sion had to be determined pursuant to that legislation and not the repealed *Social Security Act 1947* under which Sting first received unemployment benefit.

The decision to increase Sting's rate of payment was taken under s.660G of the *Social Security Act 1991*, which requires the Secretary to make such a determination if satisfied that the rate being paid is less than the rate provided for in the Act. The date of effect of such a determination is, in accordance with s.660K, dependent on whether a person who receives a newstart allowance is given notice of a previous decision about that allowance, and if so, whether they apply to the Secretary for review of that previous decision within 3 months after such notice is given. In Sting's case this would mean that if it was determined that no such notice had been given, the date of effect of the decision to increase his rate of newstart allowance would be the date on which the previous decision took effect, that is 1 February 1991. If it were determined that he was given notice of the previous decision, then, as he had not sought review within 3 months of such notice being given, he could only be paid the increased rate of newstart allowance from the later date of 22 March 1994.

Notice of previous decision as to rate payable

The DSS argued that in making a decision about a claim for newstart allowance, it was only necessary that the DSS advise the applicant of the grant, the rate of payment, the date on which payments would commence and the manner in which payments would be made, and the letter dated 13 March 1991 complied with those requirements. Sting argued that the decision the DSS had to make was whether he would be paid at the single or married rate, and the letter of 13 March 1991 did not advise him of that decision.

The AAT decided that s.660G is only concerned with the rate of payment, and that the 'previous decision' referred to in s.660K must therefore be a decision about the rate at which payment of newstart allowance is made. It was sufficient that the letter dated 13 March 1991 advised Sting that the rate of unemployment to be paid would be $134.30. It was not necessary that he be advised of the way in which that rate was calculated.

The AAT determined that Sting had been notified of the previous decision about the rate of his newstart allowance and, as he had not applied for review within 3 months, the later determination to increase the rate could only take effect from the day on which he sought a review, 22 March 1994.

Formal decision

The AAT set aside the decision under review and substituted a new decision that Sting be paid newstart allowance at the married rate with effect from 22 March 1994.

[A.T.]

Newstart allowance: Finance Direction

JEPSEN and SECRETARY TO DSS (No. 10506)

Decided: 2 November 1995 by J.R. Dwyer.

Jepsen sought review of an SSAT decision of 10 May 1955 which affirmed a decision of the DSS to reject his claim for newstart allowance.

The facts were not in issue. Jepsen was employed by the ANZ Bank for 38 years. He was retrenched on 20 February 1992, and received a superannuation payment of $250,187. He claimed job search allowance which was granted from 18 March 1992, and after 12 months he claimed newstart allowance. In this claim he disclosed a superannuation fund credit of $188,298 in an annuity fund. On 18 March 1993 Jepsen's claim was rejected because his assets exceeded the asset limit.

Jepsen received a notice dated 18 March from the DSS advising him of the decision and setting out the assets being taken into account. On 28 February 1995 Jepsen lodged another claim for newstart allowance which was granted from 9 March 1995. On 13 March Jepsen asked the DSS to review its original decision to reject his claim for newstart allowance. The DSS affirmed its original decision and Jepsen requested review by the SSAT.

The legislation

On 18 March 1993 s.1118(1)(f) of the *Social Security Act 1991* provided:

> 'In calculating the value of a person's assets for the purposes of the Act (other than subparagraph 263(1)(d)(iv) and sections 1125 and 1126), disregard the following:
>
> ...
>
> (f) if the person has not reached pension age — the value of any compulsorily preserved superannuation benefit of the person;'

The Act was amended from 25 March 1993 by omitting paragraph (f) and substituting the following paragraph:

> 'f) the value of the person's investment in:
>
> ...
>
> (iii) a deferred annuity;
>
> until the person:
>
> (iv) reaches pension age; or ...

This meant that the annuity investment was a disregarded asset until Jepsen reached the age of 65.

The AAT agreed with the DSS that the law applicable to Jepsen's first claim was the legislation in force at 18 March 1993. Because his superannuation was voluntarily preserved, it had to be taken into account as part of Jepsen's assets.

Jepsen argued that he should have been told by the DSS in March 1993 that the law was about to change, and that he should lodge another claim after 25 March 1993. The DSS 'was blatantly negligent, in not advising me (Jepsen) of the changing legislation, on 25 March 1993': Reasons, para. 15. At the hearing evidence was provided that the DSS was to notify all people whose investment details had been recorded before 12 March 1993 of the change in the law. Jepsen was not advised, and the DSS acknowledged that he should have been.

Finance Direction

The AAT agreed with the DSS that there was no remedy available to Jepsen under the Act. The SSAT had explored the options of a Finance Direction or an Act of Grace payment. The DSS told the AAT that steps were being taken to consider whether a payment should be made to Jepsen pursuant to a Finance Direction. The AAT noted it did not have the power to order that a Finance Direction be made. It did, however, agree with Jepsen that:

> 'a client of the Department is entitled to be advised when a claim is rejected, of changes to the legislation which have already been passed and assented to, but have not yet come into operation, where those changes will have a substantial impact on the client's entitlements.'

(Reasons, para. 20)

Formal decision

The AAT affirmed the decision under review.

[C.H.]