But the AAT was not prepared to adopt a purposive approach to the interpretation clause in s.59(1):

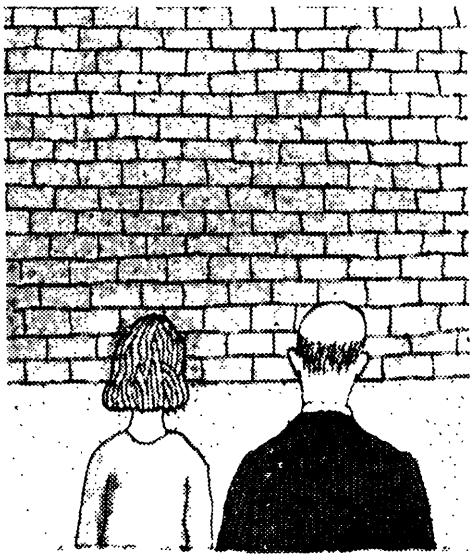
> It is the view of the Tribunal that while this approach to statutory interpretation may well be applicable to the Act in appropriate circumstances, the present is not such a case. The condition precedent to the application of this approach is primarily ambiguity, with more than one equally plausible interpretation of the section being seemingly available . . . Shortly before the handing down of the decision herein a Bill for an Act to amend the *Acts Interpretation Act* 1901 was introduced into the Parliament the provisions of which would reinforce this approach. But the rule does not apply simply because the proved facts when set against the relevant statutory provision do not offer an obvious and immediate answer to the question in issue. In the present case the relevant statutory expression has required careful consideration in order to elucidate its meaning, and could, we feel, no doubt have been drawn in a more helpful way, but that does not necessarily mean that it is ambiguous.

(Reasons for Decision, para. 27.)

The Tribunal's assessment

The AAT treated two elements of the relationship between Tang and C as showing that it was stable, permanent and similar to a marriage relationship. The first of these was the arrangement for the purchase of the house:

> In the absence of the joint beneficial ownership of the home, the relationship may well be said to be akin to a stable 'group house', indeed some may well say that the joint ownership is a function of a very stable group house, but in our view the fact of joint tenancy puts paid to any reasonable argument that this is a mere group house. In our view, a decision that the property should vest absolutely in C in the event of the applicant predeceasing him, rather than in her son, indicates a deep longstanding relationship with



> no legitimate expectation of termination. It cannot be an answer to this in the present context to point to the fact that the parties have not made a formal lifetime commitment to each other.
>
> 24. The fact of joint ownership of the home, especially it being joint tenancy, in our view colours the whole relationship. It connotes a very considerable degree of financial interdependence and its survivorship implications are even more telling than if the applicant made a will in C's favour.

(Reasons for Decision, paras 23–4.)

[It should be noted that in *Semple* (Q81/6); reported in *Social Security Reporter*, No. 1 (June 1981) p.6, but not referred to in this case, joint ownership of a house was also treated as critical.]

The second element was the day-to-day financial relationship which contained 'no procedure for systematically determining if the parties are bearing an equal burden [nor] any attempt to actually share the expenses':

> The financial relationship in our view amounted to an effective pooling of resources to the extent that we conclude that the applicant and C in fact support each other.

(Reasons for Decision, para. 24.)

While Tang and C did not have an exclusive sexual relationship, this did not establish that they were not living as if they were married:

> This aspect of the relationship again raises the varied 'standard' of marriage with which we attempt to compare the relationship under discussion. While without doubt this type of sexual freedom would be inconsistent with 'traditional' concepts of marriage current in former days, it would not be unreasonable in our view to say that it is not inconsistent with some modern forms of marriage.

(Reasons for Decision, para. 25.)

No doubt, the AAT said, the circumstances of Tang and C were unlike

> the traditional situation of the bread winner husband the wife and mother at home, but it is not against this stereotype alone that relationships of the kind in question should be considered. Marriage has proved to be a flexible institution and its variants are numerous.

Nor should the parties' subjective opinion of their relationship be treated as of much significance. It was the objective factors at which the AAT should primarily look:

> To overemphasize the subjective element is to beg the question, for while the applicant and C were adamant that they rejected marriage as an alternative for them, this in effect is the starting point of our enquiry and not its conclusion.

(Reasons for Decision, para. 26.)

