entirely understandable in the context of Dr Moraitis' original recommendation, the absence of Greek-speaking psychiatrists in Australia and the fact that her parents still reside in Greece and are prepared to receive and accommodate her. I find on the evidence that Mrs Kalathas is, in fact, dependent on her husband within the meaning of Section 112(2); the fact that he, while living on unemployment benefit, has been sending $60 a month to Greece indicates his view of her status; in that regard, while she has no doubt been essentially supported by her parents in the period since he lost his job that does not, in my view, alter the fact of her dependence.

(Reasons, para. 14)

Formal decision

The AAT set aside the decision under review and remitted the matter to the Director-General with a direction that Kalathas should be paid at the married rate from 8 October 1982.

Invalid pension: permanent incapacity for work

KOROVESIS and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N83/30)

Decided: 11 November 1983 by R.K. Todd.

Mihalis Korovesis injured his back while assembling television sets in 1976, and was granted an invalid pension in November 1979. His pension was later cancelled on the ground that he was no longer 85% permanently incapacitated for work.

Korovesis applied to the AAT for review of that decision.

Medical evidence

The Tribunal was satisfied that Korovesis had a severe back condition. It accepted the evidence of an orthopaedic specialist that the injury required surgery and that no other treatment would be of any use. Korovesis had refused to undergo such a major operation. The possibility of surgery to alleviate the condition clearly raised the question of permanency of the incapacity.

Refusal to undergo surgery

The Tribunal considered *Fazlic* v *Millinbimbi Community Inc.* (1982) 38 ALR 424, a worker's compensation case. The High Court had stated in *Fazlic* that, in assessing payment of compensation to an injured worker who refused an operation, the issue was whether that refusal was reaonable 'judged in the light of the medical evidence given to the worker at the time and all the circumstances known to him and affecting him'.

The Tribunal concluded that the principle in *Fazlic* was not applicable here and refused to follow two earlier AAT decisions, *Coban* (1983) 11 *SSR* 114, and *Dragojlovich* (1983) 16 *SSR* 162. The basis of the decision in *Fazlic* was that in compensation law an injured person must take reasonable steps to minimise his or her loss. The Tribunal said:

> But the situation under the *Social Security Act* seems to me to be quite different. There is not I consider, a straight translation into the invalid pension context of the common law rules relating to mitigation of damage . . . [T]here is no element of compensation or redress of damage involved in the provisions of the [Social Security] Act . . . Those provisions relate to the objective question of a minimum level of support, to determining whether a 'safety net' should be placed under a person in crisis . . .
>
> In a case like the present the incapacity may be permanent because an operation would not improve the applicant, or it would make him worse, or simply because it is not performed. Even if he were deemed wilful in refusing to have it, the fact is that he cannot be compelled to have the operation. If the applicant as a result must be taken to have chosen a life of pain and exceptionally low income that is his decision. The Tribunal, if it finds that the applicant is permanently incapacitated for work within the meaning of the Act, cannot, as it seems to me, deny the benefits of social security legislation purely on the basis that the applicant has unreasonably refused to undergo an operation within the criteria laid down in *Fazlic's Case.*

(Reasons, paras. 17-18)

Rehabilitation and medical treatment

The Tribunal then went on to consider whether the Act required a claimant to carry out any 'positive conduct so as to obtain a pension'. Sections 135M and 135N state:

> 135M(1) The Director-General may, having regard to the age and to the mental and physical capacity of a person who is a claimant for a pension or is a pensioner, and to the facilities available to that person for suitable treatment for physical rehabilitation and suitable training for a vocation, refuse to grant a pension to that person or cancel or suspend that person's pension, unless that person receives such treatment or training.
>
> . . .
>
> 135N If, in the opinion of the Director-General, a person who is a claimant for a benefit or is a beneficiary should –
>
> (a) submit himself for medical, psychological or other like examination;
> (b) receive medical or other treatment;
> (c) undertake a course of training for the improvement of his physical or mental capacity;
> (d) undertake a course of vocational training; or
> (e) do any work suitable to be done by him,
>
> the Director-General may refuse to grant a benefit to that person, or may cancel or suspend that person's benefit, unless that person complies with the requirements of the Director-General in respect of any such matter.

