Over a period of a few months, Waterford and Mr I began to share the cost of buying food, which the appellant cooked for her family and Mr I. After about one year of this arrangement, Mr I moved into P's house and he and Waterford abandoned the cost sharing and cooking arrangement.

At various times Waterford and Mr I went away together to greyhound meetings in country towns, when they shared a motel room and sometimes a bed. On these occasions, Mr I had booked rooms in the names of 'Mr and Mrs I'; but Waterford told the AAT that she had not authorized this, that she did not use Mr I's name and corrected anyone who addressed her as Mrs I. While they were on friendly terms, there was no sexual relationship (according to Waterford, whose evidence was accepted by the AAT).

A written statement signed by Mr I (in February 1980) confirmed these facts, but it did claim that Mr I had supported the appellant 'fully, for the past two months or so'. The AAT said that, while it received the statement, it would not give the statement any weight against the clear evidence of the appellant:

> . . . the non-attendance of Mr I to give evidence must greatly detract from the weight that can be given to it. When in factual cases the Tribunal has had the benefit of the sworn evidence of a witness who has appeared before it and been subjected to cross-examination, its reliance upon written statements by persons who have not so appeared and the circumstances of the prepartion of which are not known, will be of minimal weight.

(Reasons for Decision, para. 11).

**The meaning of the 'cohabitation rule'**

The AAT then turned to the excluding clause in the s.59(1) definition of 'widow': could it be said that Waterford was 'living with [Mr I] as his wife on a *bona fide* domestic basis although not legally married to him'?

> [T]he proper approach, we consider, is to regard the phrase as a whole and not to break it up into individual words. So doing, it must be seen as a legislative expression of a view that a woman whose relationship with a man has all the *indicia* of marriage save only that it lacks a legal bond shall not obtain the advantage of a widow's pension which she would otherwise obtain by reason of her having come to fall within the general description of 'widow' or within the extended descriptions provided for by one or other of paragraphs (a) to (e) of the definition. A widow in fact, or by application of the extended definitions, no longer has a man to support her. But if she replaces the lost relationship which had formerly afforded her that support with another relationship that is the equivalent of marriage and which should therefore in theory return her to a situation in which she is supported, then her status as a widow within the definition is lost notwithstanding that the new relationship is not supported by a legal bond. She is to be treated as if she had remarried, an action which would have destroyed her status as a widow in the ordinary way had she been such.

(Reasons for Decision, para. 15)

The AAT then observed that judicial decisions in matrimonial law (on the question whether a marriage relationship had ended despite the husband and wife continuing to live under the one roof) 'must be approached with great caution' in answering the cohabitation issue. Amongst the reasons offered by the AAT were the following:

> (iii). . . [T]he absence of financial support following an alleged breakdown of the marriage may not indicate a destruction of *consortium vitae* where the parties were formerly, and contentedly, financially independent. But when we are considering the reverse situation, we are looking at a case where no prior situation existed between the particular parties. We have therefore to make assumptions as to what are the *indicia* of a marriage relationship, having regard to the age and circumstances of those parties and decide whether enough of those *indicia* may be identified as having come into existence for the marriage relationship to be deemed to have commenced. There is a traditional and legal obligation placed upon a husband to support his wife. It would be difficult to assume, unless other *indicia* were overwhelming, the existence of a marriage relationship where the man does not support the woman but simply contributes the cost of his own maintenance.
>
> (iv) Finally, matrimonial law deals with the whole spectrum of relations within marriage. Here however, we are dealing with legislation the whole purpose of which is related to financial support, and while we are not inclined to agree, without the matter being fully argued, with those who contend that financial support is the sole determinative factor in these cases (see the very helpful article by M. J. Mossman 'The Baxter Case: De Facto Marriage and Social Welfare Policy' (1977) 2 UNSW Law Jo. 1) the answer to the question whether financial support is provided by the man with whom an applicant for a pension is alleged to be living on a *bona fide* domestic basis must be of very great significance. How can there be a real and genuine domestic basis to such a life unless such a basic feature of domestic life be present?

