The AAT found that Mrs Pfeiffer's husband's earnings fluctuated and this made it difficult for her to keep the DSS informed. But the AAT accepted 'that she probably did telephone the Department to explain her dilemma' although the DSS had no record of these calls.

Section 140(2) (unlike s.140(1)) does not require that the overpayment be due to any failure on the part of the pensioner. So it was clear that there was a recoverable overpayment here, regardless of whether Mrs Pfeiffer had failed to keep the DSS informed.

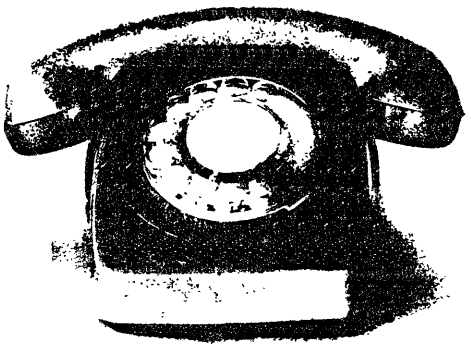
The issue before the AAT was whether it should exercise the Director-General's discretion under s.140(2). The AAT found that there would be no financial hardship to Mrs Pfeiffer in withholding all her pension. (The AAT did not set out the evidence on which this conclusion was based.)

The AAT then asked whether the fact that Mrs Pfeiffer had telephoned the DSS twice to inform them of fluctuations in her husband's income should persuade it to exercise the discretion in her favour. Could it be said that the overpayments were due to administrative error by the DSS? The AAT said:

> I do not think two telephone calls, both of which seem to have slipped through the system, can be said to amount to administrative error or are such as to make it inequitable that she should not now be obliged to repay the overpayments.

Reasons for Decision, para, 13.

The AAT affirmed the decision under review.



GEE and DIRECTOR-GENERAL OF SOCIAL SERVICES
No. N80/108

Decided: 25 November 1981 by J.D. Davies, I. Prowse and M.J. Cusack.

Patricia Gee was granted a supporting mother's benefit in July 1974, calculated on the basis of wages of $48 a week. She was told that, if her income increased, she should notify the DSS, as required by s.74(1) of the *Social Services Act* (in substantially the same terms as s.45 which applies to age and invalid pensioners).

However, Mrs Gee did not report any increase in her income until October 1978 when she was sent, and she completed, an entitlement review form, showing wages of $68 a week. This was the first DSS review of her income – from 1975 to 1978 there were no regular reviews of rates of pension, the AAT found. The suspension of regular reviews was apparently due to shortage of staff and the installation of a computer: Reasons for Decision, pp. 14-5.

When Mrs Gee advised the DSS of the increase in her income, the DSS decided there had been an overpayment of $1310 which it would recover from her supporting parent's benefit under s.140(2) of the *Social Services Act*. The DSS made 14 deductions, totalling $224, up to October 1979 when the benefit was cancelled at Mrs Gee's request because she had taken a full-time job.

Mrs Gee had, meanwhile, appealed to an SSAT against the DSS decision and, eventually, the AAT was asked to review this decision.

The AAT discussed the various ways in which an overpayment might be recovered by the DSS:

(1) As money paid unlawfully – see *Commonwealth* v *Burns* [1971] VR 825. Recovery would depend on showing that the decison to pay the money to the recipient was an invalid decision.

(2) Under s.140(1) (which is discussed at length in *Matteo*, *Forbes* and *Woodward* in this issue of the *Reporter*). The AAT pointed out that the same, perhaps strong, causal link would have to be shown between the act or omission of the pensioner and the overpayment. The Tribunal also said that the Director-General would have a discretion not to recover under s.140(1) and he should take account of financial hardship and any part which the DSS had played in the overpayment:

> In determining whether to seek a recovery, the Director-General may, in our view, have regard to all the particular circumstances of the case and to all other matters relevant to the administration of social welfare legislation.

