1979 and May 1980, when the benefit was terminated because of his failure to attend a job interview arranged by the CES. He applied to the AAT for review of this decision.

Whyte had worked (up to June 1979) as a radio announcer. The AAT found that, at the time when his unemployment benefit was terminated, he was well qualified for other employment (as a clerk or a salesman) but had taken no independent steps to obtain employment. According to the AAT, s.107(1)(c) (set out in *Weekes*, in this *Reporter)* 'required the applicant to pursue his own avenues to obtain suitable employment', not merely to rely on the CES. And the AAT was not satisfied that Whyte had taken 'reasonable steps to obtain employment outside his field of radio broadcasting [although] he was qualified for employment on other fields': Reasons for Decision, paras. 16, 18.

The AAT affirmed the decision under review.

ANDERSON and DIRECTOR-GENERAL OF SOCIAL SERVICES
(No. Q81/2)
Decided: 17 August 1981 by J.B.K. Williams.

Anderson (a 25-year-old-woman) was paid unemployment benefit between December 1977 and October 1980, when the benefit was terminated by the DSS because she was unwilling to accept a job referral. She applied to the AAT for review of that decision.

The AAT found that Anderson had worked in a food processing business (which her mother was developing) for about ten years; and that, while she received only a small income from this work, she was committed to helping her mother develop the business to the point where it would be profitable.

The AAT decided (after referring to *McKenna*: 2 *SSR* 13) that her connection with this business was more than a casual one and showed 'a preference for that activity rather than an engagement in outside employment'. Accordingly, there was real doubt that the applicant was 'unemployed' or that she 'was genuinely willing to undertake work outside her mother's organisations': Reasons for Decision, para. 17.

The AAT affirmed the decision under review.

Unemployment benefit: discretion to ignore earnings

HINE and DIRECTOR-GENERAL OF SOCIAL SERVICES
(No. T81/10)
Decided: 16 October 1981 by R.K.Todd.

Nicholas Hine was granted unemployment benefit by the DSS in August 1980. While on benefit, he worked on a casual basis as a taxi driver and he regularly informed the DSS of his income from this source.

On 10 October 1980, the DSS terminated his benefit because his income from taxi driving had, for four consecutive weeks, exceeded the permissible income level – that is, the application of the income test in s.114 eliminated all the unemployment benefit payable to Hine.

Hine applied to the AAT for review of this decision. He maintained that the Director-General should exercise, in Hine's favour, the discretion in s.107(3). Under this provision,

> the Director-General may, in his discretion, treat a person as having been unemployed throughout a particular period [for the purpose of qualifying for unemployment benefit] notwithstanding that the person undertook paid work during the whole or a part of that period if the Director-General is of the opinion that, taking into account the nature and duration of the work and any other matters relating to the work that he considers relevant, the work should be disregarded.

[**Note:** Even if this discretion had been exercised in Hine's favour, the termination of his benefit would still stand: s.107(3) allows the Director-General to disregard 'the work' but not the income from that work; and it was Hine's income, rather than the work which produced it, which caused the DSS to terminate his unemployment benefit. However, the AAT did not refer to this difficulty.]

Hine argued that this was a proper case for the exercise of the discretion because of the long hours (55 hours a week) he was working, his relatively poor remuneration (unspecified), the lack of permanency and the fact that he was paid on a commission basis. The DSS argued that these factors were irrelevant to the s.107(3) discretion.

The AAT agreed that the discretion in s.107(3) could not be exercised here: 'it strains the concept of "unemployment" to an unacceptable level', the AAT said, 'to find that a person in casual work involving 55 hours work per week is unemployed'.

The AAT referred to, and adopted what was said in, *McKenna* (2 *SSR* 13), *Te Velde* (3 *SSR* 23), and *Weekes* (this issue of the *Reporter*) on 'unemployment' and people working, more or less full-time, for little reward.

The AAT affirmed the decision under review.

Unemployment benefit: 'regular' maintenance of children

MATONS and DIRECTOR-GENERAL OF SOCIAL SERVICES
(No. N81/24)
Decided: 21 August 1981 by R.K. Todd, I. Prowse, M.S. McLelland.

Cipriano Matons was granted unemployment benefit in January 1975. It appears that he was still being paid unemployment benefit in 1981.

At the time of the initial grant of unemployment benefit, Matons was separated from his wife, who had custody of their three children. He was paying maintenance of $8 a week for each child, under a children's court order of July 1972. These payments continued until 24 April 1976 (although not always in weekly instalments) when the court order was varied to nil 'until such time as the husband obtains employment'.

In February 1975, Matons applied to the DSS for an increase in his rate of unemployment benefit because of his contribution to the maintenance of his children. Section 112(5) of the *Social Services Act* provided that an unemployment beneficiary who 'is making regular contributions towards the maintenance of a child or children' is to be paid an extra $5.50 a week for each child.

Section 112(6)(b)(iii) provided that this extra payment may not be made if any child 'has been taken into account in fixing the rate of a widow's pension'. (In 1980, s.112(6)(b)(iii) was amended by adding 'or of a supporting parent's benefit' after the words 'a widow's pension'; but, at the relevant time, the provision made no mention of supporting parent's benefit.)