(Reasons for Decision, para. 16)

The AAT then concluded that there was little in the evidence to support the view that Waterford was living with Mr I as his wife on a *bona fide* domestic basis. Even if there had been a sexual relationship, the AAT 'might still not in today's world have been very quick to conclude from what may have occurred there that the two persons in question had embarked on a marriage relationship'—'an affectionate companionship', perhaps, but that did not amount to living together as husband and wife:

> What is important is that even when they were living nominally under the one roof, in the caravan, there was apparently no recognition of any willingness on the part of Mr I, nor any expectation on the part of the applicant, that she should be financially supported by him. There was simply a mutual willingness to share the shelter which he, and the housekeeping capacities which she, could provide. The case is undoubtedly close to the line, but in all the circumstances, and emphasising the need to view closely all of the circumstances of each particular case, we have come to the conclusion that the applicant was not at the relevant time living with Mr I as his wife on a *bona fide* domestic basis.

**The commencement date issue**

Waterford gave evidence that she had handed in a completed application form at the local DSS office in late 1978, but that a person in the office told her to keep the form and wait for 'someone to call on me'.

The AAT accepted this evidence, and also accepted that Waterford waited in vain until July 1979 when she wrote to the Department enclosing the seven-month-old application form.

The Tribunal decided that Waterford had lodged her application form on 17 December 1978 and, by reason of s.68 of the *Social Services Act* 1947, her entitlement to a widow's pension should start on that date:

> 68. (1) Where a widow's pension is granted, it shall be paid from a date determined by the Director-General, but the date so determined shall not, subject to his section, be prior to the date on which the claim for the pension was lodged or later than the first pension pay day occurring after the date on which the claim was lodged, except where the determination of the claim has been delayed by neglect or default on the part of the claimant, in which case the Director-General shall fix such later date of commencement as he considers reasonable in the circumstances.

The Tribunal said:

> We do not consider that the date of commencement of the applicant's entitlement, which is governed by the provisions of s.68 of the Act, can be affected by the fact that the officer at the counter, quite wrongly in our opinion, handed the application form back to the applicant.

(Reasons for Decision, para. 20.)

**Procedure—a question of time**

In the course of their Reasons for Decision, the AAT considered what was 'the appropriate time to which attention should be directed for the purpose of ascertaining the applicant's rights to a pension'. The AAT said that s.68 (quoted above) emphasized the date when the claim for pension was lodged:

> Therefore attention should be concentrated upon the facts in existence at the date of lodgment of the claim. Such was the duty of the officer who made the decision that has eventually made its way along various paths to this Tribunal. It seems to us that the effect of these provisions, but particularly of s.68, is that the applicant's rights are to be determined in the light of the factual situation existing at the date of lodgment of the claim. On the other hand later occurring facts may be relevant for the purpose of evaluating the evidence given of the facts existing at the relevant time, and for the purpose of drawing any necessary inferences from them. It would not be proper to restrict our reception of evidence in any narrow way to evidence of the originally existing facts . . .
>
> 13. If what we have said does represent the correct approach it will be essential that all necessary steps requisite for bringing applications for review on for hearing be taken promptly. Further, all unsuccessful claimants should be advised that if an appeal is contemplated or even if it has already been initiated, any change in circumstances should be made the subject of a fresh application to the Department for a pension. This will enable the fullest consideration of the matter by this Tribunal.

(Reasons for Decision, paras 12–13).

# Jurisdiction: no 'decision'

**LAWSON and DELEGATE OF DIRECTOR-GENERAL OF SOCIAL SERVICES (No. T80/5)**

**Decided:** 12 December 1980 by J. D. Davies, J. E. Smith and M. S. McLelland.

This was an application for review in which the Administrative Appeals Tribunal (AAT) found that there was no decision which it could review. By reaching that conclusion, the AAT was able to avoid a difficult and important problem inherent in the income tests for pensions under the *Social Services Act*.

Lawson had been granted an invalid pension from 11 July 1974. At the time he was paid at the maximum rate—that is, his pension was not reduced to take account of any other income which he received. Section 28(2) of the *Social Services Act* deals with this reduction (or imposes the income test):

> 28(2) The annual rate at which an age or invalid pension is determined shall, subject to subsection (2AA), be reduced by one-half of the amount (if any) per annum by which the annual rate of the income of the claimant or pensioner exceeds—
> (a) in the case of an unmarried person—$1,040 per annum; or
> (b) in the case of a married person—$897 per annum.

