jurisdiction to review the decision of the Director-General of Social Services taken under the *Social Services Act* 1947'. The Tribunal referred to ss.7, 13, 95, 99 and 99A of the *Social Services Act* and continued:

> It follows from these provisions that where the Director-General is satisfied that a child is in the custody, care and control of more than one person, then the Director-General should make a declaration under s.99A(2) and a direction under s.99A(3). This is a function which is cast upon the Director-General, not a function imposed upon the Family Court of Australia. And s.31 of the *Family Law Act*, which confers jurisdiction upon the Family Court of Australia, does not confer upon that Court any jurisdiction to review decisions of the Director-General of Social Services made under the *Social Services Act* 1947. Indeed, s.75(2) of the *Family Law Act* empowers the Family Court of Australia to take into account when assessing maintenance the quantum of child endowment being received by the parties. Accordingly, one of the matters which it has a duty to take into account is the quantum of child endowment paid pursuant to decisions of the Director-General of Social Services. It is not a review body of his decisions, it has a duty to take his decisions, or at least the results of his decisions, into account.
>
> On the other hand, the Administrative Appeals Tribunal which is a body established for reviewing on their merits decisions of an administrative nature under specified federal laws, has the function, and duty when called upon to do so by an application, to review the decisions of the Director-General made under the *Social Services Act*. The Tribunal not only is empowered to review the decisions of the Director-General but is called upon to exercise its powers upon the lodgement of an application for review, as has been done in this case. Such a review is not a 'matrimonial cause' as defined by s.4(1) of the *Family Law Act*.

(Reasons for Decision, pp.4-5)

The AAT concluded that it had 'jurisdiction to proceed with the matters in dispute in this review': Reasons for Decision, p.6.

Unemployment benefit: uneconomic farm

GUSE and DIRECTOR-GENERAL OF SOCIAL SERVICES (No. Q81/9)

Decided: 27 November 1981 by T. R. Morling J; J. B. K. Williams and J. G. Billings.

In 1958 Colin Guse had acquired by ballot a Crown lease of 882 acres of poor quality land, on condition that he fence, clear and develop it as a farm.

In January 1978, when the farm was partly developed, Guse was granted unemployment benefit by the DSS. On 27 March 1980 the DSS decided to terminate payment of this benefit. The cancellation was explained to Guse in the following terms:

> Under section 7.108 of the Unemployment and Sickness Benefit Manual a primary producer must be able to scale down his own involvement in the activities on his property to the extent necessary to enable him to take full-time employment if employment is available.
>
> A field officer's visit indicates you are not doing this. Therefore your benefit has been terminated.

Following an unsuccessful appeal to an SSAT, Guse applied to an AAT for review of the decision to terminate.

Can a farmer be 'unemployed'

The qualifications for unemployment benefit are set out in s.107(1) of the *Social Services Act*:

> 107. (1) Subject to this part, a person . . . is qualified to receive an unemployment benefit in respect of a period . . . if, and only if,
>
> (a) [specifies minimum and maximum ages];
> (b) [specifies residence in Australia]; and
> (c) the person satisfies the Director-General that—
>   (i) throughout the relevant period he was unemployed and was capable of undertaking, and was willing to undertake, paid work that, in the opinion of the Director-General, was suitable to be undertaken by the person; and
>   (ii) he had taken, during the relevant period, reasonable steps to obtain such work.

Before the AAT the Department supported its decision on the basis that Guse was not 'unemployed' within s.107(1)(c)(i). (The DSS did not claim that Guse was incapable of working or unwilling to work or that he had failed to take reasonable steps to obtain work. He had, in fact, found a full-time job 12 months after termination.)

The DSS claimed that Guse was engaged in working and developing his property as a serious business undertaking. But the AAT found there was no evidence to support this claim. Guse had paid a contractor to clear some of his land, but (because of his shortage of capital) this was not completed; he ran 25-30 cattle on the property; and he had planted some crops. But Guse's 'farming activities were such as to occupy very little of his time amounting only to a few hours per week'. And the movement in Guse's bank account showed that the farm was a drain on, rather than a contribution to his finances.

The AAT made the following decision:

> 14. Upon the evidence before us we have reached the firm view that the farm was not a viable economic enterprise and could not properly be described as a serious business undertaking. The applicant could not make the property an economic undertaking without substantial capital which was not available to him. He was using the farm house as a place of residence and such farming activities as were carried out thereon occupied only a little of his time and did not render him unavailable for full-time paid employment. We are satisfied that at relevant times he was making reasonable efforts to obtain employment in the limited fields open to him. He succeeded some 12 months after his benefit was terminated.
>
> 15. We are accordingly satisfied that, at the time of the decision to terminate the grant, he was 'unemployed' within the meaning of that term in s.107(1)(c)(i) and that he otherwise met the requirements of s.107(1). We are therefore of the opinion that the decision under review should be set aside.

After pointing out that unemployment benefit was payable fortnightly, following the fortnightly lodgment of income statements by the claimant, the AAT said that its decision could 'have a direct effect only on the fortnightly period either immediately preceding or following the date of the decision to terminate'. But the Tribunal would expect the DSS to consider Guse's eligibility for the 12 month period 'in the light of this decision': Reasons for Decision, para. 16.

Overpayment: discretion to deduct from pension

LIVESEY and DIRECTOR-GENERAL OF SOCIAL SERVICES (No. N80/133)

Decided: 4 February 1982 by A. N. Hall.

Dorothy Livesey was granted an age pension in November 1973 at the maximum rate plus supplementary assistance (then $4 a week, increased in 1974 to $5 a week) towards her rent.

At about the same time, Livesey was granted a United Kingdom pension of £3.31 a week but she did not notify the DSS of this income until 16 November 1978. (Section 30B(1) of the *Social Services Act* obliges a pensioner to notify the DSS of the receipt of extra income.) It was not until then (five years after the grant of her age pension) that the DSS sent her an Entitlement Review Form, which Livesey completed and returned to the DSS.

The income test for supplementary assistance (set out in s.30A of the *Social Services Act*) is quite stringent and, if her UK pension had been taken into account by the DSS, she would have received no supplementary assistance or (depending on the current exchange rate) a very small payment.

The DSS continued to pay full supplementary assistance until March 1980, when it cancelled the assistance.

In April 1980 the DSS informed Livesey that there had been an overpayment which would be recovered by deductions from her age pension. (Section 140(2) of the *Social Services Act* gives the Director-General a discretion to deduct the amount of a payment which 'for any reason . . . should not have been paid' from any current pension, allowance or benefit.)

The DSS decided to recover 'overpayments' between 7 February 1974 (the date by which Livesey should, according to s.30B(1) of the Act, have notified the DSS