being the *debt schedule*. The first fortnightly period commences 18 August 1999 and ends 31 August 1999; the column headed "amount paid" relates to the amount Centrelink has actually paid to the defendant; the column headed "amount entitled" refers to the amount the defendant was actually entitled to and for that particular entry the overpayment was \$24.90. It is also indicated that no form was supplied and indicates that there was a declaration of \$96 income, being the declared income for significant periods beyond that fortnight. It also indicates that the defendant was paid \$163 net from the Northern Territory News and none (at that stage) from the Air Raid City Lodge. It is clear that essentially from the period 18 August 1999 through to the period ending 24 October 2000, the defendant declared \$96 as her declared income. For much of that period, the \$96 varied with the actual gross income earned from the Northern Territory News. In the period commencing 25 October 2000 the declared income increased to \$113.75 but for much of the relevant period does not

represent the true figure of the gross amount received. The overpayments per fortnight that are relevant to counts 1 – 8 vary from as little from \$2.87 per fortnight through to \$120 per fortnight. There are some periods also, (at least fortnightly periods), where the defendant has been underpaid the benefit by marginal amounts. For the period that the defendant has pleaded guilty there are fortnightly payments of at times insignificant sums through to consistent more significant overpayments in the order of \$200 to \$280.

8. Much of Mr Ponter's Evidence in Chief related to the later charges that the defendant pleaded guilty to part way through the proceedings. I note that he gave evidence (see transcript p 50) concerning the need to submit the 12 weekly forms for payments of Parenting Payment (Single). I note he stated the 12 week period relevant that was as an averaging out for people with a fluctuating income. For that benefit he said that when a claimant provides forms every 12 weeks, they still have an obligation to notify changes in their income within 14 days. He said for the fluctuating income it is averaged out over 12 weeks to make adjustments.
9. Various business records relating to the charges were admitted (Exhibit P13) pursuant to *sections 69, 155 and 182 Commonwealth Evidence Act*. Various Centrelink computer entries were referred to. Mr Ponter referred the Court to the screen entry on page 23 (Exhibit P13) dated July 1999. He said that refers to the date the document was created at the Casuarina office (CAA). He said the reference "CLT" means "Client" and that entry reads "advised at reception commenced work at NT News on 04/06/99". He said that the screen is a summary of what happened at Centrelink which is that the customer advised at reception that they commenced work at the NT News on 4 June 1999. He explained that when cross-referenced to Exhibit P14 it can be seen that a group certificate was provided and income was updated on the Centrelink system and the customer was advised to bring in payslips each week (transcript p 62). He also referred to the document dated 10 July 2001. He said the abbreviation "KDO" referred to the Knuckey Street office



in Darwin and the summary indicated an update of earnings at the Northern Territory News of approximately \$70 a fortnight but sometimes less. He said the screen shows that that entry was archived. He said it relates to being on the Wife's Pension (Age); that the source is listed as "COS" which is customer statement and the receipt date is 10 July 2001. He said the text indicates the income has been updated according to that information. He also referred the Court to an entry at page 20 of the screen summaries comprising Exhibit P 13 indicating an entry on 8 August 2001 "KDO" with the entry "customer advised of weekly earnings \$198 per week". Reference was made to entries that advised of changes in income from 18 April 2002 to 25 April 2002, advice being that in that period total earnings were \$105. Reference was also made to advice being given concerning earnings on 14 August 2002 where the advice for the period was \$126.88. The screen entry dated 3 December 2002 was also referred to in Mr Ponter's evidence noting "verification of employment. Q146 sent 9/1/2003. Reply due 30/1/2003"; it also notes in the text that the customer was requested to provide the 2001/2002 group certificate noting the 14 day warning if those documents were not forthcoming. He also referred to an entry of 20 December 2002 indicating that a debt was raised concerning the Parenting Payment (Single). A number of entries relevant to the charges that the defendant has since pleaded guilty to were explained.

