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**SOCIAL SECURITY**

*Reporter*

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**Opinion**

**Creative interpretation**

It is an obvious truism that the interpretation of any piece of legislation is as important as its drafting: the words which have been placed in any Act of Parliament will only achieve the result which the Act's interpreters allow them to achieve.

This is why we depend so heavily on decisions of the AAT and the Federal Court to develop the welfare rights of social security claimants: without those decisions, the words of the *Social Security Act* are no more than unfleshed bones.

It is the Tribunal and Court decisions which add substance and concrete meaning to such phrases as 'a home of the person' in the s.39(1) qualification for carer's pension; or the phrase 'following year of income' in the s.85(7) family allowance income test.

Because the function of interpreting the *Social Security Act* is not a mechanical process, but one in which human values (and even prejudices) are brought to bear, the readings given to various phrases in the Act may produce widely different impacts.

Two AAT decisions in the current *Reporter* illustrate this point. In *Morrison* (p.669) the Tribunal adopted what appears to be a very flexible approach to the family allowance income test, allowing the level of a person's allowance to be calculated by reference to an inaccurate (but 'reasonable') estimate of her income, rather than her actual income.

Although this result might have achieved substantial justice between the applicant and the DSS (who had lost and not acted on her estimate of income), it is difficult to reconcile with the words of s.85(7). That provision allows the estimate of current income to be used as a 'trigger' (so as to displace the last year of income), but requires actual current income to be used for the income test.

On the other hand, the decision in *Kinsey* (p.673) took a restrictive view of the qualifications for carer's pension, which require that a person provide care for a severely handicapped person in their 'home'. The AAT denied eligibility to a mother who was caring for her daughter because the care was being provided in a self-contained flat, adjacent to but on a separate title from the applicant's home. The AAT relied on a number of judicial decisions which had interpreted the word 'home' in quite different contexts; and made no reference to the purpose of (and policy behind) carer's pension.

Of course it may be that, even in the light of that purpose and policy, the words of s.39(1) would not permit the applicant to receive a carer's pension; but it is hard to avoid the feeling that a little of Humpty-Dumpty's healthy scepticism ('words mean what I say they mean') could have provided a sensible solution to Mrs Kinsey's dilemma.

[P.H.]

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