ond reading speech. These references made it clear, the SSAT had said, that the provisions only applied to persons who moved while in receipt of unemployment benefits and not to persons who claimed benefit after moving.

The AAT's decision

The AAT said that it was in broad agreement with the reasons of the SSAT. The Tribunal noted the absence of a clear statutory indication of a date of commencement for any non-payment period, while the length of that period, as imposed by s.126(4), was mandatory —12 weeks.

Adopting the approach of the SSAT, the AAT said, would avoid the difficulties associated with the two most likely ways of applying the provisions to persons who moved before claiming benefit.

If the provisions required the 12-week period to run from the date of a person's move (prior to lodging a claim), the DSS would be determining that benefit was 'not payable during a period when it was not payable in any case. Though possible, such an interpretation involves what Wittgenstein has described as "nonsense on stilts"': Reasons, para. 10.

Alternatively, commencing the period on the date of a person's claim would be arbitrary, given that there might be a substantial time between the move and the claim and the person may have been diligently looking for work throughout that period. The AAT preferred to avoid reading the provisions as imposing such a sanction or penalty.

The AAT agreed with the SSAT that this was an appropriate case in which to refer to the explanatory memorandum and the Minister's second reading speech to resolve the ambiguity; and read those instruments 'as confirming the view that s.126(1)(aa) only affects someone who moves after submitting a claim': Reasons, para. 14.

The AAT concluded its Reasons with the observations that its conclusions 'cannot be asserted as categorically correct'; that 'the relationship between the various components of the statutory scheme [is] equivocal'; and that, assisted by the Minister's Second Reading Speech, it had 'leaned towards the interpretation [of] those provisions most beneficial to the applicant': Reasons, para. 27.

The AAT also observed that it was comforted by the fact that its reading of the provisions was the least restrictive of freedom of movement of subjects. The right to freedom of movement was recognised in various international conventions; and the common law had an 'evolutionary capacity ... to accommodate these emerging international standards'. Resort to these principles or standards 'lends weight to the particular interpretative choice otherwise indicated by the reasoning process': Reasons, para. 28.

Formal decision

The AAT affirmed the decision of the SSAT.

[P.H.]

Unemployment benefit: living with parent

SECRETARY TO DSS and GIBSON (No. 7311)

Decided: 13 September 1991 by R.K. Todd, T.E. Barnett and S. Hotop.

Paulette Gibson was granted unemployment benefit in October 1989. She was then living in Queensland, where she had been a ward of the state until the age of 18 years.

In February 1991, Gibson re-established contact with her mother, from whose custody she had been removed as a 1-year-old baby, and began to live with her mother. The DSS then decided that, as Gibson was at least 18 and under 21 years of age and living with her mother, the rate of benefit being paid to her should be reduced.

On review, the SSAT set aside that decision. The DSS asked the AAT to review that decision.

Living with her parent?

Section 118(1)(b) of the *Social Security Act* 1947 provided for the payment of a lower rate of benefit to a person between the ages of 18 and 20 without a dependent child who 'is living at a home of his or her parent or parents'.

Gibson claimed that, although she was within the critical age range, did not have a dependent child and was living with her natural mother, she was not subject to this provision.

She based this argument on the fact that she had been separated from her mother between the age of 12 months and 18 years, during which period she had been a ward of the state.

The SSAT had treated this removal of Gibson from her mother as ending her mother's status as a 'parent' for the purposes of the *Social Security Act*. The SSAT relied on what it saw as the purpose of s.118(1)(b)— to extend the financial obligations of parents to their children beyond the age of 18 years; and concluded the word 'parent' did not include a 'biological parent' who had no financial responsibility for a child by reason that the child had been made a state ward.

The AAT rejected this approach:

> 'It is simply not legally possible to embark on this kind of search for the purpose of legislation where the meaning of the provision in question is abundantly clear on its face. If words used in an Act of Parliament are not clear, or there is some inconsistency apparent between them and another part of the Act, then we would be entitled to use various approaches to try and work out what the purpose of the provision is. But there is, in our opinion, in fact no doubt about the meaning of the expression "living at a home of [her] parent".'

(Reasons, para. 7)

On the basis of the definition in the *Macquarie Dictionary*, and any other dictionary to which the Tribunal might properly have access, the AAT said, Gibson's 'natural mother was unquestionably her "parent"': Reasons, para. 8.

Formal decision

The AAT set aside the decision of the SSAT and decided that the rate of benefit payable to Gibson should be calculated on the basis that she had turned 18 but not 21 years of age and was living at the home of her parent.

[P.H.]