10. Mr Ponter gave evidence a number of times that clients of Centrelink maybe told on several occasions that they have obligations to advise Centrelink within 14 days of any changes. He said there were letters generated by Centrelink automatically as well as manually which explained obligations to advise Centrelink of any changes. Those letters and corresponding records were tendered as Exhibit P18 and Exhibit P19. Exhibit 18 were the Multi-Cal records. On page 1 of the Multi-Cal records (Exhibit P18) the entry under 18 August 1999 indicates the sum of \$301.60 is the maximum rate of the Wife's pension that can be paid to the customer. Adding pharmaceutical

allowance the total benefit came to \$304.30. It indicates there were no direct debits. That entry also indicates that at that stage she could earn \$102 being the income threshold. The income cut-off is \$710. He said the pension was cancelled at that time at the rate of 50 cents in the dollar after \$102 and that in 2001 it changed to 40 cents in the dollar. The figure of \$97.82 indicated her earnings from employers. The “other income” in her case, \$176.19 indicates income from other sources (eg. bank interest and dividends). He said the total income of \$274.01 includes income from earnings and from bank dividends and so forth. It indicates the personal effecting income is \$86 with zero excess income from her partner giving a total of \$86. Within the same exhibit were a “summary of changes”. These figures were explained as coming not from what the customer provides themselves but from what is gathered from investigations of Centrelink and shows throughout the table two sources of income. These sources relate to a per annum basis. He said the entitlement to the Wife’s Pension is annualised and that divides her reported income by 52 to work out the entitlement. Further references were made to recording income from various sources on Exhibit P20 “the earnings history chart”. Mr Ponter said that the obligation on the Defendant to advise Centrelink within 14 days of changes in circumstances commenced with receiving the Wife’s pension in 1999 through to the period she was on the Parenting Payment and later New Start Allowance in 2003. The entry for 28 January 2003 in Exhibit P13 was referred to noting, “CLT provided payslips for 2/1, 9/1 and 23/1. No payslips for 16/1, gross income worked out for 16/1 using YTD figures. See earnings doc for more details”. At the entry on page 13 there is a reference to 20 December 2002 customer requested “by Q0002” to provide certain documents; Mr Ponter said Q0002 refers to a letter. He said that entry referred to payslips for the last 12 weeks from the NT News with a warning that the payments will be stopped if the payslips are not provided. In relation to entries of 8 August 2001 at page 20 of Exhibit P13 he explained the abbreviation “SIS” meant *customer statement*. Mr Ponter said he could

not tell from that entry whether it was a verbal or written statement but it corresponds with the earnings history.

11. In cross-examination Mr Ponter agreed that Ms Van Den Berg had actually been on the Wife's Pension since 1998 and the reporting concerning that type of pension would be minimal: (transcript 24/3/2006 at 25). He agreed with Counsel there was nothing in the records to suggest that the defendant had been given an income and assets test. He agreed that Ms Van Den Berg's Wife's Pension claim was unable to be located; Mr Ponter could not say if that meant that there had never been a computer record made. He agreed there was nothing in Exhibit P13 to indicate that the claim had in fact been made. He agreed that there was nothing in the records to indicate that a Centrelink Officer explained the recipient obligations in relation to the Wife's Pension to Ms Van Den Berg. He agreed the letter of 21 June 2004, (in Exhibit P19) was not an exact copy as it was formatted differently to the original; he agreed there was no record of it being sent out but added that the process was all automatic. Mr Ponter said those letters have changed format since 1999. He said there were headings that were in bigger print. He said he believed the obligations were on the reverse side of the letter. Mr Ponter agreed that Ms Van Den Berg was in receipt of the Wife's Pension and she gained entitlement because she was a partner of a person who was on the Aged Pension. He agreed that the aged pension was also income tested and that would include the income of the partner; he said both parties would have an obligation to report their incomes; he said their records would be linked in the computer system; he said normally the documents are created in the Centrelink system on the person who has advised about the income; he said a notation concerning income would be recorded differently if it was reported by a partner. Mr Ponter said he could not say whether Ms Van Den Berg's husband had authority to deal with Centrelink on his wife's behalf. He said it depended on whether the authority had been given (transcript p 29). He said he couldn't tell from the

current records because Ms Van Den Berg's husband was now deceased. He said he could not tell from the records before him whether her husband had permission to enquire about her payments. Mr Ponter said that if someone such as Ms Van Den Berg's husband attended to provide his wife's wage record at Centrelink, the information would be taken and Centrelink would set out to verify the information by phone call or by letter. Mr Ponter agreed there may be a declaration from the employer's directly which could be recorded on the Centrelink system.