The Tribunal noted that s.135M, the section relevant to claimants for a pension, 'is limited to treatment or training as described. It does not enable the grant of invalid pension to be made dependent upon medical treatment'. It should be contrasted with s.135N, which allowed the Director-General to make payment of a *benefit* (not a pension) conditional on the claimant undergoing 'medical or other treatment'. Section 135M and ss.135 and 135A

> reflect the legislative intention as to what should be the degree of administrative intervention in the making of decisions by doctor and patient as to what treatment a person should have. The attempt having been made to deal legislatively with the problem, I see no occasion to impose extra-legislative criteria . . .
>
> Surely it could not seriously be suggested that the Director-General might contemplate the draconian course of arranging a laminectomy under s.135, or making a payment of benefit under s.135N conditional upon a laminectomy being carried out. In the present case, of course, s.135M and not s.135N anyway is relevant, and it does not apply to a course of medical treatment. This being so, it does not now seem to me to be correct to impose such a course upon an applicant by what is essentially the 'back door', namely by a decision that an incapacity is not permanent because a person will not agree to have a major operation performed. That would in my opinion be to create a non-statutory doctrine having the effect of requiring persons to make a decision to undergo operative treatment outside the requirements of the Act. If the Director-General is to effectively impose such a requirement he must do so within and through the terms of the Act, which ought to be seen as the expression of public policy in the matter.

(Reasons, paras. 24-25)

Formal decision

The AAT set aside the decision under review and decided that the applicant was at all relevant times entitled to receive an invalid pension.

KOUTSAKIS and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N83/50)

Decided: 18 January 1983 by W. Prentice.

Drakoulis Koutsakis asked the AAT to review a DSS decision cancelling his invalid pension.

Although there was a conflict of medical opinion, the AAT found that Koutsakis suffered from a hernia, which was only moderately incapacitating, and from chronic anxiety and depression. His psychological state was so severe that it completely incapacitated him from working.

Refusal to undergo medical treatment

This psychological state would probably respond to psychiatric treatment; but Koutsakis flatly refused to undergo that treatment. He would not accept that his disability had a psychological base and insisted that it was physical.

The AAT said that, because Koutsakis' incapacity would probably respond to treatment, his incapacity for work could not 'be regarded as permanent' in the

sense of indefinitely continuing': Reasons, para. 11.

. Moreover, Koutsakis' 'fears of undertaking the psychotherapy [were] groundless'; and his objection, that it would be of no value because of the physical basis of his disability, was 'unreasonable'.

The principle established in worker's compensation law by the decision in *Fazlic* v *Millingimbi Community Inc.* (1982) 38 ALR 424 was that unreasonable refusal of treatment prevented a person from being treated as permanently incapacitated. That principle had been adopted for invalid pension purposes by AAT decisions in *Coban* (1983) 11 *SSR* 114, *Ververellis* (1983) 15 *SSR* 156 and *Dragojlovic* (1983) 16 *SSR* 162. Therefore, the Director-General could cancel Koutsakis' pension under s.135M of the *Social Security Act*.

Formal decision

The AAT affirmed the decision under review.

[**Comment**: Compare this decision with *Korovesis*, decided some two months earlier (and noted in this issue of the *Reporter*), where the AAT rejected the analogy with worker's compensation law, decided that s.135M was irrelevant to the question of medical treatment and decided that a person's refusal to undergo medical treatment (no matter how unreasonable) could not defeat that person's claim for an invalid pension. **PH**].

NAJJARINE and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/281)

Decided: 17 January 1984 by W. Prentice, D.J. Howell and G.D. Grant.

Adib El Najjarine, a 41-year-old former carpenter and welder who had migrated to Australia from Lebanon in 1970, was granted an invalid pension in 1978. The DSS decided to cancel this pension in 1980 and Najjarine asked the AAT to review the DSS decision.

The Tribunal reviewed a range of medical evidence from which it concluded that Najjarine had suffered a back injury but now suffered minimal orthopaedic disability. His complaints of constant pains had to be discounted; the pain which he actually experienced came from his original injury 'exaggerated by years of inactivity and dependence upon pain-killing drugs'.

The overstatement of his symptoms, his enforced retirement in 1978, his continued receipt of worker's compensation and total inactivity had

> combined to create in him a 'dependency, or sick role', an invalidism in which he completely lacks motivation to get fit, to try to get back to work, and to help himself.

