ceedings against his parents for support. Section 73 of the *Family Law Act* 1975 (Cth) imposes an obligation on parents to maintain their children:

> The parties to a marriage are liable, according to their respective financial resources, to maintain the children of the marriage who have not attained the age of 18 years.

This argument had also been raised in the earlier decision of *Beames* (1981) 2 *SSR* 16. In that decision the applicant had left school before his 15th birthday and had been unable to find employment. However, Beames remained at home and was supported by his parents. The AAT was then able to say:

> It follows that where parents have the financial capacity to support a child, *and do in fact provide that support*, even if their resources are limited, there is litte ground for considering that community resources should be used for the support of the child and for exercising the discretion accordingly. [My emphasis]

(Reasons, para. 10)

While *Beames* must be correct in that the applicant, being supported, could not be 'without a sufficient livelihood', this was not the case in *Spooner*. Spooner's parents were not supporting him. Should he be required to enforce that parental obligation?

Claimants are 'single units'

The AAT answered that question in the negative. The Tribunal said that the Secretary—

> is in no position to attempt to coerce third parties to honour their obligations, legal or otherwise . . .

(Reasons, pp.12–13)

The rationale provided for this view is, perhaps, the most far-reaching statement in the decision. The AAT said:

> So far as social security is concerned, there is no obligation on children to support their parents. That is our system. We are single individual units in society. The welfare of each of us is to be looked at in isolation taking into account only facts. Similarly, the legal obligations of parents to support their children are not the concern of social security when the welfare of the children is being considered.

(Reasons, p.12)

This reasoning must be correct. To require children to enforce parental maintenance obligations may leave children without any support where such action is difficult or impossible. Indeed, the notion that a child should be forced to take legal action in such a case seemed repugnant to the Tribunal:

> [I]t would in effect be trying to require a young boy, not an adult, to rely on and obtain support from a third party because that third party had a legally enforceable obligation to maintain him.

(Reasons, p.13)

Thus, if in *Beames* the applicant had *not* been provided with support from his parents the result may have been different. It seems from the reasoning of the AAT in *Spooner* the location of the child is irrelevant—that is, inside or outside the family—the question to be asked is whether the claimant has a sufficient livelihood, not whether some other party has an obligation to provide support. (This point has been emphasized by the AAT in the context of migrants covered by maintenance guarantees, in several decisions—*Blackburn* (1982) 5 *SSR* 53; *Sakaci* (1984) 20 *SSR* 221 and *Macapagal* (1984) 21 *SSR* 236; and, in that context, it has been accepted by the DSS—see *Bahunek* (1985) 24 *SSR* 287.)

Choosing school instead of work

The second issue raised in *Spooner* was whether the fact that the applicant had chosen to attend school rather than seek employment meant that he was not 'unable to earn a sufficient livelihood'.

The novel point of *Spooner* was that the applicant was a secondary school student. The earlier decisions on this point had involved tertiary students.

In *Conder* (1985) 23 *SSR* 277 the applicant had completed the first year of a university course. His TEAS allowance was not renewed until the end of January of the second year of his course and he had applied for special benefit in the interim, having no other source of income.

The AAT in *Conder* examined the consequences of the applicant choosing to become a full-time student instead of seeking employment. Conder had entered the course expecting support through a TEAS allowance and for the period claimed (January) employment prospects were poor. As a result the applicant could be said to be unable to earn a sufficient livelihood for himself. He was not in control of the circumstances that had led to this situation. (However, the AAT did not exercise the discretion in his favour because, by the time the appeal was heard, the TEAS allowance had resumed and backdated for the period special benefit was claimed.)

In the later decision of *Casper* (1985) 25 *SSR* 300, the applicant was held 'unable to earn a sufficient livelihood' when she decided to enrol for a degree in medicine upon completing an honours degree in science and had shown that her income would be low from scholarship sources and that she was unlikely to be allowed to engage in part-time work or defer her studies by the medical faculty.

At this point the decisions in *Conder* and *Casper* both make it clear that a student may satisfy the criteria of being 'unable to earn a sufficient livelihood'. However, when confronted with the live problem of the exercise of the discretion in s.124(1) in *Casper* the AAT refused to grant special benefit. The Tribunal said:

> Miss Casper has made a *voluntary* decision to place herself in a most difficult financial situation. She is attempting to gain a second financial qualification for employment. It may appear an inconsistent application of government policy if applicants ineligible for TEAS allowance because they are attempting a second qualification were to be supported by the public purse under the *Social Security Act*. [My emphasis]

(Reasons, para. 26)

Another view of government policy: Spooner

In *Spooner* the DSS argued, along the principles in *Casper*, that the applicant had chosen to remain at school. He could decide to seek employment. This matter relates to both the ability to earn a sufficient livelihood and the exercise of the discretion. As in *Conder* and *Casper* the fact that Spooner was at school did not lead to him failing the first criterion—the AAT thought it would be unreasonable to expect him to leave school and compete in a tight employment market without a School Certificate.

On the exercise of the discretion, the AAT was not swayed by the view that Spooner had voluntarily chosen school instead of employment. The AAT referred to the *Social Security Act* provisions which reflected 'a general policy that public support should be given to or in respect of children kept at school'. Sections 18A, 59A, 83AAB, 84, 94, 105H and 106(1) extend the definition of child (for whom income security payments could be made) to include a full-time student between 16 and 25 years of age.

> [These sections] . . . point to a policy not to require children to leave school to enter the workforce but to assist in their support so that they may obtain an adequate education. The Parliament has deliberately and repeatedly taken the view that it is in the public interest to spend public welfare funds rather than encourage young people to leave their educational institutions.

(Reasons, p.20)

Other considerations which led to the discretion being exercised in Spooner's favour were the alternative costs that would be borne by the community if he was forced into an institution and that his need was temporary. The AAT concluded:

> It would be a personal disaster for the applicant and a loss to this community of a promising and potentially useful citizen if, through the wrong decision, he was forced into a situation of abandoning his hopes for qualifications or (worse) was levered on to the treadmill of unemployment benefits while still unqualified.

(Reasons, p.22)

Summary

Spooner has set out commendable principles for the operation of s.124(1) of the Act:

1. In determining whether a person is 'unable to earn a sufficient livelihood' the person must be looked at as an individual and presumptions that the person may have a legal right to support against another person play no part.
2. The fact that a person is a full-time student does not prevent the person from being 'unable to earn a sufficient livelihood', especially given the current difficulties in gaining employment.
3. In the exercise of the discretion under s.124(1), the Secretary to the DSS should consider the policy, reflected in the Act, of encouraging children to remain in school and to receive an adequate education. The view taken in *Spooner* casts doubts on the validity of the decision in *Casper*. Although the applicant in *Casper* was pursuing a course in higher education, the difference seems one of degree rather than substance.
4. The alternative costs to the community if the applicant is not supported by granting special benefit should also be considered. Special benefit may assist in enabling the applicant eventually to become self-supporting, through qualifying and gaining employment, for example. Thus the need may be seen to be temporary—precisely the type of situation special benefit is designed to cover.

B.S.