12. In relation to Exhibit P14, (being the archived display from 2 July 1999), Mr Ponter said that "CLT" meant client; he disagreed that that would refer to a client's partner stating that normally an entry would say if a document was brought in by a client's partner; he agreed it was possible at the Casuarina office of Centrelink that the person who made the document could have been busy and just entered "CLT" in relation to a partner. He was asked if it was likely the person at the counter would use an interpreter. He answered that if that was required, the staff member would make an appointment later. He said it would be difficult to assess how good the person's English was if they were just dropping off payslips and not asking questions. He agreed that there was no record indicating that they were advised on the reason why they needed to bring the payslips in.
13. Mr Ponter agreed that in relation to the entry of 2 November 2000 on Exhibit P20 there was no corresponding DOC entry. He agreed this indicated the Centrelink Officer hadn't followed proper procedure; Mr Ponter agreed that the Centrelink Officer should have written up some activity about the declaration of income; Mr Ponter said he could not tell the occurrence of the event date concerning the entry of 2 November 2000. From the documents he had in Court, Mr Ponter said he could not say when the 3 May entry was made. Mr Ponter agreed he could not say how the payslip from 2 November was provided nor who brought it in. He was not able to say how the payslip concerning the 3 May 2001 entry was received;

he said there was no record of a document on the system; he said from the documents in front of him there was nothing to say who provided it. Mr Ponter agreed that the record from 3 May 2001 did not indicate who had updated the earnings. In relation to an entry dated 8 August 2001, (Exhibit P13), he agreed that a person providing the payslip in that situation did not have to provide identification; he agreed that on that occasion the employer is not recorded. Mr Ponter said he assumed that the person would be asked if it were their current employer. He said he couldn't say what actually happened but a procedure would be that the Centrelink Officer would say "was it the NT News" or "is it continuing income?" He agreed that on a busy counter "procedures aren't always followed to the T"(transcript p 36); he said however it was still the same income test whether it was apportioned to the NT News or another employer. He agreed that somebody providing information would not have to show ID; he agreed that declaring that income would be relevant to Ms Van Den Berg's husband as well as to his obligation to declare income. He agreed Ms Van Den Berg's husband's record was linked with Ms Van Den Berg in relation to an entry of 1 March 2002 on Exhibit P13 concerning 1, 4 and 8 March 2002. Mr Ponter agreed that it looked like Ms Van Den Berg's application for a Carer's Allowance or Carer's Payment for caring for her husband was stamped 8 March 2002. Mr Ponter agreed that in answer to question 10 of that application about whether she is working, that is any *voluntary work, study or training*, she has marked "yes". Mr Ponter agreed or at least said he assumed that on filing that application Ms Van Den Berg would have been asked about her income. Mr Ponter's attention was drawn to the record of 8 March 2002, (Exhibit P13) indicating that the Carer's Claim was lodged and that Ms Van Den Berg was already in receipt of the Wife's Pension; he agreed there were a series of entries that indicates she needs more proof of identity; he agrees there is an entry on 29 April 2002 where the customer has advised Centrelink of earnings (page 18 of 26 Exhibit P13). Mr Ponter said that given that entry indicates "COS", the customer would have come in; he

agreed this would have happened shortly after she made the application for Carers Payment and she would have been asked about her income. Mr Ponter agreed that an entry of 24 May 2002 indicates that the Carers Allowance seemed to be *up in the air*, had been cancelled and then re granted. Mr Ponter agreed there was material concerning advice that Ms Van Den Berg's husband was in hospital with a terminal condition; Mr Ponter agreed there was no way of telling how the customer had advised Centrelink of that information. Mr Ponter was asked to explain the expression from that document, "I asked to get a letter from her husband's Doctor so we could treat the illness as separated". He said under those circumstances some people may be given a benefit at a single rate. He agreed an appropriate benefit could be Parenting Payment Single. It was agreed as a fact in the evidence that Mr Van Den Berg died on 30 May 2002. Mr Ponter agreed that on the 3 June 2002 entry there was a discussion in relation to his death and the effect it may have on other entitlements such as COM super.

