purpose or object underlying the Act . . . shall be preferred to a construction that would not promote that purpose or object'. This provision, the AAT said, did not authorise it to impose on the words of s.153(1) (in its pre-16 December 1987 form) a meaning which the words did not 'fairly bear'. It only dealt with the situation where there were two possible interpretations open.

Rather, the AAT said, it was s.15AB which was relevant. This section permitted reference to 'material not forming part of the Act' in order to determine the meaning of a provision which was ambiguous, obscure, or whose ordinary meaning 'leads to a result that is manifestly absurd or is unreasonable'.

The AAT said that the ordinary meaning of s.153(1) in its pre-16 December 1987 form (as retrospectively amended by the *Social Security Amendment Act* 1988) did lead to a 'manifest absurdity'. The words '(whether before or after becoming so qualified)' were, the AAT said, 'quite obviously an absurdity': Reasons, para. 9.

The explanatory memorandum which accompanied the *Social Security Amendment Bill* 1988 stated that the retrospective amendment to s.153(1) would 'clarify that the sub-section may apply whether compensation was received before or after the date on which the person became qualified to receive a pension'. The AAT said:

> '19. It seems clear from the above reference that non-retrospectivity of the amendment [made to s.153(1) from 16 December 1987] escaped the notice of the Parliamentary Draftsman and the intent was, as stated, to prohibit subsequent to 1 May 1987 the payment of pension after the receipt of an award of damages whether that award was received before or after the claimant became qualified in all other respects to receive a pension.
>
> 20. The intent of the legislature can be achieved if the word "receiving" in s.153(1) is read as "receiving or qualified to receive". Given the authority referred to above and the obvious intention of the legislature I am prepared so to do.
>
> 21. Applying this interpretation to the facts of this case, as at the time the decision was made to refuse the applicant unemployment benefits, namely 28 October 1987, he was qualified to receive those benefit. On 29 October 1987, however, he received a lump sum payment by way of compensation. Thus he, in the terms of s.153(1) as I interpret it, was rendered ineligible to receive that benefit.'

Formal decision

The AAT remitted the matter to the Secretary with a direction that the applicant was, pursuant to s.153(1), not entitled to receive unemployment benefit consequent upon his application made on 8 September 1987.

[P.H.]

Assets test: 'deemed income'

WALLACE and SECRETARY TO DSS

(No. V87/209)

Decided: 22 August 1988 by I.R. Thompson.

Norman Wallace was granted an age pension in 1978. In July 1985 the DSS cancelled his pension because of the value of his assets. Subsequently, the DSS re-valued Wallace's assets and restored his pension, but at a reduced rate, on account of 'deemed income' from Wallace's assets.

The property in question consisted of a farm of 91.64 hectares which was valued at $150 000 (excluding Wallace's house and its curtilage). Originally, this farm had been part of a much larger area; but adjoining property had been transferred to Wallace's brother, son and daughter. All of the properties were farmed using natural organic methods - that is, no chemical fertilisers were used on the properties. (Wallace's brother had acquired a reputation as an inventor and innovator in organic farming, having developed a special plough for aerating the soil without turning over the topsoil.) Wallace was adamant that, if he were to lease his land (which he was no longer farming) it would be on the strict condition that organic farming methods were used.

The AAT accepted evidence from a valuer that Wallace's farm could be let for an annual rental of $5520. However, before this could be done, the property required fencing and the construction of a stockyard, at a total cost of at least $9 000.

The AAT said that the principles set down by the Federal Court in *Haldane-Stevenson* (1985) 26 *SSR* 323 should be applied when calculating income for the purposes of s.6AD(3) [now s.7(4)] of the *Social Security Act*. That is, it was net income which was relevant. On the assumption that Wallace could lease the property out for $5 520 a year and that any tenant who paid $9 000 for erecting fences and a stockyard would withhold that amount from the rent payable, the AAT decided that the amount of rent which 'could reasonably be expected to be derived from . . . the use of [the] property' (the phrase used in s.6AD(3)) and 'the amount per annum that could reasonably be expected to be obtained from a purely commercial application of that property' (the phrase used, from 13 November 1987, in s.7(4)) was nil in the first year and $2040, less the rates payable on the land in the second year. However, in the third year (which the AAT calculated to run from 14 November 1987), the deemed income would be the full $5 520 less the rates payable on the land. It would be that amount of deemed income which would be used to reduce the rate of pension payable to Wallace.

The AAT observed that, taking into account the rates payable on the land, it was likely that the net deemed income would exceed 2.5% of the land's value. In that event, s.7(4) (as it operated from 13 November 1986) required that the lesser amount be treated as Wallace's deemed income.

In addition, the AAT noted that Wallace had made a loan to his daughter and son-in-law in 1985 and that they had made small repayments of the loan each year since then. The AAT said that the definition of 'income' in the former s.6(1) [now s.3(1)] of the *Social Security Act* was so broad that the receipt of the repayments of the loan should be treated as Wallace's income so as further to reduce the amount of pension payable to him and to his wife.

Formal decision

The AAT set aside the decision under review and remitted the matter to the Secretary for reconsideration.

[P.H.]

Amnesty: voluntary declaration

GARRAFFO and SECRETARY TO DSS

(No. V88/75 and V88/131)

Decided: 7 September 1988 by H.E. Hallowes.

Mr and Mrs Garraffo had been receiving age pension since 1976 and 1979. In 1983, Mr Garraffo told the DSS that he was receiving a pension from the Italian Pension Fund, INPS.