

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 'oc-

currences overseas (e.g. the serious illness of a close relative) which cause the person to cut short his stay in Australia or occurrences 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;

- the need to match the availability of benefits and services with the shifting requirements of the various categories of dependence; and
- the role of government as adjudicator between competing claims—within a (real or perceived) shrinking economic frontier.

The demographic and economic contexts

The marked growth in expenditure on the provision of social security and welfare benefits during the 1970's has coincided with notable developments in Australian society. The ratio of welfare and social security recipients to the active labour force nearly doubled between 1971 and 1981 (from 21% to 40%); whilst the labour force participation rate of the age group 55–64 showed a substantial decline: giving rise, on well-publicised trends regarding the progressive ageing of the population, to widespread anxiety about the unconscionable taxation burden which may fall, during the coming decades, on the shoulders of the employed and the young.

These developments did not take place in an economic vacuum. Rises in relative dependence, like the decline in the labour force participation rate of persons of mature age during the 1970's, overlapped with the onset of the economic downturn which has proceeded unabated from 1974 to this day. The most optimistic reading of the economic indicators will not obscure their central message—the end of the post-War boom; and the beginning of the age of uncertainty.

Echoing recent expressions of concern in the United States, there has emerged in Australia a marked tendency to base on the relative ageing of the population of this country unwarranted arguments about the shaping of social policy. The impression of strong causal link between ageing and the taxation burden on the young and employed has been given by numerous media reports in recent years. Apart from a few exceptions these reports have failed to draw from the statistical record far more significant inferences, particularly regarding the relationship between the failure of economic policy and the increases in levels of dependence.

Between 1971 and 1981, the number of welfare recipients has increased relative to the country's population. This has been observed in each of the following categories: aged; invalid; widows and supporting parents; unemployed and sick; and service and war widows. Significantly, the largest relative increase occurred not in the aged but in the *unemployed and sick*. Another statistic, of greater long-term significance, tells us the same story: between 1971 and 1981 the number of *dependent children of welfare recipients* as a percentage of the country's population under 16 years of age has increased from just below 4% to nearly 14%. These statistics bear out inevitable inferences regarding the performance of the economic system over the previous decade; and the inability of current policy to meet the gathering challenges of the 1980's.



Towards a coherent social policy

Social policy for Australia of the 1980's must come to terms with the inheritance of the previous decade and, in particular, with the deterioration of the economic environment which has been the common lot of the market economies: the winding-down of growth and trade; persistently high levels of inflation; the massive onset of unemployment. Economic policies now in place have great potential for aggravating all of these problems. Yet, failure to bring about significant improvement can only lead to greater

dependence in this society.

There are several areas in which the opportunities for the exercise of constructive policy options seem promising:

- The target of full employment must again assume a high priority on the economic policy agenda. Policy must aim at the roots of current unemployment: structural change; technological displacement; obsolescence of skills.
- Contraction of the public sector must cease to be an essential requirement of policy. There are various examples, in the market economies of the west, of vigorous and efficient public enterprises.
- Reform of the taxation system is long overdue. The widening of the direct taxation base has become an issue of the greatest urgency in this country, as a matter of social justice and fiscal responsibility: the taxation of capital gains and the elimination of tax evasion should have a high priority in any reform of the taxation system.
- The taxation and social security systems should be linked, since they both have redistribution as their prime objective:³ the possibility of a national superannuation scheme should be considered anew, as a means to harmonise the two systems.

Above all else, the notion should be dispelled that the social security and welfare burdens can be sustained while direct taxation rates are reduced and tax evasion goes unchecked. Reliance on the 'invisible hand' of market processes has inherent and fatal dangers, which the memory of the Second World War has not yet erased. Remember the Great Depression, and remember it well.

John de Castro Lopo

Notes

1. 'The Financing of Social Security: Some Implications of the Interaction Between Social Security and Personal Income Tax', *Research Paper No. 11* (Policy Review Branch, Development Division, Department of Social Security, Canberra, December 1980), p.3.
2. 'Taxation Expenditures', Appendix II to Statement No. 4, *Budget Speech* (AGPS, Canberra 1980), p.244.
3. 'Taxation Expenditure', *Research Paper No. 17* (Policy Review Branch, Development Division, Department of Social Security, March 1982), p.2.

Legislation

SOCIAL SECURITY ACT

The *Social Services Legislation Amendment Act* 1982 was passed on 2 June 1982. It introduced the following changes to the *Social Services Act* 1947:

- The title of the Act is now the *Social Security Act* 1947.
- The Director-General and other senior officers of the Department are now entitled the Director-General (etc.) of Social Security.
- All references in the *Social Security Act* to 'child endowment' have been changed to 'family allowance' (bringing the legislation into line with DSS publicity).
- Family allowance is not to be paid (according to a new s.97) to foreign

diplomatic, consular and defence staff stationed in Australia (or their families) or to prohibited immigrants.

- The waiting period for unemployment benefit can start from the date of registration (as unemployed) with the CES, which is treated (by a new s.119A(1A)) as equivalent to the date of claiming unemployment benefit from the DSS, if that benefit is claimed within 14 days (or a 'reasonable' period) of registration with the CES.
- The waiting period for sickness benefit is removed (by a new s.119A(2A)) for any person claiming sickness benefit for an incapacity connected with a previous incapacity for which the person has previously been paid sickness benefit.

- The recovery, by the DSS, of sickness benefit payments from any subsequent compensation or damages payment is currently dealt with by s.115 of the *Social Security Act*. New sections, 115-115H, were enacted in 1979 but have not yet come into effect. The 1982 Amendment Act makes a series of changes to those new sections; but the changed sections are still not operative.

The 1982 changes to the new (1979) sections are, it seems, technical and designed to overcome 'drafting defects' or 'unintended limitations' before the new sections are proclaimed. (The *Reporter* will explore the effect of the new ss.115-115H when they come into operation.)