14. Concerning the debt schedule (Exhibit P12) Mr Ponter agreed that the declaration of 2 July 1999, the first declaration of income was accurate and that the first three entries involved an accurate declaration of income but nevertheless there had been an overpayment. Mr Ponter agreed that for the fortnight ending 10 June 1999 there was an overpayment of \$6.10 and 11 June 1999 there was an overpayment of \$34.50. He agreed the next entry meant there was an underpayment by Centrelink. Mr Ponter agreed the records for 2 July 1999 are correct when they were cross referenced to the Northern Territory Newsas employer. Mr Ponter agreed that an overpayment can occur regardless of someone complying to the best of their ability with Centrelink's obligation to report.
15. In relation to the Multical document, (Exhibit 18) and a column headed "18 August 1999", Mr Ponter agreed the income threshold was \$102; he agreed her earnings were \$97.82; he agreed if it wasn't for the other amount of

\$176.19 her pension would not have been affected. He said if her earnings were her sole income, the pension paid would not be affected. He said he believed the other income to be bank interest; he said it could also have been that Ms Van Den Berg's husband was in receipt of a pension other than Centrelink, possibly COMsuper. He said he thought that income was on the system but he didn't know whether Ms Van Den Berg advised of it or not.

### **Record of conversation**

16. By consent a transcript of a Record of Conversation dated 24 June 2004 was tendered (Exhibit P16), I note that at pages 6 and 7 the defendant speaks of the death of her husband and speaks of the Wife's Pension that she "only carried with him with my husband", she then talks about the changes through the different benefits. At page 13 she is asked (Q 119) if she told Centrelink she was working at the Northern Territory News when she was on a Wife's pension. She said she didn't get a letter and didn't know "besides I just only earn \$35. It depends how many hours you work, so if they call you only once you get only \$35 for that". On being asked again whether she told Centrelink that she started work she said

"A:121 no because I don't know be because that time you're giving the letter to my husband so I had no car and I just stay home so I don't know".

"A:122...okay a so my friend ah just give me a lift to go to work".

"Q: 123...okay so are you saying that your husband notified us that you were working at the Northern Territory News? Did you, is that what you are saying?"

"No they don't know also because they just call you if they need you if they don't need you they not calling you, so all in all ---"

"Q124...my – my question is: did you let Centrelink know that you were working when you were receiving payments from us...did you advise Centrelink? Did you bring in payslips to show that"

“A...I don’t know that yet because I didn’t get any letter and I don’t know also that go into report and my husband also don’t tell me to report also so I don’t know that. When I get the letters I start reporting it because that time I don’t know anything”.

“Q125...okay because we have a record that well, we received notification in June 1999 that you started work at the Northern Territory News and that you were earning \$96 a fortnight. So who notified Centrelink that you were working? Do you know?”

“A...I don’t know. Not me because I don’t know”.

“Q126...Would your husband have notified Centrelink that you were working?”

“A...maybe, because I’m telling to my husband but”.

“Q127...okay”

“A...because he knows that I am working and he’s seen my payslips”.

“Q128...Yeah”

“A...so I because he is the one who getting the letter or organising. He’s not getting letter all the time it’s only once”.

“Q129...okay so we will move on to a parenting payment single okay? Did you let centre were you providing details to Centrelink about your earnings from the Northern Territory News?”

“A...when they start sending me the letter, so I start also giving my payslip and I ask also there in the counter how much I earn in a week that my pension will not touch”.

