similar to that of a child with mild mental retardation and, according to her doctor, she was not able to make decisions for herself.

It appeared that, over the 2 years, Technau had provided close supervision and control of K's daily activities. She had done this in a way which actively involved K in decisions about her welfare and activities.

From 8 July 1986 to 14 July 1987, K was certified as an infirm person under the *Public Trustee Act* 1958 (Vic.); but no order was made for any person to have control over K's personal affairs.

On 28 August 1987, an order was made under the *Guardianship and Administration Board Act* 1986 (Vic.) for the Public Trustee to be appointed as 'plenary administrator' of K's estate (s.46) and for Technau to be appointed 'limited guardian' of K 'for the sole purpose of ensuring that K has accommodation appropriate to her needs' (s.22).

Following the making of this order, Technau had again applied for and been granted a carer's pension.

'A guardian'?

It was not disputed that K was a severely handicapped person; and that Technau was providing constant care and attention for her. The central issue was whether Technau was K's 'guardian' before 28 August 1987, so that she could be treated as a 'relative' of K for the purposes of s.33(1).

The AAT said that the term 'guardian' should be given its normal legal meaning, as the Tribunal had decided in *Wain* (1987) 39 *SSR* 495.

For one person to be the guardian of another, the latter must be incapable of managing her or his own affairs. In the case of an infant, this incapacity was imposed by law. In the case of a person with a mental defect, there was no legal incapacity unless the person had been found (usually by a court) to be incapable of managing her or his own affairs.

For a person to a 'guardian' in the ordinary legal sense, that person -

> 'must . . . be recognised by law as having both the powers and the duties of a guardian by reason either of parenthood or appointment.'

(Reasons, para.26)

The AAT said that administrative considerations supported this view of the term 'guardian' - that it referred to a formal legal relationship:

> '. . . claims for carer's pension have to be dealt with in a prompt and expeditious manner by many different officers in the DSS throughout Australia, initially by junior and relatively inexperienced officers. Few of those making decisions in respect of those claims at any level in the Department are legally qualified. It is, I think, to be assumed that Parliament intended the provisions of the Act to be readily applicable by those officers. Where, therefore, there are several possible meanings which a word or phrase in the Act may bear, the meaning which renders the provisions of the Act readily applicable by such officers should, I consider, all other considerations being of equal weight, be preferred.'

(Reasons, para.24)

In the present case, the AAT said, there was no doubt that K had been incapable of managing her own affairs before 28 August 1987; and that Technau managed most of her affairs. Technau had undoubtedly 'acted with great compassion and in a most responsible manner' to K's considerable benefit. But, prior to 28 August 1987, she did not have the legal status of guardian; and was not K's 'relative' within s.33(1): Reasons, para.27.

Formal decision

The AAT affirmed the decision under review.

Overpayment: waiver

GOODWIN and SECRETARY TO DSS (No. A87/88)

Decided: 3 December 1987 by J.O. Ballard.

Christine Goodwin asked the AAT to review a DSS decision to recover from her an overpayment of supporting parent's benefit, amounting to $1644.

Goodwin admitted that she had been overpaid but asked the AAT to exercise the power to waive recovery given by s.186(1) of the *Social Security Act* (as renumbered from 1 July 1987).

The legislation

Section 186(1) authorises the Secretary to -

> (a) write off a debt under the Act;
> (b) waive or defer the right of the Commonwealth to recover the whole or part of a debt under the Act; or
> (c) allow a debt under the Act to be paid by installments.

Waiver of recovery

Goodwin had been overpaid when the DSS paid her supporting parent's benefit without regard to her income from casual employment. Goodwin claimed that she had advised the DSS by telephone of her employment but the DSS had no record of the notification; and she had not referred to this employment in an entitlement review form lodged by her at the time.

G had now re-married: her husband was paying maintenance to his former wife for the support of 3 children by that marriage; Goodwin had 2 children and was expecting a third child; and the household income came from her husband's job as a bus driver.

In August 1987, a DSS officer wrote to Goodwin, stating that 'the debt is written-off subject to recovery within the next 6 years. This period, however, can be reviewed at any time.'

The AAT pointed out that the Secretary's power, under s.186(1)(a), to write off a debt, was not conditional:

> '[T]here is no power under that paragraph to write off subject to recovery within the next 6 years to be reviewed at any time, apparently at the respondent's whim. Thus the letter purporting to write off under paragraph 186(1)(a) of the Act is itself in error.'

(Reasons, para.11)

However, the AAT said, this was a proper case in which to waive recovery under s.186(1)(b). Goodwin's financial circumstances were 'appalling' and there was no prospect of recovering the overpayment. As there was no evidence of fraud on her part, those considerations were decisive.

Formal decision

The AAT set aside the decision under review and waived recovery of the whole of the overpayment.

Rent assistance: rent in advance?

WHELAN and SECRETARY TO DSS (No. V86/698)

Decided: 30 October 1987 by I.R. Thompson, L.J. Cohn and G.F. Brewer.

Mr and Mrs Whelan had lived in a flat owned by Vasey Housing Ltd (Vasey) since 1972. In 1975, they were granted an age pension and a wife's pension. They subsequently applied for rent assistance on the basis that their weekly rent consisted of $25 plus some part of $4250, the sum which they had paid to Vasey before they moved into the flat.

The DSS refused to treat their rent as more than $26 a week; and they asked the AAT to review that decision.

The legislation

At the time of the decision under review, s.30A(1)(b) of the *Social Security Act* provided that a person was qualified to receive rent assistance if, *inter alia*, 'the person pays, or is