Was there a debt due to the Commonwealth?

Section 181(1) [now s.246(1)] provides that 'where in consequence of a false statement or representation...an amount has been paid by way of pension, allowance or benefit under the Act which would not have been paid but for the false statement or representation ... the amount so paid is a debt due to the Commonwealth'.

The AAT held that Amoah's failure to indicate on his fortnightly continuation forms that he was enrolled in and attending the course was a false statement or representation within the meaning of s.181(1); and that the amount of unemployment benefit in issue would not have been paid but for the false statement or representation. Accordingly, the amount in issue was a debt due to the Commonwealth.

Should the debt be recovered?

Section 186(1) [now s.251(1)] gives the Secretary a discretion to write off or waive a debt due, or to allow the debt to be paid in instalments.

The AAT considered Amoah's financial situation, which 'was at all relevant times, and still is, precarious'. He had a number of large debts and had undertaken the course 'in an endeavour to improve his skills'. He had been forced to borrow $4500 to do the course. Despite these considerations, the AAT declined to waive the debt.

Formal decision

The AAT affirmed the decision that there was a recoverable overpayment but varied the decision under review by deferring the question of recovery for one year from the date of the AAT's decision.

[R.G.]

Unemployment benefit: leave without pay

ROACH and SECRETARY TO DSS
(No. 4744)

Decided: 15 November by M.D. Allen.

Vicki Roach was granted unemployment benefit by the DSS for the period 23 January to 17 February 1986. During that period, Roach was on leave without pay from her employment and was attempting to find casual work.

The DSS then decided that Roach should not have been paid unemployment benefits and decided to recover the amount paid to her. She asked the AAT to review that decision.

The review hinged on the question whether Roach was 'unemployed' during the period in question. The Tribunal pointed to the decision in *Vijh* (1985) 27 *SSR* 328 and concluded that, because Roach's contract of employment with her employer had still been in existence, it could not 'be said that she was unemployed as opposed perhaps to under-employed': Reasons, para.10

Accordingly, Roach had not been 'unemployed' within the meaning of that term as used in s.107(1)(c)(i) of the *Social Security Act* and she had received payments of unemployment benefits to which she was not entitled.

Formal decision

The AAT affirmed the decision under review.

[P.H.]

Unemployment benefit: de facto relationship?

LAWRANCE and SECRETARY TO DSS
(No. 4722)

Decided: 4 November 1988

by J.A. Kiosoglous.

The applicant sought review of a DSS decision to reject his claim for unemployment benefit on the basis that he was a 'married person' within the meaning of s.3(1) of the *Social Security Act* and that his income, combined with that of his *de facto* spouse, precluded payment pursuant to s.122.

The facts

Lawrance, a 33-year-old man with tertiary qualifications, was employed mainly in the theatre. He met J, a freelance theatre director in late 1981 and a friendship developed in the course of their working relationship.

The nature of their work meant that both travelled a great deal. About 12 months after they met Lawrance moved into J's rented house while she went overseas. Upon her return he remained living there and shared rent and costs with her.

The couple lived together until February 1987, when J moved to Adelaide to take up employment with the State Theatre Company. In July 1987 Lawrance also moved to Adelaide having gained employment there. He shared accommodation with J and they shared costs.

After moving to new rented accommodation together, they obtained a loan in joint names in about May 1988. They used it to purchase a house as tenants-in-common. Loan repayments were shared as equally as possible and Lawrance said he was keeping a record of the amount each contributed in case the house was sold. He told the AAT they bought the house to enable them to move out of the rental market, which neither could have done alone. Whenever they lived in Adelaide, they occupied the house. He also said they had no joint bank accounts.

Since they began sharing accommodation they had enjoyed a sexual relationship. Lawrance considered the relationship to be exclusive but had not asked J how she considered it. He said he would be hurt if she did not consider it to be exclusive. There were emotional ties and support between them and he did not want them to part. He stated they had never held themselves out as being married nor in a *de facto* relationship.

In her evidence, J said the principal concern in her life was her career. She did not consider herself to be anybody's wife or surrogate spouse. Details of domestic arrangements were also given to the AAT.

The decision

In deciding that the parties were residing under the same roof on a *bona fide* domestic basis and *affirming* the decision under review, the AAT discussed the factors enumerated in the case of *Tang* (1981) 2 *SSR* 15.

It then listed relevant factors under the following headings: permanence, exclusiveness, resource pooling, expense sharing, holding themselves out as married, perceptions of relationship, sexual relationship, social life, and obligation. The evidence was discussed separately against each heading and the Tribunal made it clear the list was not meant to be exhaustive.

[B.W.]