ation fund. The benefits are 'not in the nature of an increase in the value of the amount invested': Reasons, para. 28.

The law

Section 8(1) of the Act defines 'income' as:

> '(a) an income amount earned, derived or received by the person for the person's own use or benefit; or
>
> . . .
>
> but does not include an amount that is excluded under subsection (4), (5) or (8);'

Section 8(2) refers to income being earned, derived or received by any means and from any source within or outside Australia.

According to s.8(8) any return on a person's investment in a superannuation fund is not to be considered income for the purposes of the Act. Section 9 of the Act defines 'return' in relation to an investment as 'any increase whether of a capital or income nature and whether or not distributed in the value or amount of investment.' A 'superannuation benefit' is defined as 'a benefit arising directly or indirectly from amounts contributed . . . to a superannuation fund in respect of the person'.

Conclusion

The AAT found that the definition of 'return' was inconsistent with a payment of moneys for a temporary illness. The benefit paid to Bond was not an increase in the value of his investment. According to the Trust Deed, Bond was entitled to a temporary benefit if he was absent from work because of a temporary incapacity for more than 3 months. He would then be entitled to 75% of his annual salary payable monthly. There was no qualification period for payment of this benefit. Therefore it was difficult to say that these payments were a return on an investment.

The definition of 'superannuation fund' in the *Tax Assessment Act 1936* which is referred to in the definition of 'superannuation fund' in the Act, states that it must be a scheme for the payment of a benefit upon retirement or death. This was a payment for temporary incapacity, not death or retirement. Therefore Bond was not receiving payments from a superannuation fund as defined in the Act.

Formal decision

The AAT affirmed the decision under review.

[C.H.]

Job search allowance: legacy not 'income'

SECRETARY TO DSS and HOWARD AND STYLES (No. 11641)

Decided: 25 February 1997 by S.D. Hotop.

The DSS sought review of a decision of the SSAT that a legacy of $10,000 received by Styles was not 'income' as defined in s.8(1) of the *Social Security Act 1991* (the Act), for the purpose of calculating the rate of partner allowance and job search allowance payable to Styles and Howard.

The facts

Howard and Styles lived in a *de facto* relationship. In December 1995, they lodged a claim for job search allowance (JSA) and partner allowance (PA) respectively and this was granted. In June 1996, Styles inherited $10,000. The DSS treated the amount as 'income' and calculated that in the fortnight it was received, the combined income of Styles and Howard exceeded the allowable limit for the payment of JSA and PA.

Income

The AAT afffirmed the decision of the SSAT that the legacy received by Styles was not 'income' as defined in s.8(1) of the Act.

Section 8(1) states relevantly that income means:

> '(a) an income amount earned, derived or received by the person for the person's own use or benefit; or
>
> (b) a periodical payment by way of gift or allowance; or
>
> (c) a periodical benefit by way of gift or allowance.'

An income amount is defined in s.8(1) to be valuable consideration or personal earnings or moneys or profits whether of a capital nature or not. Section 8(2) states that 'an income amount earned, derived or received' refers to:

> '(a) an income earned, derived or received by any means; and
>
> (b) an income amount earned, derived or received from any source (whether within or outside Australia).'

The AAT found that the legacy was a gift by will, but it was not periodical and so did not fall into paragraphs (b) or (c) of s.8(1).

Notwithstanding the width of the wording of the statutory definition in paragraph (a), the AAT found that the definition should be read down according to its context, following the decisions of the Federal Court in *Secretary to DSS v Read* (1987) 15 FCR 456; Ryan J in *Kelleners v Secretary to DSS* (1988) 20 FCR 53 (p.61) and of the AAT in *Hungerford and Repatriation Commission* (1990) 21 ALD 568 (pp.574-5); and declining to follow *Secretary DSS and Webster* (1995) 38 ALD 477. It concluded that the express reference to periodical gifts in paragraphs (b) and (c) of the definition was exhaustive, and so a single, non-periodical payment or benefit by way of gift would not be caught by paragraph (a).

Formal decision

The AAT affirmed the decision of the SSAT that a legacy was not income.

[M.S.]

Disability support pension: is UK rent assistance income for income test purposes?

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DAVIES and SECRETARY TO DSS (No. 11391)

Decided: 14 November 1996 by M.T.E. Shotter.

The facts

Davies was born in the UK in 1942 and came to Australia in 1977. He went back to the UK in July 1994 and has not returned to Australia.

He was granted what was then an Australian invalid pension (now known as disability support pension — DSP) with effect from 14 September 1989.

On 4 July 1995 Davies wrote to the UK DSS office in Manchester seeking details of possible financial assistance he was eligible for. He told the DSS he had been granted rental assistance by his local council. The assistance was paid to Davies but he merely passed it on to his landlord.

Davies responded to a DSS questionnaire in July 1995 and on 2 August 1995 the Department decided to reduce his DSP. Davies had told the DSS in his July