Reasons for Decision, p.12.

(3) Under s.140(2) used by the DSS in this matter as the AAT had decided in *Buhagiar* (4 *SSR* 34), this provision allows the DSS to recover, by deduction, sums which were overpaid, even if paid pursuant to valid decisions of the Director-General or his delegates. So. s.140(2) was to be read widely to allow 'the making of appropriate adjustments, albeit in the discretion of the Director-General'. But recovery 'back over a long period' should not be a substitute for regular reviews of income and pension undertaken by the DSS: Reasons for Decision, p. 14.

It seems that the AAT was satisfied that there was, in the case of Mrs Gee, a recoverable overpayment under s.140(2). Reviewing the discretion which s.140(2) attaches to the recovery by deduction, the AAT felt that it had not been unfair to Mrs Gee to recover $224 from her benefit before the benefit was cancelled. If the benefit had continued, the AAT would have had to consider whether it was proper to continue the deductions. This decision would have been based on Mrs Gee's circumstances. But that decision did not arise here.

Shortly before Mrs Gee applied to the AAT for review of the decision to deduct, a delegate of the Director-General decided that the balance of the overpayment should be fixed as $1210 and recovered from Mrs Gee under s.140(1). The AAT pointed out that this decision had not been considered by an SSAT and so was not before the AAT. The AAT emphasized to the DSS that Mrs Gee should be given an opportunity of appealing to an SSAT if the DSS intended to proceed with this recovery. (The AAT had earlier suggested that there was real doubt whether the overpayments were made in consequence of any omission by Mrs Gee, whether they were payments which would not have been made but for her omission; rather, the AAT had suggested, they were overpayments caused by the failure of the Director-General to carry out his duty of calculating, and regularly recalculating, her benefit rate: Reasons for Decision, pp. 18-20. This was substantially the point on which the AAT later decided *Forbes*, noted in this issue of the *Reporter*.

The AAT varied the decision under review so as to authorize deduction from Mrs Gee's benefit of $224 by 14 instalments of $16 each from 12 April 1979 to 11 October 1979.

Overpayment: caused by pensioner's failure to notify?

WOODWARD and DIRECTOR-GENERAL OF SOCIAL SERVICES
No. N81/21

Decided: 24 December 1981 by A.N. Hall

The applicant asked the AAT to review a decision of the Director-General that she had been overpaid $232 as invalid pension in consequence of her failure to inform the DSS of increases in her husband's income. The facts and issues raised in this matter were similar to those in *Matteo* and *Forbes* (in this issue of the *Reporter*).

Lorraine Woodward had been granted an invalid pension in December 1978, at the rate of $5.20 a fortnight. She was advised by letter of 18 December 1978 that this was based on her husband's income of $497.38 a fortnight, a figure based on accurate information supplied by Mrs Woodward and her husband's employer about one month earlier.

In November 1979 Mrs Woodward completed an entitlement review form, showing a fortnightly income of $520, and her pension was adjusted accordingly. In January 1980 the employer told the DSS that the husband's fortnightly income was $657.19 and the DSS cancelled Mrs Woodward's pension.

The DSS then calculated, on the basis of information supplied by the employer, that the husband's income had been such as to preclude any entitlement to pension on the part of Mrs Woodward and it

sought recovery of the overpayment, said to be in consequence of Mrs Woodward's failure to notify the Department of her husband's increased earnings, under s.140 (1) of the *Social Services Act* (see *Matteo* in this issue of the *Reporter*).

Mrs Woodward had told the AAT that she had been unaware of her husband's income, which he kept to himself. The AAT raised the question whether a pensioner could 'fail' to notify an increase in income of which she has no knowledge or means of knowledge; but it assumed, without deciding, that the obligation to notify, imposed by s.45(2) of the Act, was one of strict responsibility: the pensioner, the AAT assumed, was obliged to find out the information or to notify the DSS of her difficulty. As Mrs Woodward had done neither, the AAT accepted that she may technically have acted in breach of s.45(2).

