possible anomalous results that this provision could cause. For example, take a situation where an applicant for a pension had made deposits with an institution which had since been put into liquidation and the best estimate of the liquidator was that no dividend would be paid to the depositors. In this event, even though the deposit had no commercial value, it would be shown at its face value for s.4 purposes because it had not yet been extinguished and remains as a right, albeit worthless. It is doubtful that the legislature intended that result, but the words are plain, whilst their literal meaning is clear and whilst they may produce an unfair result they do not give rise to any ambiguity.'

Formal decision

The AAT determined that the appropriate amounts to be taken into account as an asset in the applicant's hands prior to 27 October 1986 should be based on the net worth of the HFT whereas, after that date, the value of the asset in the applicant's hands was the full face value of the debt remaining outstanding at that date.

[A.A.]

Assets test: disposition

McGUIRK and SECRETARY TO DSS

(No. 7929)

Decided: 1 May 1992 by H.E. Hallowes

Michael and Gwen McGuirk appealed against an SSAT decision affirming a decision of the Department to include an amount of $31 000, given by Gwen McGuirk to Pope John Paul II, as property of the applicants for the purposes of calculating the rate of age pension.

In October 1990, Mrs McGuirk told the Department she had received a cheque for $41 983.36 from the Public Trustee, being her brother's deceased estate. She had immediately withdrawn $35 000 and paid this amount to her parish priest to give to Pope John Paul II.

The AAT accepted Mrs McGuirk's account that she was fulfilling an undertaking given to her brother while he was alive that she would carry out his wishes to give his money to the poor. He had been unable to do this in his lifetime as his affairs were managed by the Public Trustee.

The legislation

The DSS had treated this gift as a disposal of property under 6 of the *Social Security Act* 1947. This provided that, where property of more than $4000 was disposed of, that property had to be included in the value of the property of the person. And property was disposed if no or inadequate consideration was received for it.

Property disposed of?

Mr McGuirk argued that it was unfair that the DSS had a discretion to protect investors in the Pyramid Building Society but could not or would not take into account the charitable motives of his wife in disposing of the money.

The AAT decided that Mrs McGuirk had not received valuable consideration for the disposal of the money as 'consideration' in the Act had been used in a technical legal sense. It also rejected an argument, without further comment, that Mrs McGuirk had no discretion and was obliged to carry out her brother's 'trust'.

Formal decision

The AAT affirmed the decision under review.

[J.M.]

Assets test: superannuation relinquished

POOLE and SECRETARY TO DSS

(No. 7859)

Decided: on 30 March 1992 by M.D. Allen.

Mr Poole had been receiving a pension pursuant to the *Superannuation Act* 1922 of $719.64 a fortnight. He chose to relinquish his pension, to which he had a continuing entitlement, because he wanted it 'under the heading of entitlement'. He applied for age pension and sought payment on the basis that he had no income.

Legislation

Section 8(1) of the *Social Security Act* 1991 defines 'income' to mean an income amount earned, derived or received by a person for the person's own benefit or use. An 'income amount' means valuable consideration or personal earnings or moneys or profits, whether of a capital nature or not.

Section 9(5) provides that for the purposes of the Act a superannuation pension is taken to be presently payable at all times after the commencement of the first period in respect of which it is payable.

Was the superannuation pension income?

The issue was whether the superannuation pension, which was payable to Poole but which he declined to receive, was income under the Act.

The AAT referred to *Rose v Secretary to DSS* (1990) 92 ALR 521; 54 *SSR* 727, where the Federal Court had held that a pension payable to Mr Rose in East Germany, but which he could not access from Australia, was income under the Act.

The AAT said that, if a pension that a person could not access was taken to be income, 'how much more so in the case of Mr Poole who by his own voluntary act has deprived himself of the income'.

The AAT concluded that the superannuation pension was income to be taken into account in assessing his entitlement to age pension.

Formal decision

The AAT affirmed the decision under review.

[P.O'C.]

Newstart training allowance

SECRETARY TO DSS and DIEPENBROECK

(No. 7970)

Decided: 19 May 1992 by O'Connor J.

David Diepenbroeck was granted newstart allowance on 19 August 1991, when he was 19 years of age.

On 26 August 1991, Diepenbroeck started a vocational training course approved by the CES. He applied for a newstart training supplement under s.644 of the *Social Security Act* 1991. An officer in the Department of Employment, Education and Training (DEET) rejected Diepenbroeck's application.

On review, the SSAT decided that Diepenbroeck was eligible for the supplement. The Secretary to the DSS applied to the AAT for review of that decision.