recovery of public money. It cannot be said that the Department has, on this occasion, made its recovery a matter of paramount consideration. Indeed, it has allowed the overpayment to grow rather than to diminish and, in doing so, has placed Mr Coutts in a position where its repayment must appear a never-ending task.'

(Reasons, para. 23)

The AAT said that, taking all of these matters into account, it was prepared to exercise the discretion to waive half the amount of the overpayment made after 1986 on the basis that the DSS had adequate time to obtain information from Coutts' employer and to notify him of the amount of overpayment. Had the Tribunal not accorded greater weight to the recovery of public money, it would have waived recovery of all moneys received by Coutts after December 1986: by that time, the DSS had adequate time (some 5 months) to investigate the information supplied to it.

Formal decision

The AAT set aside the decision under review and substituted a decision that the sum of $1330.30 be recovered from Coutts.

[P.H.]

Assets test: disposition of property

GATES and SECRETARY to DSS (No. 5890)
Decided: 11 May 1990 by W.J.F. Purcell.

Mr and Mrs Gates asked the AAT to review a decision of the SSAT affirming a DSS decision to reject Mr Gates' claim for invalid pension and Mrs Gates' claim for age pension because their assets exceeded the allowable limit. The only issue was whether farm property and a business given to their son were caught by the disposal of assets provisions.

The facts

Mr Gates' family have been farmers for several generations and Mr Gates owned a 30-acre farm abutting residential suburbs of Adelaide which his son helped him work. He also owned a tractor business in partnership with his son. Mr Gates ceased taking an active role in these enterprises in early 1985 because of illness.

In July 1985, Mr and Mrs Gates transferred their interest in the tractor business to their son for no consideration.

Between March 1987 and May 1988, the farm was subdivided and sold, netting $342 572, from which the son purchased another farm.

Mr and Mrs Gates' son paid them $22 000 between October 1986 and November 1987 and allowed them to live rent-free in his Adelaide home after he moved to the new farm.

On 30 May 1988, Mr Gates applied for an invalid pension and Mrs Gates, who had turned 60 in September 1984, applied for an age pension. Both were assessed as qualified for the respective pensions but their claims were rejected on the basis of the assets test.

The legislation

Under s.6 of the *Social Security Act*, the value of property disposed of for no or inadequate consideration not more than 5 years before the person or their spouse qualified to receive a pension is included when applying the assets test.

There is a discretion not to include property disposed of during this period if, at the time of the disposal, it could not have reasonably been expected that the person or their spouse would become qualified for the pension: s.6(9)(b).

'Continuing farming family'

The Gates argued that they came within the 'continuing farming family' exception to the assets test accepted by the AAT, under which the proceeds of transactions such as theirs do not amount to assets because they were used to purchase another farm. However, reliance was placed upon cases that dealt with the financial hardship provisions and the AAT decided that this exception was not relevant to this review.

Disposed of property taken into account

As Mrs Gates qualified for age pension 10 months before the first disposition of property took place, s.6(9)(b) did not apply. It was not necessary for the AAT to canvass whether Mr Gates could have expected to become qualified for the invalid pension at the time of the first disposition of property. Accordingly the value of the disposed property had to be included when applying the assets test.

Formal decision

The AAT affirmed the decision under review.

[D.M.]

Portability: foreseeable reason for leaving Australia?

PEPONAS and SECRETARY TO DSS (No. 5893)
Decided: 15 May 1990 by J. Handley, G. Brewer and D. Sutherland.

Maria Peponas applied for review of a DSS decision, affirmed by the SSAT, that she was not entitled to payments of pension from September 1988 as the wife of an invalid pensioner. Peponas, who was formerly a resident of Austalia, claimed she was entitled under s.62(1)(a) of the *Social Security Act*.

The legislation

Section 62 of the *Social Security Act* provides:

'Subject to this section, where:
(a) a person who was formerly an Australian resident again becomes an Australian resident;
(b) before the end of the period of 12 months commencing on the day on which the person again becomes an Australian resident, that person lodges a claim for a pension; and
(c) that person leaves Australia (whether before or after his claim is determined) before the expiration of that period,
any pension granted as a result of that claim is not payable in respect of any period during which the pensioner is outside Australia.'
(2) Where the Secretary is satisfied, in relation to a person referred to in paragraph (1)(a) who has been granted a pension as a result of the claim referred to in paragraph (1)(b), that the person's reason for leaving, or wishing to leave, Australia before the expiration of the period referred to in paragraph (1)(b) arose from circumstances that could not reasonably have been foreseen at the time of his return to, or his arrival in, Australia, the Secretary may decide that subsection (1) does not apply in relation to that pension.'

The facts

In December 1987, when Mr and Mrs Peponas were residing in Greece, Mr Peponas was notified that his wife was no longer entitled to receive a wife's pension while she was outside Australia, but if she returned she would be so entitled.

Peponas and her husband planned to return to Australia in February 1988, and Peponas told the AAT that they intended to reside here. Mr Peponas was unable to travel at this time due to illness, but Mrs Peponas came by herself and applied for a wife's pension which was rejected. When her husband ultimately arrived in May 1988, Mrs Peponas re-applied for a wife's pension which was granted.