was necessary to establish that the deprivation of income had been undertaken for the purpose of obtaining a pension at a higher rate, rather than for some other purpose.

In the present case, Mr & Mrs Stipo and their daughter had argued that the purpose behind providing the money for the daughter's purchase of a house was to provide her and her fiancee with some security and an income in anticipation of their marriage.

On the other hand, the DSS argued that, because Mr & Mrs Stipo had provided the money to their daughter within one month of being told that Mrs Stipo's pension would be reduced, the conclusion was inevitable that they had intended to obtain a higher rate of pension for Mrs Stipo.

The AAT said that there was no basis for treating the money provided by V or the money held in trust for A as a deprivation of income under s. 47(1):

> 'In my view money placed in trust for children before notice of the reduction in the pension rate [was] not so placed to obtain a higher pension and should be excluded . . .
> 25. However, I see force in the respondent's representative's argument that the timing of events is of significance in relation to the moneys provided by the applicant for A's house. It seems to me that the purchase of the house for A and the applicants' direct contribution, otherwise than from money in trust, must be seem as being effected in order to obtain the higher rate of pension; I so find.'

Formal decision

The AAT varied the decision under review by substituting for the DSS decision the applicant had deprived herself of income amounting to $8972 a decision that the applicant deprived herself an income amounting to $3839.

Overseas pension: 'special need'

Re HARRIS and SECRETARY TO DSS (No. V84/447)
Decided: 14 March 1985 by R. Balmford.

Thomas Harris had been born in England in 1897. In 1922 He migrated to Australia and worked here until 1967, when he returned to England. He was then granted a full United Kingdom age pension.

In 1984, Harris returned to Australia and claimed an aged pension under s. 21A of the *Social Security Act*. When that claim was rejected by the DSS, Harris applied to the AAT for review.

The legislation

Section 21A of the *Social Security Act* provides that a man aged at least 65 is qualified to received age pension if he fulfills certain residence requirements (which Harris met) and if he -

> '(f) is a person who, in the opinion of the Secretary, is in special need of financial assistance . . . '

Harris' financial situation

Harris told the AAT that his only income came from the UK age pension and that his expenses exceeded his income by 6 pounds a week. He had been able to cover this excess out of his savings until late 1984; but the savings had now been reduced to 300 pounds. Harris also told the AAT that he owned his own home, which was valued at 18 000 pounds.

'Special need'

The AAT said that, before a person could be described as 'in special need of financial assistance', that person's financial situation had to be exceptional or unusual judged by the standard of living of the country in which he had chosen to live. Because Harris was receiving an age pension from the UK government, a pension which appeared to be comparable with other pensions paid in that country, it could not be said that his financial circumstances were unusual:

> '[I]n terms of the standard of living expected of pensioners in the country generally, I do not consider that he can be said to be 'in special need of financial assistance' when the additional force which Parliament must have intended to give to that phrase by the use of the word "special" is taken into account. In my view, it is appropriate to measure the needs of a applicant under s. 21A . . . by reference to the standard of living in which that applicant has chosen to live. In saying this, I would not wish to suggest that there are not other means of measuring those needs which may be equally appropriate in other circumstances.'

(Reasons, para. 13)

In coming to this conclusion, the AAT adopted the approach taken in the earlier decision of *Buttigieg* (1983) 17 *SSR* 178.

Formal decision

The AAT affirmed the decision under review

'Income'

MARSH and SECRETARY TO DSS (No. N84/531)
Decided: 19 April 1985 by A.P. Renouf.

William Marsh had been granted a part-time training allowance (of $46 a week) under the Labour Adjustment Training Arrangements administered by the CES. At that time, Marsh was being paid unemployment benefit and the DSS decided to treat the training allowance as 'income' and to reduce Marsh's unemployment benefit. Marsh asked the AAT to review that decision.

'Income'

Section 114 of the *Social Security Act* provides an income test for unemployment benefit: where a person's income exceeds $20 a week, the unemployment benefit payable to that person is to be reduced.

Section 106(1) defines 'income' as meaning -

> 'any personal earnings, moneys, valuable consideration or profits earned, derived or received by that person for his own use or benefit by any means from any source whatsoever . . . and includes any periodical payment or benefit by way of gift or allowance, but does not include -
> (b) a payment received by a trainee in full-time training under a programme included in the programmes known as the Labour Force programmes . . .'

The AAT said that an allowance paid to meet training expenses would not fall within the normal meaning of 'income'; but, because there was a very broad definition of income in s. 106(1), the allowance paid to Marsh had to be treated as income for the purposes of unemployment benefit.

The Tribunal also pointed to the fact that, in the s. 106(1) definition of income, 'express exception is made for the allowance when received by a full-time trainee and not for one from which a part-time trainee benefits'. This, the AAT said, was a significant distinction .

A discretion to waive the income test?

The AAT then dealt with an argument raised on behalf of Marsh, that the Secretary had a discretion to increase the rate of Marsh's unemployment benefit, despite the terms of s. 114(1) of the *Social Security Act*.

It was argued that this discretion arose from s. 135TJ(3) of the *Social Security Act*:

> 'If, having regard to any matter that affects the payment of . . . benefit . . . the Secretary determines that the rate of . . . benefit . . . is less than it should be, the Secretary may, by determination, increase the rate of . . . benefit . . . '

The AAT said that the discretion given to the Secretary under s. 135TJ(3) was subject to s. 114(1) which left the Secretary with no discretion: the income test was an 'overriding provision'.

