Second Reading speeches made on the Bill which produced the present form of s.152, namely the *Social Security Amendment Bill* 1988. The AAT concluded from those speeches that the present form of s.152(2)(c)(ii) was not intended to preclude future entitlement to a social security benefit where there had been a payment for past incapacity:

> 'The object, as is seen by the . . . speeches, is to preclude payment of benefit where compensation has been recovered for the same period for which benefit was otherwise paid, or could be paid. It was that "object [which is] underlying the Act" and any other conclusion would have consequences which would be "manifestly absurd or . . . unreasonable".'

(Reasons, p.10)

Accordingly, the AAT decided that Sword should be precluded from receiving invalid pension for a period calculated by reference to the part of his compensation award which related to future incapacity for work; and —

> 'the sum of $10 000 paid in respect of past incapacity should not be brought to account in calculating the (future) period of preclusion from benefit.'

(Reasons, p.10)

Formal decision

The AAT affirmed the decision of the SSAT, to the effect that the preclusion period applied to Sword should be calculated on the basis that the 'compensation part' of the award received by him in November 1987 was $30 000.

[P.H.]

SECRETARY TO DSS and DANIELE
(No. 5983)
Decided: 22 June 1990 by D.H. Burns, J.A. Kiosoglous, and B.C. Lock.

The AAT *set aside* a decision of the SSAT that the legal costs component of a compensation award received by Daniele should be excluded from that award before calculating the 'compensation part' of the award for the purposes of the preclusion period imposed by s.153(1) of the *Social Security Act*.

The award in question had been made by consent on 13 December 1988. Accordingly, the 'compensation part' of that award was to be calculated as 50% of the award: s.152(2)(c)(i) of the *Social Security Act*.

The AAT said that, where a compensation award fell within s.152(2)(c)(i), then —

> 'Costs are not to be excluded from the lump sum before calculating the compensation part of a lump sum payment by way of compensation in accordance with [that provision]. It is clear in the Tribunal's view that Parliament intended to allow the remaining 50% to be for costs and other sums which are not in respect of an incapacity for work. However, in respect of s.152(2)(c)(ii) which is not relevant for present purposes, costs must be excluded as not being in respect of an incapacity for work.'

(Reasons, para. 9)

The AAT then calculated the 'compensation part' of the award received by Daniele, $75 000, at 50% of that award, namely $37 500, which led to a preclusion period running from 18 November 1988 to 10 May 1990.

[P.H.]

Unemployment benefit: 'course of education'

O'BRIEN and SECRETARY TO DSS
(No. 6020)
Decided: 4 July 1990 by K.L. Beddoe.

The applicant applied for review of a decision to reject her application for unemployment benefit.

The basis for the rejection was that O'Brien was undertaking a course of education on a full-time basis and so was ineligible under s.136 of the *Social Security Act*. She was attending an intensive course in basic Japanese language during the relevant period. The evidence showed that the course was designed to assist in gaining employment in the tourist industry. The course ran for 90 hours over a 3-week period.

Engaged on a 'full-time basis'?

Section 136 of the Act disqualifies a person from receiving benefit where the person is engaged 'in a course of education on a full-time basis'. The first question the Tribunal addressed was thus whether O'Brien was undertaking the course on 'a full-time basis'.

In an earlier hearing of this matter, the AAT had decided that the applicant was not engaged in the course on a full-time basis. [See *O'Brien* (1989) 49 *SSR* 630.] The Tribunal had then relied on the decision of Davies J in the Federal Court in *Harradine* (1989) 47 *SSR* 615, which stated that the phrase 'engaged in a course of education on a full-time basis' was to be read as a whole and focused on the character of the study rather than the engagement. The Tribunal had then concluded that, although the applicant was engaged in a Japanese language course on a full-time basis, the course was not a 'full-time course of education' and the DSS decision to reject benefit had been set aside.

The DSS appealed against this decision to the Federal Court which remitted the matter to the AAT to be dealt with in accordance with the principles set down in the Full Federal Court decision in *Harradine* (1989) 50 *SSR* 663, which had been decided after the Tribunal's earlier decision in *O'Brien*. The Full Court had decided in *Harradine* that the question of whether a person was engaged in a course full-time was not to be answered according to course classifications but by looking at what the student did.

In the light of the Full Court decision, the AAT examined the issue of O'Brien's engagement in the language course. The conclusion reached was that a commitment of 30 hours per week constituted an engagement on a full-time basis.

A 'course of education'?

The Tribunal considered various definitions of 'education' and concluded that—

> 'there is a valid distinction between a course involving limited periods of vocational instruction . . . which may be called a vocational training course and a course of education. A vocational training course is a course directed towards job skills relevant to and to be used in employment upon conclusion of the course. In contrast the ordinary meaning of the words "course of education" is a systematic process of learning conducted by a place of education and lacking the same direct nexus with existing employment or future employment.'

(Reasons, p.6)

The conclusion reached was that the language course undertaken by O'Brien was not a course of education. It did not teach the Japanese language as such but taught conversational Japanese in order to facilitate communication with Japanese tourists and so enable the applicant to enter the tourist industry. It thus fell short of being described as 'a course of education'.

Formal decision

The AAT set aside the decision under review and remitted the matter to the DSS for reconsideration with the direction that the applicant was not engaged in a full-time course of education during the relevant period.

[B.S.]