But that breach did not begin until 26 February 1979 which was eight consecutive weeks (for the averaging of income) and 14 days (for compliance) after she was notified of the grant of pension. She could not 'fail' to comply with s.45(2) until that period of ten weeks had expired.

And that breach came to an end on 22 November 1979 when she completed the entitlement review form. The recoverable overpayment, caused by her failure to comply with s.45(2), should, the AAT said, be limited to the amounts paid between 26 February 1979 and 22 November 1979.

The Tribunal went on to recommend to the Director-General that he should take no action to recover these amounts. The AAT referred to the serious disease from which she suffered (involving debilitating and expensive treatment), to her recent separation from her husband and her responsibility for two young daughters and to her lack of assets or cash reserves. The AAT also said that Mrs Woodward had done nothing which contributed to the overpayment and she was 'a victim of circumstances outside her knowledge': Reasons for Decision, para. 25.

The AAT set aside the decision under review and returned the matter to the Director-General with the recommendation that no action be taken to recover the overpayment.

FORBES and DIRECTOR-GENERAL OF SOCIAL SERVICES (No. V81/5)

Decided: 24 December 1981 by A.N. Hall, W. Tickle and J.G. Billings.

In February 1972, Margaret Forbes was granted an invalid pension. As her husband was employed, half of his income was treated as her income (under s.29(2) of the *Social Services Act*) and her pension was paid at the rate of $8.40 a fortnight.

In February 1974, June 1974, October 1974 and February 1976 the DSS reviewed Mrs Forbes' husband's income and, on each occasion, found that it had increased and adjusted her rate of pension accordingly. These reviews were based on information supplied by Mrs Forbes and by the employer.

Between 1976 and 1979 the DSS abandoned its practice of regular reviews of pension entitlements and, during this period, Mrs. Forbes did not inform the DSS of the regular increases in her husband's income (as she was obliged to do by s.45 of the *Social Services Act*).

In March 1979 the DSS resumed its practice of regular pension reviews. Mrs Forbes returned a review form to the DSS on 28 March, showing a substantial increase in her husband's income. Her pension was then reduced from $48.20 to $4.90 a fortnight. A further review in June 1979 showed that her husband's income had again increased to a point where Mrs Forbes' invalid pension was no longer payable and the pension was cancelled in July 1979.

In August 1980 the DSS wrote to Mrs. Forbes stating that there had been an overpayment of $2860.30 and requesting a 'cash refund' and asking that any cash be 'posted by registered mail'

Mrs Forbes sought review by the AAT of the Decision to seek recovery of this overpayment as a decision affirmed by the Director-General's delegate after review by an SSAT.

Jurisdiction

The AAT agreed with the decision in *Matteo* (in this *Reporter*) that it had jurisdiction because the administrative decision to demand repayment under s.140(1) of the *Social Services Act* was a reviewable decision.

Overpayment

The DSS claimed that it could seek recovery from Mrs Forbes under s.140(1)– that the overpayments were 'in consequence of' her failure to inform the DSS of increases in her husband's income between 1976 and 1979 and that the amount which would not have been paid 'but for' her failure was recoverable as a debt due to the Commonwealth. (See *Matteo*, in this *Reporter*, for the terms of s.140(1)).

Tickle took the view, as he had in *Matteo*, the real and effective cause of the payments to Mrs Forbes was the DSS determination, in February 1976 of an 'annual rate of income' for her husband which it maintained for three years and which it could not abandon or vary retrospectively. He decided that the alleged overpayments were not recoverable under s.140(1).