The AAT therefore confirmed the decision of the delegate of the Director-General to cancel Tang's widow's pension.

Special benefit: applicant under 16

BEAMES and DIRECTOR-GENERAL OF SOCIAL SERVICES (No. V80/71)

Decided: 11 June 1981 by R. K. Todd.

Shane Roy Beames was born in July 1965. He left school before his 15th birthday—in March 1980. Since leaving school he had worked occasionally in his father's bicycle repair shop but he had been unable to find any regular work. He had 'been most assiduous in attempting to find work' but 'generally he cannot even get to the interview stage'—'youth unemployment in his [Victorian provincial] city is high': Reasons for Decision para. 5.

During the whole of this period he lived at home with his parents and three siblings; and, for most of that period, his parents had supported him.

As he was under the age of 16 he was not eligible for unemployment benefit: s.107(1)(a), *Social Services Act*. He applied for special benefit but this application was rejected and, after an appeal to an SSAT, he applied to the AAT for review of the rejection.

Special benefit is payable under s.124 of the *Social Services Act*:

> 124. (1) Subject to sub-section (2), the Director-General may, in his discretion, grant a special benefit under this Division to a person—
>
> (a) who is not in receipt of a pension under Part III or IV, a benefit under Part IVAAA, an allowance under Part VIIA of this Act or a service pension under the *Repatriation Act* 1920;
>
> (b) who is not a person to whom an unemployment benefit or a sickness benefit is payable; and
>
> (c) with respect to whom the Director-General is satisfied that, by reason of age, physical or mental disability or domestic circumstances, or for any other reason, that person is unable to earn a sufficient livelihood for himself and his dependants (if any).

[It should be noted that, in deciding on this application for review, the AAT 'stands in the shoes' of the Director-General: its responsibility is to decide the matter on its merits, re-exercizing, as it thinks appropriate, any discretions vested in the original decision-maker. The AAT is *not* confined to deciding whether the Director-General's decision was defensible, reasonable or valid; rather, the AAT makes a new decision on the merits—the decision to grant or refuse special benefit is 'in its discretion'.]

Parental obligation to support children

The AAT referred to the legal obligations of parents to maintain their children under the age of 18 years. Section 73 of the *Family Law Act* 1975 (Cth) provides:

> The parties to a marriage are liable, according to their respective financial resources, to maintain the children of the marriage who have not attained the age of 18 years.

The Tribunal continued:

> It follows that where parents have the financial capacity to support a child, and do in fact provide that support, even if their resources are limited, there is little ground for considering that community resources should be used for the support of the child and for exercising the discretion accordingly. I say this bearing in mind that at least this can be said, that s.124 appears to be directed towards very fundamental levels of support. It is there to ensure 'a sufficient livelihood' to the person in question. The relevance of these considerations in this case is that the applicant's parents have been able to support him and have done so. He has had a sufficient livelihood. I do not say, and I do not think it would be a proper approach to say, that simply because someone has in fact managed to survive he should not receive benefit in respect of the straitened times that have passed albeit that during the time of need an exercise of the discretion to pay special benefit would have been appropriate. I am rather saying that in this particular case the parental

support to which the applicant was entitled has in fact been forthcoming and his need for special benefit thus negatived.

(Reasons for Decision, para. 10.)

Special benefit not a complete substitute for unemployment benefit

A second factor which told against Beames' application was the age criterion for unemployment benefit:

> An exercise of the discretion conferred by s.124(1) to make a payment of special benefit in favour of the applicant for no other reason than he is under the age of 16 years, and that he satisfies the remaining criteria in respect of receipt of unemployment benefits, would be to ignore the specific statutory direction that unemployment benefits [*sic*] are not to be paid to a person who has not attained the age of 16. [That] would be to assume a power to repeal the age limitation imposed by Parliament in s.107. Parliament could not in my opinion have intended that the discretion contained in s.124 should be used in this way.

(Reasons for Decision, para. 11.)

Departmental instructions—creating more problems than they solve

The DSS had rejected Beames' application for another reason. A review officer ad told him 'that to be eligible for special benefit he had to be employed for thre months or where possible long term permanent employment ceased due to unforeseen circumstances'. And the DSS's Unemployment and Sickness Benefit Manual included the following statement:

> As special benefit is intended to be granted only where the claimant has established, or where there was reasonable expectation of his establishing, some financial independence from his parents, payment will generally be made only where the claimant had commenced a full-time job of permanent or indefinite duration . . . or would have commenced such a specific job but for reasons beyond his control.

