

# Administrative Appeals Tribunal Decisions

## Assets test: valuation of shares

WYNDHAM and SECRETARY TO THE DFaCS  
(No. 19990728)

Decided: 29 September 1999 by W.G. McLean.

Claims in October 1996 by Wyndham and his wife for newstart allowance and additional parenting allowance were rejected as their combined assets exceeded the \$176,000 limit for a homeowner couple. The value of their combined assets was \$170,218 plus \$295,500 for Wyndham's shareholding in the Wyndham Pastoral Co Pty Ltd (WPC). The SSAT set aside the rejections and directed a professional valuation of the shares be obtained, but Wyndham applied to the AAT.

### Background

The WPC had been formed in 1961 by Wyndham's parents to own the family home in Armidale and a nearby farming property and plant. The parents had each received a controlling management share in WPC for the remainder of their lives, and Wyndham and his brother Edmund had both received 13,900 shares. All had been appointed directors. At about the same time Wyndham, his brother Edmund and their parents had formed a partnership that rented the property and plant from WPC for a peppercorn rate and operated a farming business.

Edmund bought out the other partners in 1989, paying \$50,000 to Wyndham that represented 25% of the partnership's net assets at that time. In 1990 Edmund had also purchased 4438 shares in WPC from Wyndham whose shareholding fell to 34%. The price of \$47.32 per share was based on WPC's estimated net assets at that time. The valuation method and the price were accepted by all the directors when approving the transfer as required by WPC's Articles of Association.

Since then Wyndham had received no dividends from WPC or income from the farming operation. Edmund had suffered brain damage in 1992, and the Office of the Protective Commissioner (OPC) had been appointed to manage his affairs. His wife had been largely managing the farming operations but profits were lower. Wyndham's parents had passed away. The Armidale house had been sold to Wyndham's mother in 1996 by way of

a \$106,000 loan from the WPC, and that amount was still a liability of her estate.

Based on an estimated value for the farming property and improvements of \$728,400, an accountant had estimated Wyndham's remaining 9462 shares in WPC to be worth \$295,500 in 1996. Wyndham accepted the 1996 estimate represented a fair and reasonable assessment. He intended to negotiate the sale of his remaining shares to Edmund for a price based on the underlying net asset value.

### Shares valuation

Mr Wyndham argued that as a minority shareholder he had no control over the operations of the WPC, and the OPC for Edmund could continue to fix a nominal rental for the use of the farm and plant. Furthermore, the farming operation was not profitable enough to pay any more rent and this position was unlikely to change in the foreseeable future. This lack of dividends adversely affected the value of his WPC shareholding to a material degree.

The AAT considered it appropriate to accept the 1996 estimate of Wyndham's shares in WPC. That was probably a conservative figure as the property valuation on which it was based was less than valuations done in 1990 and 1997. That estimate was accepted by Wyndham, and had been used by the Secretary to assess Mr and Mrs Wyndham's assets in rejecting their claims. The AAT noted that in the past the directors of WPC had agreed to the transfer of shares based on the underlying net asset value of WPC, and the same approach was adopted when Edmund had bought Wyndham's interest in the partnership.

The AAT also considered it would not be appropriate to apply a discount to the 1996 estimate until Wyndham had concluded negotiations to sell his remaining shares to Edmund, and/or Wyndham had obtained legal advice concerning his rights and obligations as a director of WPC.

It followed that the total value of Mr and Mrs Wyndham's assets was \$465,718.

### Formal decision

The AAT set aside the SSAT's decision and substituted decisions to affirm the rejection of the claims for newstart allowance and additional parenting allowance.

[K.deH.]

## Age pension: deprivation of assets

KOSCHITZKE and SECRETARY TO THE DFaCS  
(No. 19990835)

Decided: 8 November 1999 by J. Handley.

### Background

Koschitzke's claim for age pension was rejected by Centrelink on the basis that her assets exceeded the asset limit. In June 1996, her husband transferred his interest in two properties to his sons. The total value of the properties was assessed at \$1,069,920, the consideration received by Mr Koschitzke was \$808,039. The assessed deprivation was \$251,881.

On appeal, the Social Security Appeals Tribunal set aside this decision and found that Koschitzke's assets did not exceed the limit. The SSAT found that there had not been a deprivation of assets for the purposes of s.1123(1) of the *Social Security Act 1991* (the Act).

### The issue and legislation

The issue in this appeal was whether there was a deprivation of assets for the purposes of s.1123(1) which states:

1123.(1) For the purposes of this Act, a person disposes of assets of the person if:

- (a) the person engages in a course of conduct that directly or indirectly:
  - (i) destroys all or some of the person's assets; or
  - (ii) disposes of all or some of the person's assets; or
  - (iii) diminishes the value of all or some of the person's assets; and
- (b) one of the following subparagraphs is satisfied:
  - (i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;
  - (ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
  - (iii) the Secretary is satisfied that the person's purpose, or the dominant purpose, in engaging in that course of conduct was to obtain a social security advantage.

### The legal submissions

Two main submissions were presented for Koschitzke. First, it was contended that s.1125A(1) of the Act related only to disposal of assets by the person who applies for the pension. In this case