However for these purposes, because Dickeson resided in only one place of residence, the reference to 'principal' was not relevant.

The AAT went on to suggest that, in the absence of any precise definition of 'home' or 'principal home' within the Act, external aids might be relied upon to assist in construction of the meaning of the relevant part of the Act, s.4(1)(a)(i).

After reference to ss.15AA and 15AB of the *Acts Interpretation Act*, and the Second Reading Speech of the Minister introducing the assets tests in 1984, the AAT referred to Dickeson's argument that to treat him as a home owner was in unfair and unjust and placed an absurd or ridiculous interpretation on the word 'home', having regard to the circumstances peculiar to Dickeson.

The DSS, on the other hand, suggested that the concept of the home had an emotional element to it and Dickeson should be deemed to be a home owner because he had made his home in the place where he lived despite its lacking the usual and commonly accepted indicia of a home.

The DSS argued that Dickeson lived in a home which was his own home and which was located upon land owned by him.

The AAT's decision

The Tribunal stated:

> 'The words "home", "house", "residence" and "domicile" have all been extensively considered by the Courts, but derive their meaning only by reference to a particular subject whether it be Taxation, Family Law, Tenancy, Customs, Probate, or Social Welfare.'

In assessing the criteria of what constituted a 'home', the AAT noted that a substantial degree of occupation was persuasive and concluded that a —

> 'home is likely to be a place where persons ordinarily eat, morning and night, and where they sleep, and in the case of adults have the characteristics of permanency (*Todd v Nichol* [1957] 1 SASR 72).'

Further, a home 'is the place where the centre of gravity of one's domestic life is to be found' (*Geothermal Energy NZ Ltd v Commissioner of Inland Revenue* [1979] 2 NZLR 324). A home need not be a structure of 4 walls and a roof, but may be constituted by a caravan or a campervan (see *Buchanan*, noted in this *Reporter*).

The AAT concluded that the structure in which Dickeson lived had all the elements which the AAT found constituted a home:

> 'Dickeson sleeps nightly at these premises and prepares and consumes most meals at these premises. It is fitted and furnished, however modest [*sic*], for his needs and comfort. It is the place that he regards as his home'.

Dickeson had not given any evidence at the hearing and the Tribunal commented that it was unable to discern from the evidence available any indication that the accommodation was in any way temporary nor any indication as to the reasons why Dickeson was living in the shed.

Formal decision

The Tribunal affirmed the decision that the premises in which Dickeson resided constituted his principal home for the purposes of the assets test.

Assets test: 'home owners'

BUCHANAN and REPATRIATION COMMISSION

(No. 5235)

Decided: 14 July 1989 by BG Gibbs.

James Buchanan sought review of a decision of the delegate of the Repatriation Commission that Buchanan and his wife were 'home owners' for the purposes of the assets test, while residing in their 'mobile home'.

The facts

Buchanan and his wife had been receiving service pension from December 1984. At that time, they had owned their own home. In June 1987, Buchanan advised that the home had been sold, that they had purchased a Nissan vehicle for $24 000, and were now proposing to tour the country.

Mr and Mrs Buchanan's pensions were reassessed from 18 June 1987, treating them as non-home owners. On 1 June 1988 a delegate of the Repatriation Commission determined that Buchanan and his wife should be treated as home owners and accordingly their pensions were reassessed as from 16 June 1988. However, shortly prior to that time, Mr and Mrs Buchanan had ceased touring and were living in rental accommodation so they were subsequently reassessed as non-home owners from 16 June 1988.

Buchanan sought review of that decision and on 24 October 1988 a delegate of the Repatriation Commission affirmed the decision that they should be treated as home owners while they were living in their mobile home. Buchanan then sought review by the AAT.

The legislation

Section 50(1)(a)(2)(ii) of the *Veterans' Entitlements Act* 1986 provides that for the purpose of calculating the value of a person's assets, there shall be disregarded —

> '... (ii) if the person is a married person — the value of any right or interest of the person in relation to one residence that is the principal home of the person, of the person's spouse or of both of them ...'

The AAT noted that the Act did not define the words 'principal home'.

The Repatriation Commission submitted that the decision was correct in accordance with its policy, in particular, part 5.27 of the General Orders Service Pension issued by the Department of Veterans' Affairs, which states that, if a pensioner resides in a caravan or boat, the caravan or boat can be regarded as the principal home of the person and the value of that caravan or boat can be disregarded under s 50(1)(a)(i) or (ii). The person can also be regarded as a home owner for the purposes of the assets test. However, Buchanan contended that a campervan was not to be compared with a caravan.

The Tribunal noted that the van in which Buchanan and his wife were touring Australia had been converted by cutting out a piece of the top and inserting in its place a fibreglass top which lifted by about 2 feet. The van also contained a refrigerator, stove, table, sink, watertank and lighting powered by batteries, but had no toilet facility.

Buchanan gave evidence that he and his wife were continually on the move while on tour and rarely stayed more than 2 days at any one place. On 2 occasions, they had paid rent to caravan park owners.

During the time they were on tour, Buchanan and his wife were registered on the electoral role as 'itinerant voters'. They had originally planned to be on tour for some 2 to 3 years. Buchanan stated that he and his wife did not consider the campervan as a home but merely as a vehicle for touring the country.