Section 46(1)(a) gives the Director-General the power to reduce or increase the rate of pension currently being paid to a pensioner if there are changes in the pensioner's income.

Apparently, Lawson's problem was that he earned other income on a casual and irregular basis. How (and when) was 'the annual rate of the income' to be calculated? There are several possible methods:

(1) The calculation could be based on fixed (and successive) periods of 12 months each. These periods could
  (a) begin on the date when the pension was granted and on each anniversary of that date;
  (b) coincide with each calendar year; or
  (c) coincide with each financial year.

(2) The calculation could be made every few months, using a twelve month period which
  (a) ended on the day when the calculation was made;
  (b) began on the day when the calculation was made; or
  (c) began six months before the day on which the calculation was made

(3) The calculation could be made every few months by taking the then current weekly income of the pensioner and multiplying it by 52.

(4) The Department could adopt 'an "earnings year", beginning on the date of the grant of the pension and subsequent anniversaries of that date, and allow payment to a pensioner, being a casual or intermittent worker, of the full pension without deduction from the beginning of the earnings year until the time when he has earned $1040 and thereafter reduce his pension by 50% of the income earned during the remainder of the year'.

It was this last option (described by the DSS as the 'earnings concession') which the DSS had applied to Lawson.

However, on 1 June 1979, the DSS wrote to Lawson in the following terms:

> After 11 July 1979 we must, when you are employed, include your earnings as an annual figure, which, on your most recent rate of earnings would make you ineligible for pension for the periods that you are employed.

The intention of this letter seemed to be that it would adopt option (3), above, in calculating Lawson's 'annual rate of income'. However, despite this letter, the DSS did not make any decision under s.46(1) to reduce the rate of Lawson's pension.

Nevertheless, Lawson appealed to a Social Security Appeals Tribunal (SSAT) and, on 24 December 1979, the SSAT recommended that the 'earnings concession be granted'. On 2 May 1980, a delegate of the Director-General wrote to Lawson in the following terms:

> I have concluded that your pension entitlement should be calculated on the basis of your annual rate of income. This current rate of income has been determined at $2718 which is based on your latest rate of earnings . . .

However, Lawson's pension was not reduced until August 1980, when the DSS made a decision under s.46(1) to reduce Lawson's pension as from 11 July 1980, by assuming an annual rate of income *from* that date of $2812 (so adopting option (1)(a), above).

The AAT decided that there was 'no decision . . . made by any oficer of the Department of Social Security in June 1979 or in May 1980 which altered the rate of Mr Lawson's pension'. (Indeed, he was paid the full rate of pension up to 11 July 1980.) The reduction in August 1980 was not based on the May 1980 calculation but on a new calculation of annual income. '[T]he decision in principle was not put in force.'

The AAT said:

> But it is not the function of the Administrative Appeals Trbiunal to give advice, save on a reference under s.59 of the *Administrative Appeals Tribunal Act* 1975, or to expound upon a proposed course of action. The function of the Tribunal is to review a decision which affects an applicant's rights. In this case, no such relevant decision was made. Mr Lawson received the full pension without deduction. The material before us does not disclose any relevant decision under s.46(1) of the *Social Services Act* that his pension be reduced.

So far as the decision of August 1980, the AAT pointed out that it was 'not one which this Tribunal may presently review. It has not been the subject of a decision of a Social Security Appeals Tribunal and it has not been reconsidered by the Director-General. It is not the subject of any application before this Tribunal'.

[**Note:** It would, of course, be open to Lawson to appeal against the August 1980 decision—he would, of course, need to take that appeal first to an SSAT, under clause 24A(1) of the Schedule to the *Administrative Appeals Tribunal Act*.]