### **Ruling on the evidence concerning counts 9 – 12**

17. After the defendant pleaded guilty to the last four counts on the second day of the hearing, Ms Scattini asked me to exclude any evidence relevant to proving guilt of those matters as she argued that it was no longer relevant. The basis of the argument was that if I admitted it in proof of the first 8 counts I would be breaching the rules concerning propensity and character evidence. In answer to this argument I took the view that the evidence of



the later counts could be evidence probative of a course of conduct in a way that did not breach the rules against receiving evidence of character on other occasions. Given the defendant was in part relying on lack of knowledge or awareness concerning her obligations and lack of knowledge or awareness concerning payment of money she was not entitled to, it seemed the evidence of the later counts may be circumstantial evidence in proof of her knowledge of the contested matters. In short, the high level of relevance of the evidence on that issue outweighed the prejudice. Although I accept this type of evidence is presumptively excluded, the situation confronting the court in this case concerns an underlying issue manifest in a course of conduct and analogous to the principles applied in *Harriman v R* (1989) 167 CLR 590. The fact of the plea of guilty to the later charges rather than all counts being contested does not in my view alter this.

### **Evaluation of the Evidence – Circumstantial Evidence**

18. I accept the approach in circumstantial cases is to assess the probative force of the accumulation of evidence and in the criminal law setting it involves the assessment of whether the proven facts cumulatively are capable of leading to an inference beyond reasonable doubt of guilt. The combination of a number of facts or inferences, even if some of those inferences are doubtful is the legitimate process of proof in circumstantial cases. I agree with the prosecution submission that it is not usually the proper approach to assess each item separately: (*Shephard v R* (1990) 170 CLR 573), although I would add that an exception of course is if there are intermediate facts or conclusions that need to be proven beyond reasonable doubt before the ultimate inference can be drawn: *Chamberlain v R* (2)(1984) 153 CLR 521 – (*links in a chain* as opposed to *strands in a rope*). This case is primarily one of *strands in a rope*, to use the often recalled analogy. It is also important that I direct myself that I should not find the charges proven if there is a reasonable hypothesis consistent with innocence that has not been negated beyond reasonable doubt.

19. As can be seen from the summary of evidence thus far in these reasons, there are a number of facts which tend to support the inference that the defendant knew what was required of her and did not comply with certain obligations leading to her receiving monies that she was not entitled to. Not every inference is clear, as can be seen from some of the answers given, in particular in cross examination from Mr Ponter.
20. The prosecution points to contact the defendant had with Centrelink on 4 June 1992 where information concerning income was notified; there is reference and evidence supportive that the attendance is noted in the records as the defendant in person because of the abbreviation of “CLT”; there is evidence concerning updating of earnings information on 10 July 2001, however the evidence also indicates that she had been earning more than what was reported prior to that date; these aspects of reporting are tendered in support of an inference that the defendant was aware of her obligations and chose to ignore the obligation to report correctly. There is a report on 8 August 2001 concerning a reported change in her weekly earnings indicating an increase to \$198 when previously her combined earnings for the previous fortnight was \$828; from this the Court is asked to find that the defendant chose to update her earnings in the knowledge or hoping that Centrelink would not enquire too closely, or, that it is open to the Court that she intended to mislead Centrelink. It is submitted by the Prosecution the same inference can be drawn from advice of a change in her circumstances on 29 April 2002 just after she finished working for PD Chan. It is submitted that this shows the defendant knew her responsibility to inform Centrelink of changes to her income. It is submitted that she also continued to declare her income and it was correct in the week ending 29 April 2002. It is submitted that she should have been declaring that income on other occasions correctly.
21. It is also submitted on behalf of the Prosecution that the defendant was sent numerous letters during the period of the offending concerning proof of

earnings; it is to be noted that she responded on 6 January 2003 this is during the period that the defendant was receiving Parenting Payment Single, the Prosecution says it is relevant and admissible in terms of the course of conduct indicating an intent to mislead Centrelink. It is submitted that payslips concerning her income were submitted on 28 January 2003 showing her income from the NT News but not PD Chan. It is also submitted that she declared earnings for the period 27 January 2003 to 20 April 2003 and aside 50 cents that was an accurate figure; it is pointed out however that she failed during that period to advise she was working for PD Chan. It is submitted that the record of conversation that the defendant participated in lacked credibility.

