liable to pay, rent at an annual rate exceeding' a specified amount.

At that time, s.6 defined 'rent' as meaning -

> 'rent, not being Government rent, in respect of premises, or a part of premises, occupied by the person as the home of the person . . . '

Rent in advance?

Vasey provided accommodation for former members of the armed services. Under a 1972 agreement between Mr and Mrs Whelan and Vasey, Mr and Mrs Whelan had acknowledged paying $4250, described as a free and voluntary donation, to Vasey. Vasey had agreed that Mr and Mrs Whelan should be entitled to occupy a flat in Vasey's building.

The agreement gave Vasey the right to end the Whelans' tenancy if they failed to meet payments of rent, if they did not observe the terms of the agreement or if they vacated the flat. The agreement provided that, should the Whelans no longer require the flat or should their right of occupation be terminated by Vasey, the company would be under no obligation to repay any part of the donation but would have a discretion to do so.

It was argued on behalf of Mr and Mrs Whelan that, in determining their eligibility for rent assistance, the $4250 paid by them on the signing of the agreement in 1972 should be taken into account as rent paid in advance.

The AAT said that there were several reasons why that $4250 could not be treated as rent in advance for the purposes of rent assistance.

First, 'rent', according to its normal meaning, meant a payment by a tenant to the landlord for a specific period. As the period of the Whelans' tenancy was not a certain period, the payment in advance could not be treated as rent - there was no way in which the annual rate of such a payment could be ascertained with certainty.

Secondly, a payment of rent referred to in s.30A(1)(b) must be made, or be payable, during a period when an instalment of pension was payable. In the present case, the payment in question had been made some three years prior to any pension becoming payable to the Whelans.

Thirdly, the evidence in the present case established that the payment in question was made under an agreement collateral to the tenancy agreement between the Whelans and Vasey and was the consideration for Vasey entering into the tenancy agreement with the Whelans.

Formal decision

The AAT affirmed the decision under review.

Age pension: 'income'

V.R. and SECRETARY TO DSS (No. V87/431)

Decided: 4 December 1987 by R.A. Balmford.

V.R. was an age pensioner. The DSS decided to treat moneys received by V.R. in each year since 1980 as 'income' for the purposes of calculating the rate of his age pension. He asked the AAT to review that decision.

Present or future income?

V.R. had set up a waste product processing business in 1980. He had received subscriptions from investors totaling some $200 000. Each of the investors signed a form letter stating that the investor was retaining V.R.'s services to process waste products and paying V.R. $4000 for those services. Each of the investors expected to receive a product from V.R. when the processing commenced - according to V.R., within a few months after the hearing of this application for review.

In the meantime, V.R. had paid the money into his own bank accounts, using it for business and personal expenses. However, V.R. had maintained financial records, crediting the money received to a suspense account in the year of receipt; and he said that he would transfer this credit to an income account in the year in which he supplied the processed product to each investor.

V.R. argued that the subscriptions received by him should be treated as income only in the year in which he supplied the processed product to the investor and the credit in the suspense account was transferred to the income account. This argument was supported by a High Court decision on income tax law, *Arthur Murray (NSW) Pty Ltd v Federal Commissioner of Taxation* (1965) 14 ATD 98.

The AAT said that definitions of 'income' developed for the purposes of the *Income Tax Assessment Act* were not readily transferable to the *Social Security Act*. That point had been made in several AAT decisions, including *Shafer* (1983) 16 *SSR* 159, and by the Federal Court in *Read* (1987) 38 *SSR* 484.

The inclusion, in the *Social Security Act*, of a definition of income 'clearly renders the decision in the *Arthur Murray* case irrelevant to the interpretation of the . . . Act', the AAT said: Reasons, para.9. The sums of money paid to V.R. were, the AAT said -

> 'in terms of the definition of "income" in the *Social Security Act*, "moneys received by [him] for [his] own use or benefit". Indeed they are so treated by him. His perceived obligation to supply goods, an obligation which in some cases has remained unmet for 7 years, is a separate matter which is not the concern of the respondent.'

(Reasons, para.10)

Formal decision

The AAT affirmed the decision under review.

Age pension: sex discrimination

McCORMACK AND SECRETARY TO DSS (No. V86/469)

Decided: 13 July, 1987 by M.E. Hallowes.

The applicant, who was permanently blind, had been in receipt of invalid pension since May 1984. She received the maximum rate applicable to a person whose spouse did not receive a pension. She was transferred to age pension when she turned 60 years late in May 1984.

In September 1985 the applicant's spouse was granted age pension. As a consequence the applicant's pension was reduced to the maximum married rate. The applicant appealed against that decision.

The legislation

Section 28(1A) of the *Social Security Act* provides the maximum rate of pension available shall be:

'(a) in the case of an unmarried person or a married person whose spouse is not in receipt of a prescribed pension -

(b) in any other case - $3985.80 per annum.'

Discrimination

The applicant believed that she was being discriminated against because of her marital status. She complained that if she was a single aged blind pensioner her pension rate would not be reduced.

The Tribunal had no option but to affirm the decision under review. The *Sex Discrimination Act* 1984 (Cth) did not apply to the *Social Security Act* (see s. 40 of the former Act) and although invalid pensioners had historically been treated differently to other pensioners for the purposes of means testing, the present legislation was clear. The applicant's spouse was in receipt of a prescribed pension and accordingly her pension was reduced to the maximum married rate.

Formal decision

The decision under review was affirmed.