However, the Director-General 'may determine' that the general rule in s.83AD(1) does not apply to a person whose reason for leaving before the end of the 12 month period 'arose from circumstances that could not reasonably have been foreseen at the time of his return to . . . Australia': s.83AD(2).

'Reason for leaving'

Burnet claimed that her 'reason for leaving', before the end of 12 months, was the DSS advice that her pension was portable. If it had not been for that advice, she said, she would have stayed in Australia for the necessary 12 months.

The AAT said that the 'reason for leaving', referred to in s.83AD(2) did not include 'matters relating to the grant of the pension itself or advice, wherever obtained, in connection with eligibility for the grant of the pension'. Rather, it referred to 'occurrences overseas (e.g. the serious illness of a close relative) which cause the person to cut short his stay in Australia or occurences in Australia (e.g. the death of a relative with whom the person came back to Australia to live) which frustrated the intention of living in Australia': Reasons for Decision, para. 20.

That interpretation of s.83AD(2) was enough to dispose of Burnet's application. But the AAT went on to consider the case on the basis that misleading DSS advice could be counted as a 'reason for leaving' within s.83AD(2).

The Tribunal reviewed the evidence in the case, including the chronic illness of Burnet's husband and her return flight booking for a date three months after her flight to Australia and said:

> We have difficulty in accepting the applicant's claim, made after the event, that she would have remained for 12 months if necessary to qualify for a portable pension . . . She had a good reason for leaving Australia, namely, to return to assist her ill husband, but that reason certainly did not arise from circumstances that could not reasonably have been foreseen when she returned to Australia.

(Reasons for Decision, paras 33, 34)

The Tribunal also doubted whether it was appropriate to exercise the s.83AD(2) discretion in favour of a person who returned to Australia 'only to qualify for a grant of pension and immediately leave Australia for permanent residence abroad': Reasons for Decision, para. 34.

Formal decision

The AAT affirmed the decision under review.

Special benefit: maintenance guarantee

ABI-ARRAJ and DIRECTOR-GENERAL OF SOCIAL SERVICES (No. N81/76)

Decided: 17 July 1982 by J. O. Ballard.

Najla Abi-Arraj, a woman aged 65 at the time of the AAT decision, migrated to Australia from Lebanon. The date of her migration does not appear from the AAT decision; but, presumably, it was within the last four or five years.

Before she came to Australia, two of Abi-Arraj's sons (Tony and George) signed a 'maintenance guarantee' under Part IV of the *Migration Regulations*, in which they undertook to the Commonwealth government to maintain their mother during her presence in Australia.

On her arrival in Australia, Abi-Arraj stayed with Tony. She soon moved, because of overcrowding, to the house of another son, Raymond. She then applied to the DSS for special benefit. The DSS refused to grant this benefit because Tony and George had guaranteed to support her and were able to support her.

Qualifying for special benefit

Section 124(1) of the *Social Security Act* gives to the Director-General a discretion to pay special benefit to any person if he is satisfied that the person 'is unable to earn a sufficient livelihood' and if the person is not receiving a pension or qualified to receive a benefit.

The Tribunal agreed with the decision in *Blackburn*, 5 *SSR* 53, that 'the existence of the Maintenance Guarantee is not . . . a relevant factor in determining whether the applicant is entitled to special benefit': Reasons for Decision, para. 12.

The amount of special benefit

However, the Tribunal apparently thought that the guarantee was relevant to fixing the amount of special benefit which might be paid. Section 125 gives the Director-General a discretion to fix 'the rate of special benefit payable to any person' (subject to a maximum).

The Tribunal indicated that other relevant factors were the fact that Abi-Arraj was currently being supported by the third brother, Raymond, and that she was 'now a beneficiary under the *Health Insurance Act* 1973'. [This last reference was, it seems, to Abi-Arraj's entitlements (as a 'disadvantaged person') to free medical treatment.]

However, the AAT seemed to ignore some of these factors in its final conclusion. After observing that Abi-Arraj had chosen to leave Tony's house; could go back; and probably would go back as his children left home and when Raymond married—the Tribunal said:

> In these circumstances it seems proper to have regard to the income of the son who had accepted the moral obligation to support the applicant, who have [*sic*] the financial ability to give effect to that guarantee and the willingness to do so rather than that of the son with whom she now resides . . . Accordingly the applicant will be awarded special benefit on the basis that the income of the guarantors, as from time to time assessed, be taken in account in assessing the amount of the special benefit . . .

(Reasons for Decision, paras 21-22)

Formal decision

The AAT set aside the decision under review and remitted the matter to the Director-General with the direction that Abi-Arraj be granted special benefit, the amount to be based on the income of the guarantors, as from time to time assessed.

Background

The Australian social security system is affected by (and is a response to) many economic, social and political factors. This series will explore this relationship. Comments, responses or other contributions are welcome—if they are no longer than 1000 words.

The dependent sector: issues and options

Australia has experienced in recent years substantial rises in levels of Commonwealth outlay on social security and welfare. Between 1971 and 1981, combined outlays in these categories of Federal expenditure have expanded by an average annual rate of 17%: social security alone, which averaged an annual 23% growth during the period, having increased its share of total government spending from 17% to 27%. The figures do not include government assistance to industry, mandated benefits (e.g. workers' compensation), government-regulated benefits (e.g. occupational superannuation), or benefits provided voluntarily by employers and private organisations.[1] Obviously, the figures also exclude so-called 'taxation expenditures': assistance to persons and firms through tax concessions which, has been noted by the government itself, 'are as much a call on the Budget as are direct outlays'.[2]

Federal expenditure figures on welfare and social security thus understate by a significant (if indeterminate) margin the actual size of the dependent sector in the Australian economy. The point needs to be made: to concentrate on those two categories of expenditure to the exclusion of other (direct and indirect) forms of public sector assistance is misleading as to the scope and magnitude of dependence in this society. But it is understandable; welfare and social security issues are the concern of social policy, which in turn is underpinned by interests and values of lasting consequence:

- the role of government as provider of income maintenance;
- the changing patterns of dependence in response to changes in demographic structure;