The AAT commented, and concluded, as follows:

> 13. Two things may be said of this approach. One is that it is understandable that guidelines should be laid down for the assistance of Departmental officers in their administration of the Act. But generalised restatements of the effect of legislation can breed more problems than they solve, and they can concretise in the form of rules what are only suggestions. The requirement of 'financial independence from parents' may itself have problems. What if the applicant, despairing of finding work in his home city, had left for the capital of his State, to seek his fame and fortune, but had failed to get a job? Jobless and under the age of 16, and in fact unsupported by his parents, it would surely appear that he could be a proper case for special benefit. Likewise, even accepting the test of 'financial independence' it can hardly be said to be satisfied by a person having had, as opposed to having, employment. It seems odd that the present applicant would apparently have been treated as entitled to special benefit if he had worked full-time at a job of permanent or indefinite duration, but had then lost that job and relapsed into precisely the same domestic and financial situation in which he was placed after the casual work with his father ceased. The essence of the matter is that s.124(1) of the Act confers a discretion that should be exercised according to the criteria expressed in it and conformably with the Act as a whole. The exercise of the discretion should not be otherwise limited.
>
> 14. The truth is in this case that the applicant has not been able to earn a sufficient livelihood for himself. But, because his parents have discharged their parental, moral and legal obligation to maintain him, he has not been without a sufficient livelihood. Accordingly there seems to me to be no adequate reason to exercise the discretion conferred by s.124(1) in his favour. In so finding I have not overlooked the fact that s.124(1)(c) makes inability to 'earn' a sufficient livelihood one of the criteria for the exercise of the discretion. It does not make absence of such a livelihood one of such criteria. This aspect of the problem was not raised before me in argument, and I would not wish in any way to appear to be deciding it for the future. More extreme cases might be supposed, from which it would appear unlikely that it should be concluded that the enquiry should be limited to whether there is inability to earn a sufficient livelihood, and not take into account whether a sufficient livelihood is in fact otherwise provided. What, for instance, of a case in which a claimant has a substantial income from investments, but is unable to 'earn' a sufficient livelihood? For present purposes, however, I am content to say that a case in which there has been support by parents is not one in which the discretion should be exercised. Also, as previously stated, it is not in my opinion a reason for the exercise of the discretion that had the applicant attained the age of 16 years he would have been entitled to unemployment benefit.
>
> 15. In all the circumstances, I consider that I have no option but to affirm the decision of the respondent, made by his delegate, not to pay special benefit to the applicant.

(Reasons for Decision, paras 13–15.)

Recent AAT decisions

These decisions will be reported in more detail in the next issue of the *Reporter*.

- **IVOVIC and DIRECTOR-GENERAL (No. V81/21)**

Decided: 15 July 1981

Repayment of sickness benefit following settlement of damages claim—Director-General's discretion to waive repayment in 'special circumstances': decision affirmed.

- **R. C. and DIRECTOR-GENERAL (No. N80/35)**

Decided: 16 July 1981

Widow's pension—cancellation on ground of 'cohabitation'—jurisdiction of AAT—AAT's power to 'stay' cancellation pending hearing of appeal—admissibility of Family Court documents—meaning of 'living . . . as husband and wife': decision affirmed.

- **McAULEY and DIRECTOR-GENERAL (No. Q81/17)**

Decided: 20 July 1981

Child endowment—overpayment—discretion of Director-General to recover by deducting from current entitlement—no evidence of hardship: decision affirmed.

- **GRECH and DIRECTOR-GENERAL (No. V81/4)**

Decided: 31 July 1981.

Invalid pension—whether maintenance paid for children (not in pensioner's custody) should be deducted from pensioner's income for purposes of income test—whether those children should be treated as dependent on the pensioner: decision set aside.

- **EDWARDS and DIRECTOR-GENERAL (No. V80/72)**

Decided: 31 July 1981.

Sickness benefit—recovery of benefit payments where beneficiary receives lump sum workers' compensation payment—can part of that lump sum 'reasonably be regarded' as related to period when sickness benefit was paid? Decision set aside.