(Reasons, para. 11)

The AAT expressed its alarm at the number of drugs Najjarine was taking without any co-ordination by his medical advisers. There were 17 medications, which Najjarine was taking in the form of assorted cocktails according to his daily view of his needs – some of the drugs being those of addiction which could both increase his dependency and make him hypersensitive to pain. He presents the picture of a walking rattling dice box of drugs – dicing with the possibility one day of his not waking up from heavily drugged sleep.

(Reasons, para. 12)

However, the Tribunal concluded that, despite his self-induced 'invalidity', Najjarine had 'a medical disability, principally of a psychological nature (allied to a sociological aspect)' which stemmed from a minor orthopaedic disability. This amounted to incapacity for work which should be considered as continuing indefinitely and so 'permanent' within s.23 of the *Social Security Act*.

Formal decision

The AAT set aside the decision under review, directed that Najjarine's pension be restored as from the date of cancellation and recommended a medical review in two years time.

FRASER and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V82/391)

Decided: 4 November 1983 by I.R. Thompson

Bruce Fraser, aged 53, applied for an invalid pension in July 1981. This application was refused and Fraser applied to the AAT for a review of that decision.

The applicant had held a number of jobs since leaving school. In particular he had worked for 15 years running a canteen, a job which he had left in 1972 when his father died and he went to live with his mother.

He held various jobs until 1979 when he was laid off. He attended the CES office for about two years and applied unsuccessfully for a number of jobs. At the end of two years he said that CES officers had told him it was pointless to continue to look for work as he would not find any.

Medical evidence

Medical opinion was divided on the extent of Fraser's incapacity. His general practitioner felt that he suffered from obstructive airways disease, asthma and osteoarthritis of the right knee which were seriously disabling. Other specialists felt these diseases were only mild. The Tribunal preferred the specialists' opinions and stated that the obstructive airways disease and the asthma were not a major problem: he merely needed to avoid employment which would expose him to allergens. The osteoarthritis meant that he should avoid heavy work.

The Tribunal heard evidence that the applicant's intelligence was in the dull/normal range and the Tribunal accepted that his intellectual capacity was substantially the same as when he had worked as a canteen manager. Therefore, the Tribunal concluded neither his physical or mental capacity disabled him from doing the sorts of jobs he had done in his working life, and affirmed the decision under review.

The need to adjust social security policy

The Tribunal went on to make an interesting policy suggestion. It accepted the opinion of another specialist that Fraser was 'unemployable' and said that the only present social security benefit for which he was eligible was unemployment benefit:

> With the prospect of the effects of technological changes in industry nullifying any improvements in the labour market which might otherwise be expected to follow an upturn in the national economy, it is virtually inevitable that from now on there will continue to be many persons over the age of 50 who, having become unemployed, will, unless the Government creates special jobs for them as part of a social welfare programme have no realistic expectation of ever again being gainfully employed or working gainfully on their own behalf. The cost of processing fortnightly applications for unemployment benefit from such persons will be considerable; and the requirement that such applications must be made and the qualifying conditions for an unemployment benefit met on each occasion will be frustrating and demoralizing for them. It would seem, therefore, that both in fairness to them and with a view to eliminating unnecessary expenditure consideration should now be given to either altering the qualifications for unemployment benefits for persons over the age of, say, 50 years or introducing another benefit with appropriate qualifications.

(Reasons, para. 24)

Formal decision

The decision under review was affirmed.

MILANOVIC and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/47)

Decided: 7 September 1983 by C.E. Backhouse, M. Glick and C. Grant.

The AAT *set aside* a DSS decision to cancel an invalid pension originally granted to Slobodan Milanovic in 1979.

In the course of its decision, the AAT discussed an argument, put by counsel for Milanovic, that the DSS had to prove that Milanovic was no longer incapacitated for work (because the DSS was cancelling an existing pension).

The Tribunal rejected this argument, saying:

> We prefer to adopt the approach of Mr Smith in *Dabbagh* [(1983) 15 *SSR* 115] and determine the application on the basis of whether the applicant had the necessary qualifications for the pension at the time that it was cancelled.

(Reasons, para. 23)

[It seems that the AAT was asserting that neither the applicant nor the Department carried the onus of proof, whether the case arose out of a refusal to grant or out of a cancellation.]