# Sickness benefit: late application

**WHEELER and DIRECTOR-GENERAL OF SOCIAL SERVICES (Q80/12)**

**Decided:** 26 February 1981 by A. N. Hall, M. Glick and M. McLelland.

On 17 January 1980 E. G. Wheeler applied to the Department of Social Security (DSS) for sickness benefit, claiming that he had been 'incapacitated for work by reason of sickness' since 26 January 1979. The qualifications for sickness benefit are set out in s.108(1) of the *Social Services Act*:

> 108(1) Subject to this Part, a person . . . is qualified to receive a sickness benefit in respect of a period . . . if, and only if—
> (a) [specifies minimum and maximum ages];
> (b) [requires residence in Australia]; and
> (c) the person satisfies the Director-General that, throughout the relevant period, he was incapacitated for work by reason of sickness or accident (being an incapacity of a temporary nature) and that he has thereby suffered a loss of salary, wages or other income.

Wheeler had a well-documented record of medical treatment (for acute allergic bronchitis) over the period between February 1979 and January 1980; and had been medically certified as unfit to work at least from 7 November 1979 onwards. He claimed that he had abandoned his business (a caravan park in Hughenden, Queensland) in January 1979 because of his illness but had hoped that his condition would improve sufficiently to enable him to return to work.

**The original DSS decision**

On 6 February 1980 the DSS rejected Wheeler's claim on the ground that he had not suffered loss of income by reason of his incapacity. (The DSS did not at this stage consider the separate issue of whether, if Wheeler was qualified for sickness benefit, payment could be back-dated.) On 18 February 1980 Wheeler appealed to a Social Security Appeals Tribunal (SSAT).

Meanwhile, Wheeler had been examined by a Commonwealth Medical Officer, who certified that he was suffering from chronic obstructive airways disease; and that he was permanently incapacitated for work to the extent of 85% or more. The DSS accordingly accepted Wheeler as qualified for invalid pension (within s.24 of the *Social Services Act*) as from the date of his application for sickness benefit, 17 January 1980. (Under s.145 of the *Social Services Act* the Director-General may treat a claim for one type of pension allowance or benefit 'as a claim for whichever pension, allowance or

benefit under this Act is appropriate'.

However, Wheeler persisted with his appeal to the SSAT: he wanted a back-dated sickness benefit for the period January 1979 to January 1980. There is no power under the *Social Services Act* to back-date payment of an invalid pension; however, s.119 of the Act deals with the payment of sickness benefit:

> (2) Subject to the next succeeding sub-section, a sickness benefit payable to a person is, if a claim for the benefit is lodged within thirteen weeks after the day on which the person became incapacitated, payable—
> (a) in a case to which the next succeeding paragraph does not apply—from and including the seventh day after the day on which he became incapacitated; or
> (b) in the case where the sickness benefit became payable to him within the period of twelve weeks after the expiration of a period of incapacity in respect of which, by reason of the operation of the last preceding paragraph, sickness benefit was not payable—from and including the day on which he became incapacitated.
>
> (3) If a claim for a sickness benefit is not lodged within the time specified in the last preceding sub-section, the benefit shall be payable from and including the day on which a claim for the benefit is lodged, unless the Director-General is satisfied that the failure to lodge the claim within that time was due to the incapacity or to some other sufficient cause, in which case the benefit shall be payable from and including the seventh day after the day on which the claimant became incapacitated, or from such later date as the Director-General considers to be reasonable in the circumstances.

**The DSS reconsiders**

The DSS, after Wheeler lodged his appeal, reconsidered the sickness benefit claim and, on 26 March 1980, accepted that Wheeler had become incapacitated for work on 26 January 1979 and had suffered loss of income since that date. The DSS wrote to the SSAT advising that Wheeler's claim was now accepted and that the DSS would pay him sickness benefit from the date he had lodged his claim—of no value to Wheeler, as he had been paid invalid pension from that date. (The officer who reviewed Wheeler's file noted that the claim for benefit had been lodged outside the 13-week time limit in s.119(2); no consideration was given to whether there was any 'sufficient cause' for the late lodgment: see s.119(3).)

