3. the full amount of the debt be written off for a period of one year from the date of the hearing.

[B.W.]

[**Note:** Despite the preoccupation of the AAT with the jurisdictional issue it considered was imposed by the amendments made to s.1247 by the *Social Security Legislation Amendment Act (No.3) of 1992*, the amendments requiring that a decision be reviewed by an ARO before it is reviewed by the SSAT, only apply if the decision was made on or after 1 January 1993 (see s.3(4) of the amending act).]

Sickness allowance - 'in gaol'

BULSEY and SECRETARY TO DSS

(No. 9078)

Decided: 27 October 1993 by S.A. Forgie, G.S. Urquhart and A.M. Brennan.

Bulsey requested review of a SSAT decision of 25 March 1993 which affirmed a DSS decision refusing Bulsey's claim for sickness allowance (SA). When Bulsey lodged his claim he was a patient in the John Oxley Memorial hospital receiving treatment for a psychiatric illness.

The facts

Bulsey was imprisoned in 1973 for five years. In 1977, while in prison, Bulsey was convicted of murder and sentenced to life imprisonment. At the time of his conviction Bulsey's mental illness was not apparent and it played no part in his conviction.

Bulsey was admitted to hospital as a 'regulated patient' for treatment of his mental illness. The grounds for certifying him as a regulated patient were that his mental ilness was severe enough to warrant detention in hospital, and his detention was either in his own interest or to protect other people.

The law

Section 1160 of the *Social Security Act 1991* provides that SA is not payable to a person in goal, or to a person undergoing psychiatric confinement because the person has been charged with committing an offence. 'In gaol' is explained in s.23(5) as:

> 'For the purposes of this Act, a person is in gaol if the person:
>
> (a) is imprisoned in connection with the person's conviction for an offence; or
>
> (b) is being lawfully detained in a place other than a prison in connection with the person's conviction for an offence; or
>
> (c) is undergoing a period of custody pending trial or sentencing for an offence.'

It was agreed between the parties that Bulsey was not imprisoned while he was an inpatient. The AAT noted that lawful detention under the *Mental Health Act* (Qld) could amount to imprisonment, but that s.23(5)(a) had to be read with s.23(5)(b) which refers to lawful detention 'in a place other than a prison'. The term 'imprisoned' in s.23(5)(a) must mean lawful detention in a prison only. While Bulsey is in hospital he is legally detained, but not in a prison because the hospital is not designated as such under the relevant legislation.

In connection with the person's conviction

The DSS submitted that there did not have to be a causal connection between a person's lawful detention and the conviction. The meaning of 'connected with' was dealt with in several Federal Court decisions including *Perrett v Commissioner for Superannuation* (1991) 23 ALD 257. The term should be interpreted in the context of the particular legislation, and is: 'something more comprehensive than a causal relationship': Reasons, para.18.

The AAT identified the issue to be decided as whether there was a causal link between Bulsey's detention in hospital and his conviction. Bulsey had only been hospitalised because he was mentally ill and his illness was severe enough to warrant his detention in hospital. There was no link between his hospitalisation and his imprisonment or his conviction. Therefore s.23(5)(b) did not apply to Bulsey because there was no connection between his detention in hospital and his conviction.

Formal decision

The AAT set aside the decision under review and substituted a decision that Bulsey was not prevented from receiving sickness allowance because of the operation of s.1160.

[C.H.]

Wife pension: portability

SECRETARY TO DSS and SRPCANSKI

(No. 9095)

Decided: 29 October 1993 by G. Ettinger, J. Kalowski and A. Cripps

Srpcanski was granted a wife pension in 1979 and, when she returned to Macedonia to live permanently in 1982, her wife pension was paid to her overseas. A legislative change to the *Social Security Act 1947* restricted portability of wife pension to 12 months from the date of leaving Australia or from 1 July 1990 when the pensioner had left before that date. Srpcanski's pension was cancelled, last paid on 20 June 1991, when she did not return to Australia before 1 July 1991. Srpcanski returned to Australia on 8 August 1992 and lodged a new claim for wife pension which was granted from 13 August 1992. She applied for portability but was told that her pension would cease if she left Australia before 8 August 1993. Srpcanski returned to Macedonia, on her return ticket, on 5 September 1992 and her pension was cancelled from that date. The SSAT had set aside that decision and decided that Srpcanski had resumed qualification once she temporarily returned to Australia and her pension remained payable until she had been overseas for 12 months when she would again be disqualified.

The issues

The issues considered by the AAT were:

(i) whether the wife pension was correctly cancelled under s.1216;
(ii) the effect of s.1217 on the qualification and payabilityof wife pension;
(iii) whether s.1217 automatically reinstated pension rights and payments; and
(iv) whether s.1220 operated to prevent payment of Srpcanski's wife pension when she left Australia in September 1992.

The cancellation

The AAT said that both parties agreed that Srpcanski's wife pension had been correctly cancelled under s.1216 (the section restricting portability to 12 months) and that Srpcanski was not exempt by being an 'entitled person' under s.1216B.

The effect of the return to Australia

The main dispute was the effect of s.1217 which stated (1) that a person disqualified under s.1216 remained disqualified until returning to Australia and