VASSALLO and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q81/174)

Decided: 8 December 1983
by J.B.K. Williams

The AAT *adjourned* indefinitely the hearing of an application to review a decision by the DSS to refuse to grant an invalid pension to a 52-year-old former butcher who suffered from back problems.

There was a marked division of opinion in the medical evidence before the Tribunal. The AAT decided that the DSS should exercise its power under s.135N to require the applicant to undergo examination and assessment at a Rehabilitation Centre in order to establish with greater certainty the extent of his disability before the application proceeded.

[**Comment**: It is, no doubt, a sensible administrative practice to delay the decision on eligibility for invalid pension until the medical evidence has been clarified. However, the AAT was wrong in asserting in this case that s.135N gives the Director-General power to require a claimant to undergo medical examination. That section is expressly limited to 'a claimant for a benefit or a beneficiary', and is irrelevant to a claimant for invalid pension. That point was made quite strongly in *Korovesis*, noted in this issue of the *Reporter*. **PH.**]

BEKDACHE and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N83/118)

Decided: 6 January 1984 by R.K. Todd.

Mohamad Bekdache asked the AAT to review a DSS decision that he was not qualified for invalid pension.

The DSS had decided that Bekdache was not 'permanently incapacitated for work within s.24 of the *Social Security Act*; but the AAT found, on the medical evidence, that he had the necessary incapacity.

Where did incapacity occur?

The Tribunal then turned to consider whether Bekdache's claim might be defeated by s.25(1) of the *Social Security Act*.

> 25(1) An invalid pension shall not be granted to a person –
> (a) in the case of a claimant under section 24, unless he became permanently incapacitated for work or permanently blind –
> (i) while in Australia or during a temporary absence from Australia . . .

Bekdache had migrated to Australia in 1977. He claimed to have injured his back seven months after arrival. Recent medical examinations suggested that Bekdache's incapacity was based on degeneration of his spine which would have developed over 'many years'. However, there was no medical evidence as to his condition at the time of his migration to Australia.

The Tribunal said that in the absence of medical reports and x-rays prepared when Bekdache migrated to Australia, it had to rely on evidence from Bekdache and his son. That evidence was that Bekdache was in good health when he arrived in Australia. His injuries appeared 'to have rendered the previously asymptomatic degenerative changes in his back symptomatic and to have resulted in the applicant becoming permanently incapacitated for work': Reasons, para. 8.

On balance, the AAT was satisfied that Bekdache had become permanently incapacitated 'while in Australia'.

Formal decision

The AAT set aside the decision under review and substituted a decision that Bekdache was eligible for invalid pension.

FLIEDNER and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/451)

Decided: 23 December 1983
by R. Balmford.

The AAT *set aside* a decision to refuse invalid pension to a 50-year-old former farm labourer who suffered from a multiplicity of symptoms, including stomach problems and arthritis.

In assessing whether the applicant's incapacity arose from his medical condition or 'in inability to exploit a capacity for work due to depressed job opportunities', the AAT referred (at length) to Australian Bureau of Statistics data on unemployment rates and to a Department of Employment and Industrial Relations Research Report entitled 'Retired, Unemployed and at Risk'. This data indicated that persons of older ages have greater difficulty in obtaining employment and have done so for some time, i.e., that this is the norm. Thus the older age of the applicant would make it difficult for him to obtain work.

JURAGA and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. S83/10)

Decided: 24 October 1983
by I.R. Thompson.

Pave Juraga, was born in Yugoslavia in 1929 and migrated to Australia in 1959. He worked as a welder until 1980 when he was retrenched. (He had experienced breathing difficulties for about six years, which he felt were caused by irritants and pollutants at his work place.) He applied for an invalid pension in July 1981. After his claim was rejected, he applied to the AAT for review of that decision.

Medical evidence

The Tribunal found that Juraga was seriously disabled by obstructive airways disease, depression and psycho-

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The AAT has been devoting a great deal of energy to reducing a large back-log of invalid pension cases. More than 50 invalid pension decisions have reached us since we prepared the last issue of the *Reporter*.

Some of those decisions raised important questions which go beyond the dispute in the particular case: see, for instance, *Korovesis* in this issue of the *Reporter*.