**The SSAT decision**

The SSAT considered Wheeler's appeal on the basis of the DSS file; it did not contact Wheeler. However, it came up with recommendation that Wheeler be granted sickness benefit back-dated to 14 November 1979. The SSAT selected this date because, in its view, the only medical evidence of incapacity on the file was a certificate, signed by a Dr Acutt, that Wheeler was incapacitated for work from 7 November 1979; the SSAT was not prepared to find an earlier incapacity on the basis of numerous receipts for medical treatment over the period February to November 1979. As the claim for sickness benefit had been lodged within 13 weeks of this date (7 November 1979) of incapacity, the SSAT considered that benefits should be payable from 14 November 1979: see s.119(2)(a).

**The final DSS decision**

The DSS rejected this recommendation: it maintained that the medical evidence showed a long term deterioration in Wheeler's health and that the incapacity for work commenced at the latest in January 1979. (Indeed, Wheeler consistently claimed that his incapacity dated from then, as did his loss of income).

On 11 August 1980, the DSS wrote to Wheeler, saying that the Director-General could not accept the Tribunal's recommendation; that Wheeler had become incapacitated for work on 26 January 1979; and that the Director-General was 'not satisfied that . . . the delay in lodging the claim was due to incapacity or to some other sufficient cause which would justify' back-dating payment of the benefit.

(It seems that the possibility of the Director-General exercizing a discretion under s.119(3) was first considered by DSS on 8 July 1980, almost six months after Wheeler lodged his claim for sickness benefit.)

On 8 September 1980, Wheeler applied to the Administrative Appeals Tribunal for a review of the Director-General's decision.

**Wheeler's explanation for delay**

In his formal application for review, dated 22 October 1980, Wheeler claimed that his incapacity and loss of income dated from January 1979. He explained his delay in claiming sickness benefit in the following terms:

> (c) No advice was received by me nor was there any reasonable chance of my being aware of the existence of any Commonwealth Social Security Benefit being due to me as a result of my illness.
>
> . . .
>
> (e) My ignorance of the benefits available to me in such circumstances is the reason for failing to make an application for sickness benefit for a period of twelve months after I incurred financial loss and that these facts should have been taken into account by the Delegate [of the Director-General] in determining that there was a reasonable explanation for the delay in lodging a claim.

In a supporting letter of the same date Wheeler claimed that Dr Acutt had told him of the availability of sickness benefit and that he 'immediately made an application'. He concluded:

> At no time have I received any advice from any medical practitioner as to the existence of a sickness benefit and I wish you to take into consideration, when reviewing the decision of the Delegate, the services offered in Hughenden, including both Government and private enterprise. I submit that it is not unreasonable for people to be completely unaware of the benefits that are available to them. It was not until I had lived on the coast, that I was able to hear 'through the grapevine' that I may be eligible for a sickness benefit.

**Applicant not present at appeal**

Wheeler was represented by counsel before the AAT; but Wheeler did not attend the hearing (his counsel said he could not afford the expense); nor were any witnesses called on his behalf: these omissions could well have affected the result of the appeal.

Before the AAT, the DSS tried to argue (despite its concession in the letter of 11 August 1980) that Wheeler had been qualified for an invalid pension and so disqualified from sickness benefits (s.108(1)), for some months prior to January 1980 and that, of course, an invalid pension could not be back-dated. The AAT concluded that the DSS could not prove 'permanent incapacity to the extent of 85% or more' before January 1980 and so rejected this ingenious argument.

The AAT accepted that, from January 1979 to January 1980, Wheeler's medical condition qualified him for sickness benefit. ('It is not without significance' said the AAT, 'that the Department itself, until the time of the hearing, apparently assessed the applicant's medical condition as entitling him to a sickness benefit for a period from 26 January 1979': Reasons for Decision, para. 28.

**Is ignorance an 'other sufficient cause' for delay?**

Accordingly, the issue to be resolved was whether the applicant's failure to lodge his claim because of ignorance was due to 'some other sufficient cause' within s.119(3).

The AAT referred to a series of judicial decisions on similar provisions in workers' compensation legislation, and legislation fixing time limits for bringing common law actions. The trend of these decisions was that ignorance of one's rights or entitlements could not be treated as a 'mistake or other reasonable cause' for failing to claim within a specified time limit. (Some of the decisions distinguish between ignorance of entitlements and ignorance of time limits, and between ignorance and being mistaken—very fine, possibly elusive, distinctions.)