Hall and **Billings** came to the same conclusion – that the overpayments were not recoverable but their reasoning differed from that of Tickle. It was true, they said, that Mrs Forbes had not informed the DSS of changes in her husband's income – she had not complied with s.45 of the *Social Services Act*. But they were, as all the Tribunal members had been in *Matteo* strongly critical of the failure of the DSS to undertake regular reviews of pensions between 1976 and 1979 and they continued:

> In our view, the applicant could reasonably have assumed, in the light of the past administrative practice in dealing with adjustments to her rate of pension, that the Department itself was monitoring her entitlement by reference to information supplied to the Department from time to time by her husband's employer . . . Having regard to the fact that Mr Forbes had been employed continuously by one employer since January 1954, and that this fact was known to the Department it is, we think, as much due to the failure of the Department to update regularly the information in its possession by conducting annual reviews of the applicant's pension entitlement as it is to any default on the part of the applicant that an overpayment has occurred in this case. Had the Department carried out the necessary periodical reviews, the overpayment would not, in our view, have occurred. Whilst the applicant's default was certainly a contributory cause, we do not consider it to have been the effective cause of the overpayment.

Accordingly, as the majority in *Matteo* had said, the requirements of s.140(1) were not satisfied: Reasons for Decision, para. 30.

Hall and Billings went on to say that, even if the overpayment was recoverable, there were reasons why the DSS should not pursue recovery. These included the meagre financial resources and heavy medical expenses of Mrs Forbes and her husband, their responsibility for caring for an adult invalid son and her state of health. As a matter of discretion, they said, no further action should be taken against Mrs Forbes.

The AAT set aside the decision under review and returned the matter to the Director-General for reconsideration in accordance with the recommendation that no further action be taken against Mrs Forbes to recover the alleged overpayment.

MATTEO and DIRECTOR-GENERAL OF SOCIAL SERVICES (No. V81/8)

Decided: 18 December 1981 by E. Smith, I. Prowse and W.B. Tickle.

In this application, the AAT was asked to review a decision by the DSS that Carmela Matteo had been overpaid $1030.80 on her part invalid pension between December 1977 and 28 August 1980.

The facts

Mrs Matteo had been granted an invalid pension from 13 October 1977. The rate of her pension was reduced because of her husband's income, then $388.57 a fortnight.

In May 1978, November 1978 and November 1979, the DSS increased the rate of Mrs Matteo's pension (following indexation increases in all pensions). The DSS calculated these increased rates on the basis that her husband's fortnightly income remained $388.57.

In December 1979 the DSS asked Mrs Matteo to complete an Entitlement Review Form. – the first such request since her pension had been granted. On this form Mrs Matteo reported that her husband's fortnightly income was $440. On the basis of this information, the DSS re-assessed Mrs Matteo's pension in January 1980.

On 26 February 1980 the husband's employer confirmed that his fortnightly income had been $440 in December 1979 and indicated that, since December 1979, the fortnightly income had exceeded $500.

In May 1980 the DSS increased Mrs

Matteo's pension (following indexation increases), basing this increase on her husband's income of $440 a fortnight.

On 12 August 1980, the husband's employer advised the DSS that his fortnightly income was $525.15. Under the income test for invalid pension, this income finally extinguished Mrs Matteo's part pension and the DSS cancelled the pension from 28 August 1980.

The DSS then obtained from the employer details of the husband's income over the period from December 1977 to August 1980 and calculated an overpayment of $1030.80 over this period.

The Department's claim

This overpayment, the DSS maintained, had been caused by Mrs Matteo's failure to inform the DSS of changes to her husband's income, as required by s.45(2)(b) of the *Social Services Act*. (That section says that a pensioner shall notify the Department if, in any eight week period, the average income of her spouse is higher than the income last notified to the Department.)

Consequently, the DSS argued, there was an overpayment recoverable under s.140(1) of the *Social Services Act*:

> 140(1) Where, in consequence of a false statement or representation, or in consequence of a failure or omission to comply with any provision of this Act, an amount has been paid by way of pension, allowance, endowment or benefit which would not have been paid but for the false statement or representation, failure or omission, the amount so paid shall be recoverable in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Commonwealth.

