

they do not know their TFN and that they authorise the Taxation Office to provide the TFN to the DSS, or a declaration that they have applied for a TFN and authorised the Taxation Office to tell the DSS if the TFN is issued what it is, or whether the application is refused or withdrawn.

#### No power to suspend

The Tribunal observed that the Act was silent on the matter of a person who was in Malloch's position of having no intention of applying for a TFN. It did not attempt to require people to apply for a TFN.

'The secretary is empowered to require the recipient of a disability support pension to give the secretary a written statement of the recipient's TFN or to authorise the Commissioner of Taxation to tell the Secretary the TFN. The Secretary has no power to require the recipient to supply a TFN which the recipient does not have and which the recipient has no intention of getting. The payment of Malloch's pension should never have been suspended.'

(Reasons, para. 5)

#### The DSS guidelines

The AAT also commented on the application of the DSS guidelines in this matter. In the view of the AAT Malloch should have been exempted under these guidelines in any event. It was noted that there was nothing in the guidelines which required all three points to be fulfilled. The disallowance of the exemption on the ground that he had not been in receipt of the pension for 10 years 'was not a balanced exercise of the discretion' according to the Tribunal.

#### Formal decision

The AAT set aside the decision under review to suspend payment of disability support pension.

[B.S.]

## Disability support pension: incapacity, whether condition diagnosed

CONWAY and SECRETARY TO DSS

(No. 9354)

**Decided:** 8 February 1994 by K.L. Beddoe, J. Billings and R.A. Joske.

On 27 March 1990, Conway applied for an invalid pension (now disability support pension) which was later granted by the DSS. In 1993, the DSS decided to cancel Conway's disability support pension. The decision was affirmed by the SSAT and Conway appealed to the AAT.

#### The legislation

Section 94(1) of the *Social Security Act 1991* specifies the qualifications for a disability support pension. As well as other requirements, the person must have:

- (i) a physical, intellectual or psychiatric impairment of 20% or more under the Impairment Tables (in Schedule 1B to the Act): s.94(1)(a) and (b); and
- (ii) a continuing inability to work: s.94(1)(c).

#### The facts

Conway, had not been employed since 1980 and gave his occupation as labourer. He was in receipt of unemployment benefits from 1980 until he applied for an invalid pension in 1990. In considering his application, the DSS had regard to a report dated 27 February 1990 by Dr Clifford, a Commonwealth Medical Officer who rated Conway as having a 5% impairment of the left index finger and a 10% impairment for an undefined psychological problem.

The DSS decided to cancel Conway's pension on the basis of an assessment by Dr Thong who assessed his disability under s.94 and Schedule 1B of the Act. He concluded that there was a combined impairment of 5%.

Conway argued that the assessment of Dr Thong failed to take into account the psychological problem, referred to in the report of Dr Clifford. Conway was not psychologically assessed by the DSS when reviewing his entitlement. He indicated to both the SSAT and the

AAT that he would refuse an invitation to attend a psychological assessment. Accordingly, the AAT found that it was unable to take into account any psychological or psychiatric impairment Conway might have. The AAT also found that it was unable to take into consideration Dr Clifford's 1990 opinion in determining the level of impairment under the impairment tables. His opinion was not relied on as it was not based on any independent expert evidence and it was given without the benefit of investigation or diagnosis.

#### Formal decision

The AAT affirmed the decision of the SSAT that Conway's pension should be cancelled.

[H.B.]

## Disability support pension: educational or vocational training

RAAD and SECRETARY TO DSS  
(No. 9346)

**Decided:** 4 March 1994 by B.A. Barbour, G. Stanford and D. Coffey.

Raad sought review of a decision of the SSAT which rejected his claim for the disability support pension (DSP). The claim had been rejected under s.94 of the *Social Security Act 1991*.

#### The issues

The DSS conceded that Raad satisfied ss.94(1)(b), 94(2)(a)(i) and 94(2)(a)(ii). That is, the DSS considered Raad's impairment to be of 20% or more, and that this impairment was of itself sufficient to prevent him from doing his usual work as well as other work for which he was skilled.

In contention was whether or not Raad's impairment would prevent him from undertaking educational or vocational training during the next two years, or whether such training would be unlikely to equip him to do work for which he was currently unskilled (s.94(2)(b)).