

The Tribunal expressed regret that this claim of privilege 'should be invoked in relation to' 51 ALJR 198: the only purpose for which the reports had been brought into existence was for their possible use in legal proceedings:

'They were prepared for and in contemplation of these proceedings. That they were also prepared for financiers of these proceedings was not even a separate or ancillary purpose. It was part of the one overall purpose related only to the conduct of these proceedings.'

(Reasons, p.15)

The Tribunal expressed regret that this claim of privilege 'should be invoked in relation to

documents of such potential relevance . . . Reviews of decisions made particularly under the *Social Security Act* should not be conducted as tactical exercises. As a matter of good faith we would normally expect a full and frank disclosure on both sides of all available evidence. If an applicant seeks a beneficial interpretation of social welfare legislation, he should not expect a consideration of his case to be carried out as if it were a jury trial.'

(Reasons, pp.17-8)

Privilege in AAT proceedings

The AAT said that this claim of legal professional privilege should be recognised by the Tribunal. Although

it had been said, in *O'Reilly v. Commission of State Bank of Victoria* (1982) 44 ALR 27, that such a claim should not be recognised in administrative proceedings, the present proceedings were 'conducted in a formal quasi-judicial manner based on the adversary system': Reasons, p.15.

An inconclusive result

The AAT pointed out that, without the rehabilitation reports, it was unable to conclude that Greenbank's medical condition was likely to prevent him from obtaining employment indefinitely. It therefore adopted the course of setting aside the decision under review, and remitting the matter to the Secretary with a direction that Greenbank be granted invalid pension subject to review in 3 years time.

Overpayment: failure to comply with Act

BOYD and SECRETARY TO DSS
(No N85/22)

Decided: 6 March 1986 by R.A. Hayes.

Robert Boyd had been granted supporting parent's benefit in May 1983. At the end of that month he found employment but the DSS continued to pay him supporting parent's benefit at the maximum rate until September 1983.

When the DSS confirmed that Boyd was in employment, it cancelled his supporting parent's benefit and calculated that he had been overpaid \$1574, which amount the DSS decided to recover from Boyd. Boyd asked the AAT to review that decision.

The legislation

At the time of the decision under review, s.140(1) of the *Social Security Act* provided that an amount paid by way of benefit in consequence of a failure or omission to comply with any provision of the Act should be recoverable from the person to whom the amount was paid as a debt due to the Commonwealth.

Section 74(1) obliged a person receiving supporting parent's benefit to notify the DSS where his 'average weekly rate of income' in any 8 week period was higher than the average

weekly rate of income last notified by the beneficiary.

No failure to comply with Act

Both Boyd and his fiancée told the AAT that they had notified the DSS by telephone of the circumstances of Boyd's employment immediately after he started working. However the DSS had no record of any communications from Boyd or his fiancée. Nevertheless, the AAT said that Boyd and his fiancée 'impressed as honest, straightforward, and responsible people'; and it was prepared to accept their evidence:

'There was no evidence before the Tribunal from the respondent of any system, rigorously inculcated into its managerial and administrative processes, which would automatically produce a written record of communications made to it by, or on behalf of, beneficiaries of changed employment circumstances. The fact, therefore, that it has no record of any telephone calls or other communications by the applicant, or by his fiancée . . . does not even raise a presumption that such communications were not made.'

(Reasons, p.6)

The AAT also concluded that Boyd

had acted in good faith in continuing to receive and cash the cheques for supporting parent's benefit which were paid to him while he was in full-time employment. He had, the AAT said, lacked

'intimate knowledge of the Act, the respondent's procedures and practices, and the processes involved in assessing entitlements to, calculating payment of, and paying, pensions and benefits. Inevitably, he put himself in the respondent's hands, relying upon it to compute the information which he gave to it about himself, and which he reasonably assumed it would acquire about him, and to adjust his benefit payments accordingly.'

(Reasons, p.7)

For these reasons, the AAT concluded that there had been no failure or omission on Boyd's part to comply with the Act and that, therefore, there was no foundation for the decision to recover any overpayment under s.140(1) of the *Social Security Act*.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary with the direction that the amount in question was not recoverable under s.140(1).

Rehabilitation training: recovery from damages

HOBBS and SECRETARY TO DSS
(No S85/104)

Decided: 27 March 1986 by J.A.

Kiosoglous, B.C. Lock and J.T.B. Linn. Thomas Hobbs was injured in a motor accident in 1981. Between February and May 1982, the DSS provided Hobbs with rehabilitation training valued at \$4729.

In May 1984, Hobbs settled a claim for damages arising out of his accident for \$134 000. After meeting his costs and expenses, he received \$98 000

from his solicitors, who still retained \$7000 in their trust account. Before this claim was settled, the DSS had notified Hobbs, his solicitors and the insurance company involved that it proposed to recover the costs of rehabilitation training provided to Hobbs from any damages which he recovered.

Hobbs asked the AAT to review the DSS decision to recover the cost of rehabilitation training.

The legislation

Section 135R(1A) of the *Social Secu-*

rity Act provides that a person who has received rehabilitation training and recovered compensation is liable to repay to the DSS the costs of that training. Section 135R(1) defines 'compensation' as meaning any payment by way of compensation or damages which relates to the disability for which training has been provided.

Section 135R(1B) gives the Secretary a discretion to release a person from the obligation to repay the cost of rehabilitation training, if the Sec-