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;

• that there was a close personal relationship and emotional care and support between Lambe and Foxwell and between the two adults and the two children.

The 'cohabitation rule'—meaning and application

The AAT then turned to the 'cohabitation rule' as expressed in s.83AAA(1) of the *Social Services Act*: could it be said on the evidence and the AAT's findings, that Lambe was 'living with [Foxwell] as his wife on a bona fide domestic basis although not legally married to him'? What did that phrase involve? What types of relationship were caught by it? On this question, the AAT gave a rather more sophisticated or complex response than it had in *Waterford's* case (No. N80/8);

> 47. We . . . see the words 'domestic basis' and the requirement which those words connote that there must be a household in which the relationship between the parties subsists as the key to understanding this part of the definition. We consider, therefore, that in order to determine whether a woman comes within the expressing 'living with a man as his wife on a bona fide domestic basis although not legally married to him', all facets of the interpersonal relationship of the woman and the man with whom she is allegedly living as his wife need to be taken into account. This will involve consideration of the interrelationship of the parties and any children in the household; whether that relationship contains any of the indicia of a family unit; and the way in which the parties present their relationship to the outside world. As was indicated in *Waterford's* case (supra), the question of financial support provided to a woman will be an important consideration but it is only one of a number of relevant matters which need to be taken into account if the question posed by Parliament is to be answered.
>
> 48. Before a woman can be said to be living with a man 'as his wife', there must, in our view, be elements both of permanence and of exclusiveness in the relationship, as these elements are of the essence of a marriage relationship [cf. *Nachimson* v *Nachimson* [1930] P.217 at 224 per Lord Hanworth MR]. But within those broad confines, it is surely a notorious fact that marriage, in present day society, allows considerable scope to the parties to develop their relationship as they see fit, without damaging the fundamental integrity of that relationship as a marriage. What might be called the traditional concept of marriage—a marriage in which the husband is the breadwinner and the wife the homemaker caring for her husband and children—is far from being a comprehensive description of marriage as it is accepted in today's society. It is unnecessary and it would be unwise to attempt any description of the range of relationships acceptable within and recognisable as a marriage, but it seems reasonably clear that those relationships extend at one end of the spectrum to the more traditional relationship of the husband as breadwinner and the wife and children as his dependents, through relationships in which a high degree of financial independence is enjoyed by both parties, to relationships in which the wife is the breadwinner and the husband and children her dependents.
>
> 49. It is a well established principle of statutory interpretation that in construing a statute the language which Parliament has used should be deemed to be 'always speaking' (see the authorities cited by Pearce in *Statutory Interpretation* p.27). Thus in evaluating whether in any given relationship a woman can fairly be said to be 'living with a man as his wife on a bona fide domestic basis, although not legally married to him' we think that for the purposes of making the necessary comparisons, regard may properly be had to what, within the legal bonds of marriage, current society standards recognise as constituting a relationship of man and wife.
>
> 50. Evaluating the evidence before us in the light of these considerations, there is, in our view, and underlying thread of interdependence in the relationship between the applicant and Mr Foxwell since they first decided to establish and share accommodation towards the end of 1977. Their association has persisted through a number of changes of residence in which their relationship has progressively developed towards the establishing of a joint household for which they have acquired various household appliances and articles of furniture to facilitate their enjoyment of the shared accommodation. Despite suggestions by the applicant that Mr Foxwell has on occasions ceased to share accommodation with her and has gone to live at his parents' home or in other accommodation, such evidence as there is on the file (which was not disputed by the applicant) would indicate that with the possible exception of the period from September to December 1979, Mr Foxwell has not resided on a permanent basis at his parents' home or elsewhere since he left his own home at the end of 1977 to share accommodation with the applicant. Other evidence such as postal addresses, motor vehicle registration address and employment records confirm that the applicant's address has always been provided by Mr Foxwell as his place of residence. Underlying the whole relationship is the fact that Mr Foxwell is the natural father of the applicant's second child Raymond; that one of the reasons for their living together was to enable Mr Foxwell to share in the upbringing of his son; and that the applicant, Mr Foxwell and the two children emerge as a family unit.
>
> 51. Allowing that in today's society there are many circumstances in which young people may, through force of economic necessity, be obliged to share accommodation and the basic expenses of living without developing any relationship that may be characterised as that of man and wife, this is not such a case. When we weigh up the totality of the evidence, there is in the final analysis only the applicant's denial standing in the balance against the finding that her relationship with Mr Foxwell as at 19 July 1979 was one in which she lived with him as his wife on a bona fide domestic basis although not legally married to him.
>
> 52. We therefore affirm the decision under review.

A legal argument rejected by AAT

Counsel for Lambe put to the AAT an argument which would have very much narrowed the scope of the cohabitation rule in s.83AAA(1); this argument is spelt out rather cryptically in paras 43–44 of the Reasons for Decision; and was based on two decisions of the United States Supreme Court which the AAT regarded as irrelevant to the meaning of s.83AAA(1) of the *Social Services Act*.

This argument (it seems) was that a woman with a dependent child could only be disqualfied (by the cohabitation rule stated in s.83AAA(1)) from receiving supporting parent's benefit if the man with whom she lived 'on a *bona fide* domestic basis' was supporting that child: that is, if the child was entirely dependent on the woman then she remained qualified for supporting parent's benefit despite her relationship with a man. The two cases cited in support of this argument were *King* v *Smith* (1968) 392 US 309 and *Lewis* v *Martin* (1970) 397 US 552: see 1979 4 *LSB* 177. Those cases involved the meaning of Federal legislation setting up an income support programme for 'dependent children'—those who had been deprived of parental support. The cases emphasized that, in determining a child's eligibility under the programme, attention must be directed to the parental support which the child actually received, or to which it had a legally enforceable right.

However, the AAT said, the *Social Services Act* was not concerned with the degree of support enjoyed by any child of the claimant:

> [W]here the specified relationship [between the woman and a man] is found to exist, the legislation disqualifies the mother from eligibility for benefit under Part IVAAA. It allows no exception if the man in the relationship accepts less than full financial responsibility for any child of the woman.

[The **Reporter** understands that Lambe has lodged an appeal to the Federal Court of Australia; and that the principal ground of appeal is the AAT's rejection of this argument.]

Invalid pension: cohabitation

SEMPLE and DIRECTOR-GENERAL OF SOCIAL SERVICES (Q81/6)

Decided: 10 April 1981 by J. B. K. Williams, L. G. Oxby and I. Prowse.

Agnes Semple applied (in the name of 'Semple known as Stevenson') to the Department of Social Security (DSS) for an invalid pension on 25 February 1980. (Between 15 February and 4 June 1980 she was paid unemployment benefit and sickness benefit at the single rate in the name of Agnes Stevenson).

On 4 August 1980 the application for invalid pension was granted at the rate of $9.20 per fortnight.

The DSS treated her as a married woman because she was, according to the DSS living with a man as his wife on a *bona fide* domestic basis although not legally married to him. The man was identified by the DSS as Thomas Stevenson; as he had a fortnightly income of $427.36, the invalid pension payable to her was reduced to $9.20 a fortnight. (The AAT described her as being paid at 'the married rate': that must be an error on the part of either the DSS or the