dilemma...[W]e believe that as the act is beneficial legislation, we are obliged to give the benefit of the doubt to Mrs Kershaw, that is, to find that reconciliation did not take place until the end of November, 1984. The evidence is such that we cannot be sure beyond reasonable doubt that reconciliation transpired earlier, that is, at the end of June, 1984.'

Formal decision
The Tribunal set aside the decision under review.

WEST AND SECRETARY TO DSS (No. N86/700)
Decided: 1 May 1987 by A.P. Renouf, M.S. McClelland and C.J. Stevens

The AAT affirmed a DSS decision to recover an overpayment of $10,474.20 in supporting parents' benefit paid to the applicant after she commenced living in a de facto relationship.

In deciding whether a de facto relationship existed the applicant asked the Tribunal to give more weight to the 'subjective indicia' - how the applicant and the alleged de facto regarded the relationship - than to the 'objective indicia' - such as the existence of a sexual relationship, permanency and living under the same roof. The AAT did not accept that approach:

'...while the subjective indicia have to be considered, the decision maker has to look more to the objective indicia. Even in Re Smith (1985) 26 SSR 314 we note that the Tribunal said that 'where subjective considerations play so large a part, corroboration becomes highly desirable'.
(Reasons, para.30)

BUSH AND SECRETARY TO DSS (No. N86/66)
Decided: 27 February 1987 by A.P. Renouf, G.P. Nicholls and M.T. Lewis.

The AAT affirmed a DSS decision to recover an overpayment of $2,546 in supporting parent's benefit. This was raised because the DSS alleged that the applicant had not notified the Department that she had formed a de facto relationship.

The evidence was that she did not notify the DSS because although there had been a prior relationship the situtation relevant to the proceedings was not one of a *de facto* relationship. The applicant was living with Mr H as a matter of convenience in order that they could share accomodation. The lease was signed by the applicant but using the surname of Mr H. The applicant paid the bills and Mr H made a contribution. The applicant shopped for him. She did not clean his room. They had a separate social life. It was a very different relationship to the one they had had in the past when they were in a de facto relationship.

The Tribunal found that 'on the balance of probabilities' the relationship was quite different to that which they had had previously. But it was still a de facto relationship, albeit a bad one.

'The features in the relationship which support our view include that, at least with the estate agent, the couple presented as being married, Ms Bush signed a form 'J. Hudson', and they set up an independent living arrangement with their child notwithstanding that they occupied separate bedrooms and 'went their own way'. Beyond this, it is difficult to know the precise nature of the relationship, nor do we need to. If the couple were in fact legally married and experienced the same 'bad marriage' relationship they would, without a doubt, have been regarded for pension or benefits purposes as being married. To consider the relationship...in any other way merely because they are not legally married is inconsistent with the Act and indeed would place them in an advantaged position compared with married couples in similar circumstances.'
(Reasons, para.24)

Overpayment: amnesty

PATRON and SECRETARY TO DSS (No. N86/899)
Decided: 16 March 1987 by G.P. Nicholls

The applicant asked the AAT to review a decision of the DSS to refuse to apply the 'amnesty' provisions of the Social Security Act in respect of an overpayment of $912.40 in supporting parent's benefit.

The legislation
The Social Security Legislation Amendment Act 1986 provided in s.45 that where a person had failed to notify the DSS of changed circumstances which may affect their eligibility for a pension or the rate of their pension, then provided that they notify the Department of those changed circumstances by 31 May 1986 the person will not be guilty of an offence for failing to notify, nor will they be indebted for the amount that may have been overpaid.

It was a condition of the amnesty that the pensioner had not previously been informed that they were indebted to the Commonwealth due to an overpayment.

The facts
The applicant had been in receipt of supporting parent's benefit since 1983. In 1984 she undertook a course at a college for which she received a TEAS alllowance. She did not notify the DSS that she was in receipt of the allowance. It was in respect of this period that the overpayment was raised.

The DSS said that they notified the applicant by letter in May 1986 that recovery of the overpayment would be made. The applicant said that she never received that advice. On 30 May 1986 the applicant applied for the amnesty under the above legislation.

However, the AAT found that the applicant was vague as to the details of the date on which she had completed the amnesty form. She said that she completed and dated the form on 22 May but did not lodge it until the 30 May. Yet the applicant could remember clearly the people she spoke to about the amnesty and the actual words on the amnesty form.

This led the Tribunal to conclude that it was more likely than not that the applicant did receive the letter from the DSS on or before 28 May and that her amnesty form could not be treated as having been lodged prior to 30 May.

As a result of this finding the Tribunal found that the applicant could not satisfy the condition precedent to the operation of the amnesty provisions. She had been informed in writing of the overpayment prior to her application for amnesty.

There was no case for the application of the waiver provisions in s.146 of the Act. A repayment of $20 per fortnight would not impose a real financial burden on the applicant.

Formal decision
The AAT affirmed the decision under review.