Formal decision

The AAT affirmed the decision under review

BUCKNELL and SECRETARY TO DSS (No. N84/175)
Decided: 12 April 1985 by A.P. Renouf

The AAT *affirmed* a DSS decision that, in assessing his income for the purposes of the age pension income test, donations made by him to registered charities could not be deducted from his income.

During the year in question, Bucknell had a gross income of $38 358, of which he had donated $30 000 to public institutions (such as the Australian Red Cross). These institutions were registered under the *Income Tax Assessment Act* and donations to them were deductible from a taxpayer's taxable income.

The AAT pointed out that the definition of 'income' in the *Social Security Act* was not related to the definition of 'income' in the *Income Tax Assessment Act* and that there was no basis for deducting voluntary contributions to approved public institutions from a pensioner's income for social security purposes.

Special benefit: student

CASPER and SECRETARY TO DSS (No. V84/356)
Decided: 27 March 1985 by H.E. Hallowes.

Gaye Casper had completed an honours degree in science in 1980. Although she was then offered a Commonwealth scholarship for postgraduate study in science, she chose to enrol for a medicine degree. Under guidelines administered by the Commonwealth Department of Education, she would not be eligible for a TEAS allowance until she completed 4 years of the medicine degree course (at the end of 1985). In 1984, she applied to the DSS for a special benefit; and, when the DSS rejected her application, she asked the AAT to review the rejection.

The legislation
Section 124(1) of the *Social Security Act* gives the Secretary a discretion to grant a special benefit to a person if -

> 'the Secretary is satisfied that, by reason of age, physical or mental disability or domestic circumstances, or for any other reason, that person is unable to earn a sufficient livelihood for himself and his dependants (if any).'

'Unable to earn a sufficient livelihood'
During 1984, Casper had received grants and a loan from her university totalling $4300; but she did not expect to receive more than $1800 from this source in 1985. Moreover, the medical faculty was most unlikely to allow her to engage in part-time work or to defer her studies.

The AAT said that, on this evidence, Casper was 'unable to earn a sufficient livelihood' within s. 124(1). Her personal commitment to her studies ('which she could not reasonably be expected to abandon untile she has exhausted all possible avenues of financial support') produced the inability to earn. Following the approach taken in *Te Velde* (1981) 3 *SSR* 23, that was a sufficient reason for the purposes of s. 124(1): Reasons, para. 16.

The discretion
However, the AAT decided that the discretion in s. 124(1) should be exercised against Casper:

> '26. Each case must be looked at on its own merits. Miss Casper has made a voluntary decision to place herself in a most difficult financial situation. She is atempting to gain a second financial qualification for employment. It may appear an inconsistent application of government policy if applicants ineligible for TEAS allowance because they are attempting a second qualification were to be supported by the public purse under the *Social Security Act*.'

Formal decision
The AAT affirmed the decision under review.

Unemployment benefit: work test

TIZZANO and SECRETARY TO DSS (No. V84/238)
Decided: 8 March 1985 by R. Balmford, G. Brewer and L. Rodopoulos.

Giovanni Tizzano opened a pizza shop in April 1983, after working as a machine operator in a factory for 3 years. In December 1983 he sold that business because it was larger than he could manage; and in January 1984 he took out a lease on smaller premises, which he then arranged to have fitted out as a pizza shop. This fitting out was done during normal business hours under Tizzano's supervision; and it was completed by 29 February 1984, when Tizzano opened his pizza shop. In the early part of this period, Tizzano attempted to find evening work as a pizza cook and later he sought a wider range of employment but was unsuccessful.

Meanwhile, Tizzano had applied to the DSS for unemployment benefit for the period from 11 December 1983 to 29 February 1984. When the DSS rejected that claim, Tizzano asked the AAT to review the rejection.

The work test
The central question before the AAT was whether Tizzano had met the requirements of s.107(1)(c) of the *Social Security Act*—had he been unemployed and willing to undertake suitable work, and had he taken reasonable steps to obtain work while setting up his pizza business?

The AAT referred to the Federal Court decision in *Thomson* (1981) 38 ALR 624 and noted that the various elements in the work test were connected. The Tribunal said that, although Tizzano had been 'engaged full-time in normal daytime working hours in the supervision of tradesmen setting up his business, he had specialised skills enabling him to be gainfully employed in the evenings.' Accordingly, he should be treated as 'unemployed' during that period: Reasons, para. 13.

Because the period in question was comparatively short, the AAT said, Tizzano's initial efforts to find work as a pizza cook and his later attempts to find other jobs were evidence of his willingness to undertake suitable work and of his having taken reasonable steps to obtain work.

Formal decision
The AAT set aside the decision under review and remitted the matter to the Secretary with the direction that Tizzano had been qualified to receive unemployment benefit from 11 December 1983 to 29 February 1984.

ERREY and SECRETARY TO DSS (No. N84/345)
Decided: 3 April 1985 by R. K. Todd, H. D. Browne and G. P. Nicholls.

Catherine Errey was enrolled as a medical student in NSW. In 1983 she was granted 12 months leave from her studies; and in August she travelled to Roxby Downs to participate in a 'blockade' of the uranium mine there. After the blockade concluded, she remained camped close to the mine site (a relatively isolated area some 300 kilometers from Port Augusta in South Australia), in order to observe the environment and become acquainted with the local Aboriginal people.