Mrs Matteo applied to the AAT for review of the DSS decision that there was an overpayment recoverable under s.140(1).

Jurisdiction

The AAT's jurisdiction is to review 'decisions' made under the *Social Services Act* (provided that the decision in question has been reviewed by an SSAT and affirmed by the Director-General): *Social Services Act*, s.15A; *AAT Act*, s.25(4).

Section 3(3) of the *AAT Act* provides that 'a reference... to a decision includes a reference to... (e) making a declaration, demand or requirement...'

The AAT said that at least the determination, by a DSS officer, of the amount of 'overpayment' and the decision to seek recovery were decisions *'prima facie'* reviewable by the AAT: Reasons for Decision, para. 28.

It could be argued that s.140(1), by providing for recovery in a court, excluded the jurisdiction of the AAT to review those decisons which preceded court recovery. But the AAT found nothing in s.140(1) to support this argument. While any decison of the AAT 'would have no binding effect on a court in which recovery of the moneys claimed... was later sought', the preceding administrative decision to seek recovery was reviewable. And the AAT emphasized that its intervention would give added protection to the individual. If it found that the conditions of s.140(1) had not been met, or that the amount of the overpayment was less than determined by the DSS, the AAT's decison would be effective and would be substituted for the DSS decision:

> The Tribunal's intervention would provide a valuable safeguard against the pursuing of unjustifiable claims in court proceedings when the citizen may be at a disadvantage in ascertaining the basis of the calculation... and may be deterred by the legal costs involved from seeking to defend the claim... Most importantly, the Tribunal, in its role as a supervisory administrator, has a rather different function from that of a court which has no concern beyond resolving the question whether the moneys claimed are recoverable at law; by contrast, the Tribunal may bring to notice any specific factors in the case that in its view make it unreasonable to seek recovery, or full recovery, of an amount that is strictly recoverable, and make such recommendation as it considers appropriate in the circumstances.

(Reasons for Decison, para. 32.)

Overpayment: the majority view

The AAT then looked at the real issues: had Mrs Matteo failed to comply with the *Social Services Act*; had there been an overpayment 'in consequence of' this failure; and what was the amount of the overpayment? Here, the Tribunal members differed. The majority view was that of **Smith** and **Prowse**.

Section 45(2) did oblige every pensioner to notify the DSS of increases in income, including a spouse's income. Mrs Matteo's husband's wages had increased (because of regular wage indexation) regularly since October 1977. While Mrs Matteo could not read or write English and did not know her husband's income (which he concealed from her), her husband had taken responsibility for filling in her pension forms; and he told the AAT that he understood that increases in income were to be notified to the DSS.

Mr Matteo was, the two Tribunal members said, acting as his wife's adviser and agent in pension matters and there had been a failure or omission to comply with s.45(2).

Was there an overpayment 'in consequence of' this failure or omission, an overpayment which would not have occurred 'but for the... failure or omission' (see s.140(1))? Smith and Prowse took the view that s.140(1) required 'that the failure or omission be the effective, and not merely a contributory, cause of the overpayment': Reasons for Decision, para. 64.

The difficulty in isolating the effective cause of the overpayment to Mrs Matteo resulted from the DSS failure to initiate any review of her pension over two years. As Smith and Prowse pointed out, sound administrative practice required an annual review of each pensioner, or at least of those with continuing income – because the DSS must have known that 'wages were being increased in accordance with national wage decisions': Reasons for Decision, paras. 67, 66.

However, the DSS had abandoned annual review of pensions from 1975 to 1978. Smith and Prowse, 'not without some hesitation', concluded that the DSS failure to review Mrs Matteo's pension did not displace her failure to notify as the effective or substantial cause of the overpayment up to December 1979.