22. On behalf of the defendant I was reminded that over counts 1 – 8 the overpayment is alleged to be \$2480.29, that is an average of \$30 per fortnight; it was submitted that this tends to throw doubt on the issue of whether the defendant knew that she was not entitled to receive that amount; I am reminded the amount is small over those years. It was also submitted that the first two payments in the debt schedule (Exhibit P13) were honestly stated but still represented small overpayments. It was submitted that the informant in this case was unable to say who had submitted the information in relation to actual earnings. I was asked to take into account that the letters concerning the obligations on the part of the defendant were inadequate given that the obligations were on the flip side of the letter; it was also submitted there was no record of it being posted or received and that the letters ought to be disregarded. I was also reminded that the records of Ms Van Den Berg and her late husband were obviously linked and that although declarations of income were noted against her records on the system they were also linked to him. I was reminded that in the record of conversation Ms Van Den Berg had spoken of the fact that her husband may have been the one who gave information; she speaks of not having a car and relying on her husband. It was submitted that after her husband's death, Ms

Van Den Berg's contact with Centrelink increased and it is obvious from the records that there is a different personality that is being dealt with. In relation to the record of 2 July 1999, it was submitted that the notation of "CLT" could also be the husband as he was also a client of Centrelink. It was submitted that there is evidence that the records may not be completely accurate given that the entry on 2 November 2000 (Exhibit P20) concerning the payslip does not have a corresponding computer entry; similarly in relation to 3 May, there is no evidence on how that income was declared; similarly, it was submitted that the update of earnings on Exhibit P13 relating to 10 July 2001 did not show an indication that it was the defendant. It is submitted that the information given by or on behalf of the defendant was obviously accurate for that period. It is submitted on behalf of the defendant that it is obvious that contact increased after the death of Mr Van Den Berg.

23. It is submitted on behalf of the defendant that I should not give a great deal of weight to the defendant's conduct after the death of her husband, that it is obvious that her *world was turned upside down* and she was confused; she had a change in financial circumstances and it was a very difficult time. In other words, it is submitted that I should not use the course of conduct evidence in a significantly probative manner.
24. Although in some instances it is clear the defence have weakened the interpretation on some of the Centrelink records that are before me, in my view the whole circumstances point to a person who is avoiding being frank with Centrelink. While it is true that there have been suggestions raised in the cross examination that there are "possibilities" that the late husband of the defendant was doing some of the transactions with Centrelink, there is no basis for me to act on that as being a possibility, nor in my mind does that suggestion raise a doubt. The issues about the involvement of the defendant's husband are little more than suggestions. Even if the late husband were involved in the early period, there are still inferences that

combined point to the defendant having the requisite knowledge. I appreciate that the charges that she has pleaded guilty to were after her husband's death and involved a different benefit with greater emphasis on regular (12 weekly reporting). To that extent, I do discount the weight that I give to that evidence, but in my mind her conduct still in some degree confirms the intention to deceive Centrelink. I regard the defendant's on and off reporting of her income and incomplete reporting of her income over time as a course of conduct to deceive Centrelink and show the requisite knowledge of her disentitlement. A number of her statements in the record of conversation are obviously wrong and it is difficult to give her answers that might assist in excusing her any weight. For example, as has been recorded above she indicates that she only earns \$35 at the outset. That is clearly wrong. Although the Prosecution of course bear the onus of negating any reasonable hypothesis consistent with innocence, there is very little evidence to support the defendant's hypothesis. She has chosen not to give evidence which of course I do not use to draw an inference against her, however these matters of knowledge and intention are within her knowledge and without some evidence to the contrary there is no reasonable basis before me to doubt the facts put forward by the Prosecution, nor the inference ultimately to be drawn from them. I find all counts proven beyond reasonable doubt. I will sentence Ms Van Den Berg on 15 June 2006.

25. I wish to record that I am indebted to Ms Scattini and the Legal Aid Commission for representing the defendant so professionally as it was evident at the outset that it would be difficult to ensure her case was fairly put.

Dated this            day of            2006.

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**Jenny Blokland**  
STIPENDIARY MAGISTRATE