tor in a marriage relationship where joint ownership of a house and the financial considerations involved in leaving the matrimonial home often compel the parties to remain residing under the same roof despite matrimonial difference.
(Reasons, p.11).

This focus on the needs of the applicant was premised on the distinction drawn between provisions of the Act governing eligibility for benefit and those provisions governing the amount of pension. *De facto* relationships had been discussed in the context of the former provisions but not in regard to the latter according to the AAT. It was in *Lambe* (1981) 4 *SSR* 43 that the Federal Court had drawn this distinction. In *Lambe* it was said that the provisions dealing with rates of pension were concerned with the particular circumstances of the *qualifed* person. Thus need alone became of crucial significance.

The reasoning appears to be that while Lynam was qualified to receive unemployment benefit, because he was financially supported by Mrs W the relationship with her became a *de facto* one for the purposes of s.114.

Formal decision

The AAT affirmed the decision under review.

[Comment: The AAT did not refer to the decision in *Sturges* (1983) 13 *SSR* 133. In that case the same question fell for consideration under s.114 where the applicant lost her benefit having regard to the income of her *de facto* spouse. There the AAT drew no distinction between the eligibility provisions and the income test provisions. They referred to *Lambe* as requiring that all facets of the interpersonal relationship need to be taken into account. In *Sturges* a house was jointly owned, but an independent financial existence, separate social life and an absence of any sexual relationship precluded the AAT from regarding a *de facto* relationship as in existence. **BS**]

Supporting parent's benefit: 'supporting mother'

'W' and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. V82/374)

Decided: 21 June 1983 by R. Balmford.

Miss W obtained an order from the Victorian County Court in April 1981 allowing her to adopt J. This order was obtained under s.10(2) of the *Adoption of Children Act* 1964 (Vic.) which allows the Court to make an adoption order in favour of one person in 'exceptional circumstances'. The exceptional circumstances in this case were Miss W's training as a mothercraft nurse, her close attachment to J (J was born with a condition which affected her physical and intellectual development and Miss W worked at the hospital where J was born and had looked after her there) and her experience with intellectually handicapped people.

Miss W subsequently gave up work and applied for supporting parent's benefit. This claim was rejected on 1 June 1981 on the basis that she did not have a qualifying child within the meaning of the Act in her care, custody and control. An SSAT upheld her appeal but a delegate of the Dirctor-General affirmed the original decision to reject her claim on 3 August 1982. Miss W applied to the AAT for review of that decision.

'Supporting mother'

To qualify for supporting parent's benefit it is necessary to be a supporting father or a supporting mother under the Act. Section 83AAA(1) defines 'supporting mother'. It reads (so far as is relevant):

> '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 ...

As Miss W had never married nor lived with a man as his wife the DSS claimed that her eligibility fell to be determined under paragraph (a)(i). As the child was not 'born of' her, her claim was rejected.

The AAT agreed with this conclusion. The Tribunal could not accept the applicant's argument that the effect of s.32(1) of the *Adoption of Children Act* (Vic) was to deem J to be a child born of Miss W. Section 32(1) reads in part:

> Subject to the Act and to the provisions of any other Act that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order –
> (a) the adopted child becomes a child of the adopter or adopters, and the adopter or adopters become the parent or parents of the child, as if the child had been born to the adopter or adopters in lawful wedlock ...

It was clear, according to the AAT, that the definition of 'supporting mother' in the *Social Security Act* did distinguish between a child born of a woman and an adopted child. The ordinary grammatical sense should be given to the words in a statute except to avoid some inconsistency or absurdity. Paragraph (a)(i) in s.83AAA(1) referred to non-adopted children, paragraph (a)(ii) to adopted children. This created no inconsistency.

Reform

The AAT commented that:

> ... consideration could be given to amending the Act in order that an adopting single parent might, for the purposes of the Act be equated with a natural parent. Such an amendment would be consistent with the clear intention that adopting and natural parents should be so equated for all purposes which is manifested by the Victorian *Adoption of Children Act* and indeed by the corresponding Acts in all States and major Territories.

(Reasons, para.19)

Formal decision

The AAT affirmed the decision under review.

Income test

GREEN and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. N82/49)

Decided: 27 June 1983 by C.E. Backhouse.

On 10 February 1982 Mr Green's invalid pension and Mrs Green's wife's pension were cancelled by the DSS. This was because Mrs Green refused to complete part of an Entitlement Review Form sent to her husband which required her to state her income. Mrs Green was in full-time employment and the evidence before the Tribunal showed that she financially supported her husband. The applicant applied to the AAT to review the cancellation.

The legislation

Section 29(2) of the Act provides that in assessing the rate of pension the income of a spouse should be taken into account. It reads:

> 29(2) For the purposes of this Part, unless the contrary intention appears, the income of a husband or wife shall –
> (a) except where they are living apart in pursuance of a separation agreement in writing or of a decree, judgment or order of a court; or
> (b) unless, for any special reason, in any particular case, the Director-General otherwise determines, be deemed to be half the total income of both.

Ante-nuptial agreement: a 'special reason'?

Mr Green and his wife had entered into an ante-nuptial agreement the day before their marriage in 1964. The agreement provided *inter alia* that there was to be no community of property between the parties, and that each would be liable for his or her own debts. It also gave Mrs Green exclusive rights in her property owned before, and that acquired after, the marriage. There was no obligation on Mrs Green to maintain her husband although there was such an obligation imposed on the applicant in relation to his wife.

It was argued by Mr Green that the existence of the agreement constituted a 'special reason' under s.29(2) as to why