

of the *Acts Interpretations Act* had no operation because the transitional provisions of the 1991 Act had expressed a contrary intention.

In November 1991 an amendment to the 1991 Act abolished the invalid pension and replaced it with the disability support pension. There were no transitional provisions and so s.8 of the *Acts Interpretations Act* applied. According to s.8 the amendment repealing the invalid pension did not affect any right under the Act which was repealed. Therefore Cosmano continued to be entitled to be assessed as to his eligibility for an invalid

pension under the 1991 Act. The AAT had decided that Cosmano was entitled to a disability support pension from 1989. This was an error as there was no preservation of a right that did not exist prior to the disability support pension coming into effect.

#### Medical evidence

The Federal Court declined to make any finding as to Cosmano's medical disability as these were factual questions. However Heerey J noted that the AAT failed to make any precise finding as to the degree of Cosmano's incapacity. It sim-

ply found that Cosmano was unable to undertake his normal occupation or any other occupation because of his medical conditions. The Court also found it difficult to decide under which piece of legislation the AAT had granted the disability support pension given that the eligibility requirements are different under the 1947 Act to the 1991 Act.

#### Formal decision

The Federal Court remitted the matter back to the AAT to be determined according to law.

[C.H.]

## SSAT Decisions

### Youth allowance: transitional provisions

CR

Decided: 21 September 1996

CR was receiving newstart allowance until 21 June 1998. On 22 June 1998 she went overseas and returned to Australia on 9 July 1998. On 20 July 1998 she lodged a claim for newstart allowance which was rejected. Because of CR's age, if she claimed youth allowance she would be subject to the parental income test. This would preclude her from receiving any payment.

According to the transitional provisions relating to the introduction of youth allowance, a person who was receiving newstart allowance prior to 17 June 1997 (when the change to the youth allowance was announced), and was under the age of 21 could continue to receive newstart allowance following the introduction of youth allowance on 1 July 1998 (see s.115(1) of the transitional provisions). That provision also requires that the person did not cease to be and was immediately before 1 July 1998 a recipient of newstart allowance. The problem for CR was that she was not receiving newstart allowance immediately before 1 July 1998. The SSAT considered the term 'receiving a benefit' in s.23(4) of the *Social Security Act 1991* (the Act), which provides that the person continues to receive a payment until the last day it is payable. CR continued to receive her payment until she failed to lodge a fortnightly form. Payments ceased to be payable from the first day in that period. CR did not return a form on 18 June 1998 so her payment ceased to be payable from that date. The SSAT also considered whether the short break should be ignored pursuant to

s.38B of the Act, which provides for a notional continuous period of receipt of income support payments, where the break in payment does not exceed 6 weeks.

To decide whether s.38B overrode clause 115 the SSAT referred to the explanatory memorandum. It explained that newstart allowance could continue to be paid 'provided they are still receiving newstart allowance at 1 July 1998'. The Tribunal decided that it was mandatory that CR be receiving newstart allowance immediately prior to 1 July 1998.

### Re-establishment grant: 'effective control' of farming enterprise

DL

Decided: 25 September 1998

The decision under review was to reject a claim for payment of a re-establishment grant under the Restart Re-establishment Grant Scheme 1997. DL's claim was rejected because it was decided he was not effectively in control of his farm enterprise from 4 September 1997 when he entered into a contract to sell the farm. First the SSAT had to decide whether it had jurisdiction to hear the matter. The relevant legislation was the *Farm Household Support Act 1992* and in particular s.8B and s.8C setting out the qualifications. The farm family restart scheme was introduced on 1 December 1997 to assist farmers wishing to leave the industry to qualify for a grant of up to \$45,000. The farmer must satisfy the qualifying conditions for restart income support under s.8B of the *Farm Household Support Act*. Section 8C requires the person to be ef-

fectively in control of the farm that relates to the claim.

DL's evidence was that he was still trading and thus in control of the farm after 4 September 1997 until settlement date at the end of January 1998. DL decided to sell the farm when he could not get any further finance. DL described his activities following signing the contract of sale as including all the activities associated with running a farm. The SSAT noted that one of the conditions of sale was that DL retained ownership of all growing crops on the property, and that he did not sell his stock, crops or equipment associated with his farming operations.

With respect to jurisdiction the SSAT noted that the Restart Re-establishment Grant Scheme states that Chapter 6 of the *Social Security Act 1991* applies to decisions made under the Scheme. This gave the SSAT jurisdiction. The Scheme states that a person is qualified if they were eligible for restart income support. A person is not qualified for restart income support if the Secretary determines that the person is not effectively in control of their farm enterprise. The SSAT considered the term 'effective control', noting that it had not been defined under the Act. However the *Bankruptcy Act 1966* used the same term, and the Federal Court had said the term should be given its ordinary meaning and not be restricted by a requirement to show a traditional legal or equitable interest in the property. Dictionary definitions refer to exercising restraint or direction over a project or undertaking. Whilst noting that the purchaser of a property obtains an equitable interest once the contract becomes unconditional, the SSAT found that DL retained the legal interest, title and possession to the property. The pur-

chaser's equitable interest did not mean that DL lost effective control. DL's farm enterprise was raising stock and growing crops. He maintained possession of the property and continued those activities until settlement. The Tribunal referred to the notes to s.8C, the explanatory memorandum and Centrelink's guide to assist it to come to its conclusion that DL was in effective control of the farm enterprise.

### ***Income test: employer provided benefits***

**LM**

**Decided: 15 September 1998**

LM received family payment. In 1997 she advised Centrelink that she had en-

tered an agreement with her employer and she now had access to a car for private use for which she paid her employer \$70 a week. Centrelink treated provision of the car as an employer provided benefit and included extra income of \$3250 a year to LM's income.

LM told the SSAT that the decision was unfair because it did not take into account that she paid her employer \$70 a week for the use of the car. She said she did not have to pay for petrol, maintenance or insurance, and had almost unrestricted use of the car for her private use. If someone at work needed the car for work it would be given to the other employee. As well as paying \$70 a week LM gave up her right to time off in lieu of unpaid overtime.

The SSAT referred to s.1157K of the *Social Security Act 1991*, which sets out the method for valuing car fringe benefits. There was no provision in the Act to discount the maintained income figure (calculated by reference to s.1157K), by the amount LM pays to her employer for the benefit. Whilst noting that this may have been an oversight in the Act, the SSAT concluded that it had no discretion to reduce the maintained income figure.

[C.H.]

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