But the large majority involved only the assessment of medical evidence and were decided along quite predictable lines – lines laid down in earlier AAT decisions in *Panke* (1981) 2 *SSR* 9, *McGeary* (1982) 11 *SSR* 113 and *Sheely* (1982) 9 *SSR* 86.

We can see no value in noting these 'run-of-the-mill' decisions. So we are simply listing the decisions, their reference number and the date of each decision.

DSS decision affirmed

Martin (S82/114) 4.11.83
Sammut (V82/198) 4.11.83
Howard (Q82/58) 19.10.83
Shtrambrandt (V82/331) 21.10.83
Adamou (N82/405) 25.10.83
Zogos (V82/241) 25.10.83
Kenna (Q82/231) 27.10.83
Hodak (V82/348) 5.10.83
Buda (N82/481) 25.11.83
Lawrence (N82/295) 16.9.83
Hodak (V82/348) 5.10.83
Halabi (N82/454) 11.10.83
Fahda (N83/4) 10.10.83
French (Q81/88) 11.10.83
Khalil (N82/371) 14.10.83
Annas (N82/266) 19.10.83
Cannuli (N83/167) 23.1.84
Etri (N83/155) 23.1.84
Middlemiss (N83/101) 18.1.84
Villani (V81/110) 20.1.84
Tasdemir (N82/442) 15.12.83
Clarke (N82/452) 23.12.83
Tsalazidis (V81/419) 14.12.83
Canino (V82/138) 29.11.83
Harrison (N82/179) 11.11.83

DSS decision set aside

Chandler (Q82/219) 20.12.83
Souter (V82/452) 21.10.83
Bartolo (N82/404) 4.11.83
Karlaganis (V82/227) 21.11.83
Korn (N83/92) 17.11.83
Maglicic (V82/87) 19.10.83
Marcus (V82/261) 19.12.83
Hodzic (S82/18) 18.7.83
Dik (N82/456) 11.1.84
Weeding (Q82/175) 8.12.83
Beattie (N82/235) 23.12.83
Rostirolla (N82/139) 23.12.83
Parris (N82/243) 23.12.83
Malafouris (N83/87) 23.12.83
El Hage (N83/157) 22.12.83
Kitsos (N83/106) 23.12.83
Koutsospyros (N82/178) 23.12.83
Bardek (V82/433) 17.11.83
Diamantis (V82/433) 17.11.83
Trifunoski (V82/379) 23.12.83
Marks (N82/33) 30.11.83

genic hyperventilation, the exact cause of which was unclear.

Permanency

The Tribunal decided that, insofar as his incapacity arose from his respiratory problems, it was very likely it would persist indefinitely. Insofar as his incapacity was the result of depression, for treatment to be effective the applicant would need to return to employment. Given Juraga's age and the depressed labour market, that was virtually impossible. Therefore, the Tribunal found that Juraga's incapacity was permanent for the purpose of s.24 of the Act.

The Tribunal went on to consider the possibility of rehabilitation:

> A scheme may be introduced one day for people like the applicant, under which they are placed in jobs made available specially to enable them to re-establish their self-esteem and to recreate in them a feeling that they have some economic worth in the community and to themselves. If such a scheme is introduced, it may then be possible for the applicant to be cured of his depression. So I would certainly not rule out the possibility that at some time in the future it may be reasonable for the Director-General to require the applicant to undertake treatment or training; but, as I have observed, on the evidence that is before the Tribunal today, I think that without some such developments it would not be reasonable for him to require the applicant to do so.

(Reasons, para. 24)

Formal decision

The AAT set aside the decision under review and remitted the matter to the Director-General with a direction that Juraga was qualified to receive an invalid pension since July 1981.

Pensions outside Australia

BUTTIGIEG and DIRECTOR-GENERAL OF SOCIAL SECURITY

Decided: 5 October 1983 by R. Balmford.

Anthony Buttigieg was born in Malta in 1899. He lived in Australia from April 1922 to December 1954, when he returned to Malta to stay.

On 20 February 1980 he lodged an application for either an invalid or age pension. After rejection of this claim, Buttigieg sought review from the AAT.

Age pension outside Australia

Section 21A of the *Social Security Act* provides for payment of an age pension to a person outside Australia. To qualify, a person must have resided in Australia for at least 30 years, have left Australia before 7 May 1973, and have reached 65 years of age (if a man) within five years of leaving Australia.