Therefore, the overpayments between December 1977 and December 1979 were recoverable. But, said Smith and Prowse, there were good reasons why the DSS should only enforce its rights of recovery for the period to December 1978 – 'we are strongly of the view that only so much of any overpayments as are referable to the first pension year should be sought to be recovered': Reasons for Decision, para. 74. The DSS should not seek to recover for the 'second pension year' because –

- the failure of the DSS to make an annual review of Mrs Matteo's pension in December 1978 had contributed to the overpayments after that date;
- Mrs Matteo was, and had been, in poor health;
- she spoke little English;
- she had not engaged in any deception and had little understanding of the system;
- she had no income in her own right;
- the pension payments made to her had been spent; and
- she had completed the Entitlement Review Form accurately and honestly when asked to in December 1979.

After December 1979, the position was even more strongly against the DSS. Mrs Matteo had given the DSS accurate information on her husband's income. In February 1980 her husband's employer provided accurate information on that income, showing a further increase. Yet the DSS took no action to review the rate of her pension until August 1980 and, indeed, *increased* that pension in May 1980.

If this information (on the husband's income) did not move the DSS to review Mrs Matteo's pension, asked Smith and Prowse, was her failure to provide regular notification of increases in her husband's income 'the effective or substantial cause'

of the overpayments between December 1979 and August 1980? It was not, they said, and overpayments after December 1979, 'would not legally be recoverable under s.140(1)': Reasons for Decision, para. 68.

Turning to the question of calculating the amount of overpayments, Smith and Prowse adopted the views expressed by Todd and Cusack in *Harris*: 3 *SSR* 22. That is, the amount of pension payable to a pensioner should be calculated on an annual basis, taking the 'pension year' as the basis of calculation. The first 'pension year' is the pension year beginning on the date of the grant of the pension, and later 'pension years' begin on each anniversary of that grant. It is the amount of income received in each pension year which is critical to calculating, according to the income test, the pension to be paid for that year. Accordingly, a pensioner who receives a regular income of, say, $20 a week through the pension years, would be paid the same pension as another pensioner who receives a fluctuating income which totals $1040 for the pension year. (See Reasons for Decision, paras 41-8.)

Overpayment: a minority view

The third member of the AAT, **Tickle**, agreed with Smith and Prowse on the jurisdiction of the Tribunal to review a s.140(1) 'decision'; and he agreed that, for an overpayment, to be recoverable under s.140(1), the pensioner's failure to notify income had to be the real or effective cause of the overpayment.

Of course, Tickle said, the DSS had to show that there had been an overpayment – that is, some difference between what had been paid and what should have been paid. He took the view that whenever the Director-General (or a delegate) determined the rate of pension to be paid to a pensioner, that determination was conclusive – it fixed the pension which should be paid – until a new determination of a new rate of pension is made by the Director-General. So long as the pensioner did not deceive, mislead or conceal information from the Director-General when that official determined the rate of pension, the determination stood until replaced.

Moreover, the *Social Services Act* did not allow the Director-General to adjust any pension payments retrospectively (except to deal with some default by the pensioner, such as deception or concealment of income):

> [I]n the last analysis, the discretion conferred by s.46, to adjust the rate of pension 'having regard to the income of the pensioner' is [the Director-General's] to exercise independently of the procedures [for pensioners to supply information on their income]. Whenever and as soon as information is available to him which induces him to make a new determination, then the pension rate will change. However, this new determination cannot affect the validity of previous determinations properly made, nor the inviolability of the payments made thereunder.

In Mrs Matteo's case, the DSS determined her rate of pension in December 1977, based on accurate information provided by Mrs Matteo and her husband's employer. That information was used to determine Mrs Matteo's 'annual rate of income' and the DSS made no attempt to review these determinations for two years (except to adjust the rate of pension when all pensions were increased through indexation). This failure was despite the DSS being 'aware that the applicant's husband was employed and cannot have been unaware of the almost universal increase in wage levels through the period.' Indeed, said Tickle, the Department could be said to have had 'constructive notice' of changes in Mrs Matteo's husband's income which 'warranted review and adjustment of the determined rates of income and pension': Reasons for Decision, para. 40.