The Commission relied upon a decision of *Helsham and the Repatriation Commission* (2 June

1986). In that case, Helsham owned a house in Sydney but lived in a caravan in Queensland where he was pursuing his interest in opal mining. The AAT had held that Helsham's principal home was the caravan and therefore he was a home owner for the purposes of the application of the assets test.

After referring to definitions of 'campervan', 'home' and 'residence' from the *Macquarie Dictionary* and the *Shorter Oxford Dictionary* the Tribunal stated that it had no difficulty in finding that such a vehicle could properly be described as a campervan within the definition provided in the *Macquarie Dictionary*. That definition provided that a campervan is 'a motor van in which people may live, usually temporarily, furnished with beds, stove, sink etc.'

The Tribunal went on to note that the General Orders Service Pensions were purely a statement of policy for the guidance of departmental officers and were not in any sense binding on the Tribunal. However the Tribunal was satisfied that on the whole of the evidence before it, the campervan was a residence and the principal home of Buchanan and his wife for the purposes of the application of the assets test under s.50(1)(a)(ii) of the *Veterans' Entitlements Act*. Accordingly, Buchanan was a home owner for the relevant period.

Formal decision

The AAT affirmed the decision under review.

[R.G.]

Invalid pension: incapacity for work

THIEL and SECRETARY TO DSS (No. Q89/32)

Decided: 25 July 1989 by Barry J, N.C. Davis and K.J. Lynch.

The AAT *affirmed* a decision of the DSS to cancel an invalid pension held by a 37-year-old man, who had injured his knee in 1984.

It appeared that Thiel's knee injury had left him with some residual incapacity but that this was not sufficient to qualify him for an invalid pension. But Thiel relied upon the opinion of a psychiatrist, given in December 1988, that he was suffering from a depressive condition which, in combination with his physical disability, made him more than 85 per cent incapacitated for work.

However, a second report from that psychiatrist, given in July 1989, noted that Thiel's psychiatric condition had improved and did not quantify the current extent of his disability. The DSS also produced a psychiatric report, dated April 1989, which concluded that Thiel was not suffering from a depressive illness or any other serious psychiatric disorder; and that, if there was a psychiatric disability, it would only be mild, 'perhaps in the 10 to 20 per cent range'.

In comparing these two opinions, the AAT noted that the psychiatrist consulted by the DSS had attended the Tribunal hearing and been subjected to cross-examination; whereas Thiel's psychiatrist had not been called as a witness and her July 1989 report had been 'ambiguous and uncertain'. The AAT commented:

> 'If the applicant elects not to call a specialist doctor in support of his case, that is a risk he must face. We see no reason to reject the forceful unambiguous evidence of [the psychiatrist consulted by the DSS].'

(Reasons, p.11)

[P.H.]

CASSIN and SECRETARY TO DSS (No. 5460)

Decided: 27 September 1989 by M.D. Allen.

The AAT *affirmed* a DSS decision to refuse to grant invalid pension to a 52-year-old man whose disabilities prevented him from undertaking his former occupation of a slaughterman but left him with a residual capacity for light work.

The AAT accepted that Cassin was unlikely to find this light work but this was 'more a circumstance of the economic situation rather than anything directly related to the actual medical impairment of the applicant'.

It followed, the AAT said, that 50% of Cassin's permanent incapacity for work was not caused by any permanent physical or mental impairment, which only caused 'a slight incapacity which prevents him from engaging in any heavy work' but he could do light work if that work were available.

[P.H.]

GOTCH and SECRETARY TO DSS (No. S87/265)

Decided: 2 November 1989 by W.J.F. Purcell.

The AAT *set aside* a DSS decision, made in December 1986, to refuse an invalid pension to a 32-year-old man who had suffered persistent and severe headaches since a fall in 1983.

The issue before the AAT was whether Gotch was eligible for an invalid pension at the time when he lodged his claim in November 1986. At that time, ss.23 and 24 of the *Social Security Act* provided that a person would qualify for an invalid pension if the person was at least 85% permanently incapacitated for work. The requirement that at least 50% of that incapacity be due to a permanent physical or mental impairment was not part of the Act at that time.

Gotch had been examined on behalf of the DSS by a psychiatrist who reported that it would be inadvisable for the DSS to grant him an invalid pension, because this would reinforce the 'sick role' which Gotch had adopted. The AAT queried the validity of that psychiatrist's approach, which appeared to be directed towards treating Gotch's condition, rather than assessing his eligibility for invalid pension. However, the AAT did not pursue this point as it preferred evidence given by Gotch's treating psychiatrist.

A particular problem in this case was that, despite extensive investigations, no organic basis for Gotch's severe headaches and an associated memory loss had been identified. But Gotch's treating psychiatrist had diagnosed 'somatoform pain disorder' — a chronic pain syndrome, where the severity or extent of the pain complained of is out of keeping with the underlying physical pathology. This psychiatrist said that the disorder was difficult to treat and that it was unlikely that there would be any rapid resolution over the next few years.

The AAT accepted that evidence and concluded that Gotch was permanently incapacitated for work to the extent of at least 85% and that, accordingly, he had been qualified for an invalid pension at all times since November 1986.

[P.H.]