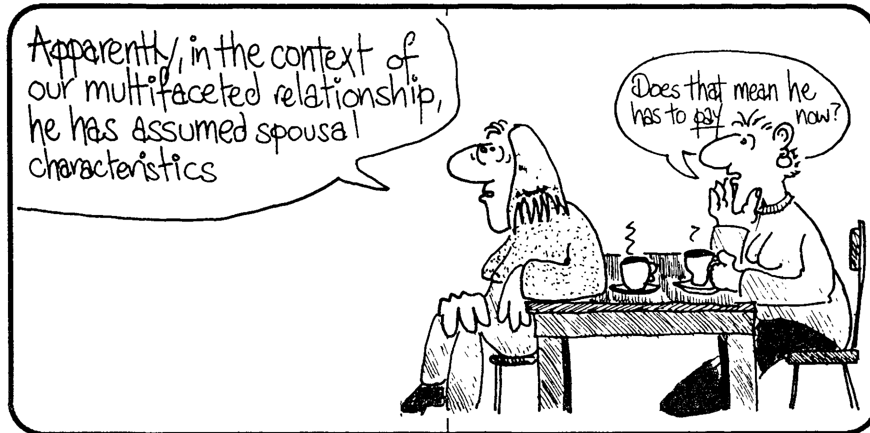

'Of his statement to the effect that he made the claims at all because "it's the Government and you take them for all you can get", it must be borne in mind that in the context of income tax, such a view is widely representative of the Australian ethos.'

(Reasons, para.27)

Notwithstanding these factors, and evidence led of a tombstone on Shine's mother's grave which described her as 'in-law of Bill', the Tribunal held that all of the other evidence of support of Shine by G was explicable by his close attachment to his only child Amelia. Each of the instances of material support followed the birth of the child. By contrast, he had known Shine for many years before the birth and no such support had been previously forthcoming, other than small contributions when he was temporarily resident in her house.

The AAT accepted that Shine -

'is the disgruntled former wife of a husband who would not work and .... that she is not interested in again entering a relationship of or akin to marriage. He is a bushy, to use the vernacular, a bachelor but a man whose moral dictates decree that he should support a life which he in part created.'

(Reasons, para.33).

Formal decision

The AAT set aside the decision to cancel Shine's supporting parent's benefit and remitted the matter to the Secretary with the direction that Shine was eligible for supporting parent's benefit.

[R.G.]

Unemployment benefit:full time students

KARNIB and SECRETARY TO DSS
(No.N88/122)

Decided: 1 June 1988 by A.P. Renouf.

The AAT *set aside* a DSS decision that Ali Karnib had been overpaid $6403 by way of unemployment benefits paid between February and August 1986.

Karnib had arrived in Australia with his wife and 7 children in 1984. He attempted to find work without success. At the beginning of 1986, he enrolled as a full-time university student for a B.Sc. degree, in the hope of improving his chances of finding employment.

The AAT found that Karnib had continued to look for work and would have abandoned his studies if he had found a job. However, Karnib did not advise the DSS of his enrolment. When the DSS discovered that he was enrolled as a full-time student, it cancelled his unemployment benefit and claimed an overpayment.

The AAT said that earlier Tribunal decisions [which it did not name - but see, for example, *Collins* (1985) 27 *SSR* 328] established that a full-time student could be 'unemployed' within s.107(1) of the *Social Security Act*. Because Karnib intended to give up his studies if he found employment and he took reasonable steps to find work during the relevant period, he had been qualified for unemployment benefit.

The introduction, from 3 June 1986, of a new provision, s.133, did not affect Karnib's eligibility: that provison had disqualified from unemployment benefit a full-time student receiving a TEAS allowance, or not receiving such allowance because of poor academic results. But Karnib was not receiving TEAS because he had refused an offer of TEAS in May 1986. In any event, the AAT noted, s.133 did not affect unemployment benefit granted prior to 1 July 1986 until 1 January 1987.

[P.H.]

Assets test: severe financial hardship

NAGLE and SECRETARY TO DSS
(No. N87/831)

Decided: 30 June 1988 by I.R. Thompson.

Eileen Nagle was granted an age pension in November 1978. She had spent the last 40 years of her life caring for her brother, who suffered from cerebral palsy, was grossly disabled and required constant care. When the assets test was introduced, the DSS cancelled Nagle's pension. She asked the AAT to review that decision.

The legislation

At the time of the decision under review, s.6AD(1) of the *Social Security Act* [now s.7(1)] provided that a person's property was to be disregarded for the purposes of the assets test where the person could not reasonably be expected to sell or realize the property or use it as security for borrowing (para (c)) and the Secretary was satisfied that the person would suffer 'severe financial hardship' if the property was taken into account (para (d)).

The DSS guidelines declared that a single person with readily convertible assets exceeding $6000 would not generally be regarded as a person who would suffer 'severe financial hardship' as required by s.6AD(1)(d). On the basis of that guideline, the DSS had concluded that Nagle could not meet the requirement of s.6AD(1)(d).

S.6AD(3) of the Act [now s.7(4)] provided that, where property was disregarded for the purposes of the assets test, the annual rate of pension payable to the person was to be reduced by the amount of income 'that could reasonably be expected to be derived' from the disregarded property.

'Severe financial hardship'

Nagle and her brother lived on a farm of 607 hectares, owned as tenants in common by Nagle and another brother, L, who managed the farm for the support of Nagle, L and L's family. In the tax year ended 30 June 1985, Nagle derived $6241 from the farm and $1078 from investments; in the 1985-86 tax year she derived $2104 from the farm and $1254 from investments; and in the 1986-87 tax year she derived $4042 from the farm and $1206 from investments.

In January 1985, Nagle had liquid assets of $16 942; and at the date of the hearing of this review those assets amounted to $19 894.

The AAT said that, taking into