would be appropriate for Martin to, from time to time, request the DSS to review the rate of DSP to be paid to him.

Formal decision

The AAT affirmed the decision under review.

[P.A.S.]

Sole parent pension: marriage-like relationship

LILLEY and SECRETARY TO THE DSS

O'NEILL and SECRETARY TO THE DSS (No. 12517)

Decided: 22 December 1997 by K.L. Beddoe, H.M. Pavlin and E.K. Christie.

Lilley and O'Neill shared premises since 1992. The DSS decided on separate dates to cancel the sole parent pensions (SPP) of both Lilley and O'Neill. Both decisions were affirmed by an Authorised Review Officer and the SSAT. The issue for the AAT was whether they shared a 'marriage-like relationship'.

The law

Section 249(1) of the *Social Security Act 1991* provides that a person is qualified for SPP if not a member of a couple. Section 4(2) provides that a person is a member of a couple if he or she has a relationship with a person of the opposite sex, is not legally married to that person, but in the Secretary's view has a 'marriage-like relationship'. Section 4(3) sets out the criteria to be considered by the Secretary in determining whether there is a marriage-like relationship, including the financial and social aspects of the relationship, any joint responsibility for caring for children, the household arrangements, any sexual relationship and the length of the relationship.

The facts

The AAT commented that neither Lilley or O'Neill 'seems able to cope with details as to what happened in the past': Reasons, para. 9. It appeared they began living in the same premises at Wynnum in 1992. O'Neill and her daughter moved into the premises where Lilley and his children lived, as her mother's flat was too small to accommodate 3 people. The DSS investigated their circumstances in 1993, and did not cancel either party's SPP. The evidence showed that the DSS had considered their eligibility for SPP 'on more than one occasion': Reasons, para. 11.

Lilley and O'Neill moved to Griffin in April 1993. There was evidence of O'Neill leaving the premises and residing separately for several months in 1994. There was clear and consistent evidence that both parties had separate bedrooms and did not share a common bed. In 1996 O'Neill gave birth to a daughter, Leilani, with Lilley as the acknowledged father. The evidence was that O'Neill agreed to conceive a child because Lilley wanted a child to replace his daughter who now resided with her mother. O'Neill gave evidence that Lilley had the prime responsibility for the care of Leilani and, in the event that they no longer shared premises, Leilani would stay with her father.

O'Neill did not live in shared premises at the time of the AAT hearing, and said that she had moved away 4 or 5 times. However, her 2 daughters stayed with Lilley during the week because of their schooling.

Marriage-like relationship

The AAT found this to be evidence of joint responsibility for the care of her children together with their joint responsibility for the care of their daughter. The AAT was not satisfied that there were two distinct households operating in the shared premises. There did not appear to be joint social activities. The only evidence of a sexual relationship was the conception and birth of their daughter. Lilley was 21 years older than O'Neill and the AAT was of the view that he had very strong views about raising children and household matters. The AAT thought that O'Neill was more submissive and prepared to rely on others to help in the care of her children.

The AAT found that their relationship was a marriage-like relationship. It had particular regard to the length of the relationship, the dominant personality of Lilley, his desire to have another child, the arrangements for the care of the children and O'Neill's apparent dependence on Lilley for support.

Formal decision

The decision to cancel both pensions was affirmed.

[H.B.]

Member of a couple: same sex relationship

HARMAN and SECRETARY TO THE DSS (No. 12503)

Decided: 19 December 1997 by M.T.E. Shotter.

The background

Harman's application for an age pension had been rejected due to the level of his income. He resided in Holland but would otherwise have been entitled to a pension under the International Agreement between Australia and the Netherlands. Harman objected to the decision of the DSS and the SSAT, arguing that he should be considered as a member of a couple, which would allow for the application of a higher income limit. He argued that the refusal to consider himself and his same sex partner as a couple was contrary to the way in which assessment of pension occurred in the Netherlands, and also contravened international agreements signed by Australia.

The law

The AAT noted that s.4(2) of the *Social Security Act 1991* defines a person as 'a member of a couple' if:

> '(a) the person is legally married to another person and is not, in the Secretary's opinion . . . living separately and apart; or
>
> (b) all of the following conditions are met:
>
> (i) the person has a relationship with a person of the opposite sex (in this paragraph called the "partner");
>
> (ii) the person is not legally married to the partner;
>
> (iii) the relationship between the person and the partner is, in the Secretary's opinion . . . a marriage-like relationship . . .'

Member of a couple

Australian government policy was clearly expressed in s.4(2)(b)(i), requiring the relationship to be with a person of the opposite sex, and the AAT was bound by the legislation. The policy of the Dutch government could have no bearing on the decision. Harman's pension rate therefore had to be worked out as if he were a single person. According to the International Agreement Portability Rate Calculator, s.1210 and Article 10 of the Agreement itself, this depended upon Harman's Australian working life residence. The DSS had calculated Harman to have a working life residence of 288 months, and this was not contested by Harman. Based on this the AAT applied the relevant formula set out in Article 10