That last requirement defeated Buttigieg who had left Australia in 1954 and turned 65 in 1964.

Invalid pension outside Australia

Section 24A of the Act sets out the qualifications for invalid pensions for persons outside Australia:

> 24A. Subject to this Act, a person above the age of 16 years who is not receiving an age pension and—
>
> (a) is permanently incapacitated for work or is permanently blind;
> (b) has not resided in Australia at any time since 7 May 1973;
> (c) became permanently incapacitated for work or permanently blind while in Australia or during a temporary absence from Australia; and
> (d) [repealed]
> (e) is a person who, in the opinion of the Director-General, is in special need of financial assistance,
>
> is qualified to receive an invalid pension.

The AAT said that Buttigieg met most of the requirements of s.24A. He was permanently incapacitated for work, he had left Australia before 7 May 1973, and his incapacity should be treated as having developed in Australia. This last requirement (spelt out in s.24A(c)) was satisfied because his incapacity was well established when Buttigieg left Australia. So, it had either developed in Australia or before his arrival in Australia. If it had developed before his arrival, s.25(2) had the effect of 'deeming' it to have occurred in Australia, because Buttigieg had been continuously resident in Australia for at least ten years: see *Nathanielsz* in this issue of the *Reporter*.

However, the critical question was whether Buttigieg met the requirements of s.24A(e) of the *Social Security Act*: was he 'in special need of financial assistance'?

Evidence of the cost of living in Malta was provided to the Tribunal as was some evidence of Buttigieg's needs. (His income was from a Maltese age pension and, apart from the evidence that he lived in a house jointly owned with his two sisters, there was no evidence as to his living conditions).

Concluding that 'special need' required some need which was 'exceptional in character, quality or degree', the AAT found that Buttigieg was not 'in special need of financial assistance':

> He is receiving a pension from the government of the country where he lives, which appears to be comparable with other pensions paid in that country. It must be assumed that that pension is calculated at a rate which would give the recipient an adequate income to provide a standard of living at least beyond what could be described as being 'in special need', in terms of the definition of 'special' above cited.

Thus the applicant failed to satisfy the requirements of s.24A(e) and was not qualified to receive an invalid pension.

Formal decision

The Tribunal affirmed the decision under review.

Pensions: 'continuous residence in Australia'

NATHANIELSZ and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V82/60)

Decided: 30 September 1983 by R. Balmford.

Sheila Nathanielsz was born in Sri Lanka in 1923. She and her husband arrived in Australia in December 1975. In November 1976 she was granted permanent resident status and returned to Sri Lanka with her husband in December 1976 to 'tidy up their affairs'. She returned to Australia in March 1979.

In December 1980 she claimed an invalid pension but the DSS rejected the claim because her incapacity had not developed in Australia (as required by s.25(1)(b) of the *Social Security Act*) but pre-dated her arrival in 1975.

The DSS told Nathanielsz that she would qualify for invalid or age pension after she had completed 10 years continuous residence in Australia. Ignoring the period 1976–79 (when she was in Sri Lanka), the DSS calculated that Nathanielsz would complete that 10 years in August 1988.

Nathanielsz asked the AAT to review the DSS decision that she had not been resident in Australia during her absence from Australia between 1976 and 1979. In practical terms, she argued that she would be qualified for invalid or age pension in December 1985 rather than August 1988. (She did not challenge the DSS decision that her incapacity predated her arrival in Australia.)

'Continuously resident' in Australia

Section 25(2) of the *Social Security Act* provides that a person, whose incapacity developed outside Australia, will qualify for invalid pension after 10 years continuous residence in Australia.

Section 21 of the Act provides that a woman who has reached 60 years of age and has been continuously resident in Australia for 10 years is qualified for age pension (so long as she is present and resident in Australia when she lodges her claim).

Section 20 sets out the meaning of 'resident' and reads (so far as is relevant):

> (1) For the purposes of this Part, a claimant shall be deemed to have been resident in Australia during a period of absence from Australia—
> (a) if the Director-General is satisfied that, during that period, the claimant's home remained in Australia; . . .
> (2) For the purposes of this Part, a claimant shall be deemed to have been resident in Australia—
> . . .
> (b) during a period of absence from Australia during which the claimant was a resident of Australia within the meaning of an Act