However, the AAT said, these decisions should not control the meaning to be given to the phrase 'other sufficient cause' in s.119(3) of the *Social Services Act*. Not only were the distinctions drawn in those cases based on different legislative provisions, but the discretion and flexibility given to the Director-General under s.119(3) (he may back-date payment to such date as he considers reasonable in the circumstances) made it unnecessary to interpret s.119(3) as restrictively as the provisions of workers' compensation and damages legislation.

The AAT clearly accepted that, in some situations at least, ignorance of entitlement to sickness benefit could amount to an 'other sufficient cause':

> 40. Without attempting to be in any way exhaustive, the sort of matters which suggest themselves to us as being relevant in assessing the 'sufficiency' of alleged ignorance as the cause for failing to lodge a claim for sickness benefits within time are:
> (i) The length of time after the commencement of the period of sickness when the applicant became aware of his entitlement to claim;
> (ii) The length of any further delay in the lodging of a claim after the applicant became aware of his possible entitlement;
> (iii) The applicant's level of literacy, his age and length of residence in Australia and whether he has made any prior claim under the Act;
> (iv) The facilities available to the applicant to obain information or to seek advice regar-

ding the benefits payable under the Act; and

(v) The attempts made by the person to obtain information or advice as to the availability of benefits under the Act.

40. In the present case the evidence, so far as it was elucidated before us, disclosed no more than that the 'cause' of the applicant's failure to lodge a claim for sickness benefit before he did was his lack of knowledge that the provisions of the Act might apply in the circumstances of his case. But the evidence of the surrounding circumstances is incomplete. Many relevant and important questions are left unanswered—questions such as why, if he was concerned at his loss of income by reason of sickness, he did not direct his mind to the question of obtaining assistance; the reason why he did not seek advice regarding possible benefits when consulting any of the numerous doctors who attended him during 1979; whether at any stage during 1979 in attending a doctor's surgery, a hospital or a post office he had access to information regarding the payment of Social Security benfits; why he did not make a claim for benefits in early November 1979 when he was first advised that he might not work again; and how it is that a man of his mature age who has apparently lived in Australia all his life, was unaware that a sickness benefit might have been available in accordance with the Act. In the absence of any satisfactory answer to these questions we can only say that we are not satisfied on the evidence before us that there is 'sufficient' cause for the lodgment of the claim so long outside the time limit Parliament has seen fit to impose.

42. Accordingly, as sickness benefits are only payable to the applicant in accordance with s.119(3) of the Act from the date on which he lodged his claim for benefits (17 January 1980); and as the applicant has been in receipt of an invalid pension since that date, we do not consider that the applicant has any other entitlement to benefit under the Act and we therefore affirm the decision of the Director-General.

# Supporting parent's benefit: cohabitation

## LAMBE and DIRECTOR-GENERAL OF SOCIAL SERVICES (S80/11)

**Decided:** 8 April by A. N. Hall, F. A. Pascoe and J. G. Billings.

Karen Lambe, a single woman with one child, was granted a supporting mother's benefit from 23 December 1976 (a little over six months from the birth of her child). On 29 July 1977, she had a second child and the rate of benefit was increased from 4 August 1977.

On 19 July 1979 the Department of Social Security (DSS) cancelled Lambe's supporting parent's benefit (as it was then called) on the ground that Lambe was living with a man, Graham Foxwell, as his wife. The DSS relied on s.83AAA(1) of the *Social Services Act* 1947 which defines the people who are qualified to be paid supporting parent's benefit. There are two groups of people who are so qualified—'supporting fathers' and 'supporting mothers':

> 'supporting mother' means a woman (whether married or unmarried) who—
> (a) has the custody, care and control of a child, being a child who—
> (i) was born of that woman; or
> (ii) in the case of a woman who is a married woman living apart from her husband or a woman who has ceased to live with a man as his wife on a *bona fide* domestic basis although not legally married to him—was an adopted child of, or in the custody, care and control of, that woman on the relevant date;
> (b) is not living with a man as his wife on a *bona fide* domestic basis although not legally married to him; and
> (c) in the case of a married woman—is living apart from her husband,

On 7 August 1979 Lambe appealed to the Director-General against the cancellation. The appeal was referred to a Social Security Appeals Tribunal (SSAT) which interviewed her and recommended, on 11 September 1979, that her appeal be upheld.