Accordingly, the effective cause of the payments to Mrs Matteo was the adoption and maintenance by the DSS of an unjustified annual rate of income. Since the power to make a determination of the annual rate of income was vested in the Director-General and he made the determination in December 1977 while in possession of the relevant income information, that 'determination should prevail' and none of the pension payments from October 1977 to August 1980 were, according to Tickle, recoverable: Reasons for Decision, paras. 44-5.

The decision

The AAT set aside the decision under review and returned the matter to the Director-General for reconsideration with the recommendation that only overpayments for the first pension year should be sought to be recovered from Mrs Matteo.

Special benefit: low employment area

LAW and DIRECTOR-GENERAL OF SOCIAL SERVICES
(No. Q81/83)

Decided: 23 November 1981 by T.R Morling, J.B.K. Williams and J.G. Billings.

For some time prior to 15 May 1980, Bryan Law (apparently aged about 27 years) had been living in Nambour, Queensland, and receiving unemployment benefit. In May he decided to move to the Atherton Tableland because he was having no success in finding work in Nambour, because he found it difficult to meet rental payments in Nambour and because free accommodation was available in Atherton. He was warned by a DSS social worker that there were few employment opportunities in the Atherton area and that his unemployment benefit could be terminated.

Law moved to Atherton and the DSS terminated his unemployment benefit. He then applied to the DSS for special benefit. The DSS refused the application and Law eventually applied to the AAT for review of that decision.

Special benefit is payable under s.124(1) of the *Social Services Act*:

> 124. (1) Subject to sub-section (2), the Director-General may, in his discretion, grant a special benefit under this Division to a person –
> (a) who is not in receipt of a pension under Part III or IV, a benefit under Part IVAAA, an allowance under Part VIIA of this Act or a service pension under the *Repatriation Act* 1920;
> (b) who is not a person to whom an unemployment benefit or a sickness benefit is payable; and
> (c) with respect to whom the Director-General is satisfied that, by reason of age, physical or mental disability or domestic circumstances, or for any other reason, that person is unable to earn a sufficient livelihood for himself and his dependents (if any).

Sub-section (2) prevents payment of special benefit to any person disqualified from receiving unemployment benefit because of an industrial dispute.

Law claimed that his inability to earn a sufficient livelihood was due to his physical and mental disabilities. Two social workers told the AAT that, while the applicant had not been unemployable, he had been 'temporarily in a physical and mental state which made it very difficult for him to obtain and cope with full-time employment.

However, the AAT decided that this evidence did not establish that Law was 'by reason of . . . physical or mental disability . . . unable to earn a sufficient livelihood' with in s.124(1)(c).

Was there some 'other reason' which led to Law being unable to earn a sufficient livelihood? Only, according to the AAT, that there were few employment opportunities in the Atherton area, to which Law had moved. But that was not a sufficient reason to exercise the discretion to grant a special benefit, a discretion which was wide but 'not unlimited' – see *Te Velde*, 3 *SSR* 23. The AAT continued:

> We do not think it would be a proper exercise of the discretion to grant a special benefit to a person whose need for it arises directly from his own action leading to the termination of an unemployment benefit which would otherwise be payable to him.

Reasons for Decision, p. 6.

The AAT also suggested, without making a final decision, that s.124(1)(b) would exclude payment of special benefit to Law because he might be regarded as a person entitled to receive unemployment benefit, even though he was not in fact receiving that benefit whilst at Nambour.

[*Note*: This argument is difficult to accept. If Law's unemployment benefit was terminated when he moved to Nambour, the termination was because the Director-General was no longer satisfied that he was taking reasonable steps to obtain work – because he was no longer qualified to receive unemployment benefit under s.107(1)(c)(ii) of the *Social Services Act*. Being' disqualified from receiving unemployment benefit,