On 9 July 1980, the Director-General dismissed that appeal. Lambe then applied to the Administrative Appeals Tribunal (AAT) for a review of the Director-General's decision.

**The evidence**

Evidence given to the AAT showed that Foxwell was the father of Lambe's second child (but not her first child). This second child had been given the surname of Foxwell. Lambe and Foxwell, had according to the AAT's findings, shared accommodation between December 1977 and July 1979 and for a substantial part of that period they had shared rent and other expenses.

On 23 February 1979 Lambe had made a statement to an officer of the DSS in which she had said (amongst other things):

> We live similarly to a married couple. The furniture is jointly owned. I do all the domestic duties for Graham such as cooking and washing etc. I have not used the name of Foxwell for any purpose and Graham claims on Taxation as a single man. He gives me $20 per fortnight maintenance for Raymond his son, otherwise he brings him something instead. We share the rent and expenses 50/50 because we have our own income. We do go out socially and we have discussed marriage but no definite plans have been made. I did not advise that Graham was living with me because I thought my Benefit would be terminated. I was worried about this and discussed it with my mother who advised that it was permissible as long as I paid my own way and I did not use Graham's name for any purpose. If my Benefit was terminated I would be forced to go out to work but Graham and I would not separate.

However, in her statement to the SSAT, Lambe had said she had only shared accommodation with Foxwell 'off and on'; that the arrangement was one of convenience based on cost sharing and that she had not lived with Foxwell as his wife. She also said that Foxwell had left the house which she occupied (in Everard Park) 'about a month and a half, two months ago'.

The AAT described the domestic arrangements in the following terms:

> The applicant said that she had not used the name Foxwell and that she did not live in a 'de facto relationship' with Graham (Transcript 102-3).
>
> 19. The applicant also said in her evidence that during the time that she and Graham shared accommodation, they slept in separate rooms. She said that they had sexual intercourse 'very occasionally'. They paid the rent and gas and electricity bills in equal shares. They also shared the costs of food although less so than with the other expenses because Graham would buy his own food most of the time (he being on shift work). The only money he gave her was $20.00 per fortnight for his son Raymond. Graham, she said, wanted nothing to do with her elder child Allan and gave her no money for him (Transcript 92-3). She did Graham's washing, cooked for him occasionally, and kept the house tidy (Transcript 109).

Employment records, produced to the AAT by Foxwell's employer (Australia Post) showed that he had explained his absences from or late arrival at work on six occasions (between August 1978 and July 1979) because of the illnesses of his 'girlfriend', 'wife' or 'fiancee'.

The evidence also showed that several items of furniture were acquired under credit purchase agreements in Foxwell's name for their joint use, or for Lambe's separate use.

On the basis of this evidence, the AAT observed that there was 'a developing mutual dependence and support and . . . the establishment of a household at three separate addresses in which the relationship of the applicant and Mr Foxwell and the two children developed the characteristics of a family unit. This evidence sits uncomfortably with the applicant's claim that she was not living with Mr Foxwell in a "de facto" relationship and brings her credibility into question'. (Reasons for Decision, para. 26.)

The AAT also received evidence on the relationship between Lambe and Foxwell after the cancellation of the supporting parent's benefit—because that evidence was relevant to Lambe's credibility.

According to Lambe's evidence to the SSAT and the AAT, Foxwell had not lived with her since August 1979. However, evidence given by a debt collector and by Australia Post demonstrated that Foxwell and Lambe had been living together in January, March, April, August and November 1980 and that Foxwell had referred to Lambe as his 'wife' in applications for compassionate leave in January, August, October and November 1980.

**The AAT's assessment**

Given this evidence, it is not surprising that the AAT concluded:

- that Lambe and Foxwell had lived together between December 1977 and August 1979 and between January and November 1980;
- that they had acquired a substantial number of household appliances for their joint use;
- that Lambe provided some domestic services to Foxwell;
- that there was a considerable degree of financial interdependence between Lambe and Foxwell;