workforce, namely, the unemployed and the self-employed.[5] The second requirement, on the other hand, would exclude a significant number of workers engaged in intermittent work or engaged by multiple employers. A prime instance of such excluded workers are casual employees; a point of some significance given the over-representation of female workers among casual employees.[6]

For mothers in the workforce who are unable to access workplace entitlements, a crucial source of support would be social welfare benefits. Take the example of a worker who has recently given birth but is not entitled to any form of maternity leave. In many cases, such a worker would rely on Parenting Payment and/or Family Tax Benefits.

The second reason why social welfare policy and workplace measures are simultaneously relevant in supporting mothers in the paid workforce around the time of childbirth is that those who are entitled to workplace entitlements can, in certain circumstances, receive social welfare benefits. In other words, for some mothers, *both* workplace and social welfare entitlements would be relied on for income. For instance, a worker on paid maternity leave may still receive payments of the Family Tax Benefit.

These reasons mean that the work and family debate should not proceed on any false 'unresolved dilemma'. Instead, the debate needs to be founded on the understanding that social welfare policy and workplace measures, alongside taxation policies, are all legitimate means to achieve the end of supporting workers with family responsibilities.

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References

1. John Howard quoted in Phillip Hudson, 'Work and family: Striking a balance for a fertile future', *The Age: Insight*, 20 July 2002, p.3.
2. Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002* (2002), Chapter 2.
3. Ibid para 2.2.
4. See, for example, cl 3, Schedule 14 of *Workplace Relations Act 1996* (Cth).
5. The exclusion of the self-employed must be seen in the context of a significant proportion of self-employed constituting 'dependent' self-employed, that is, such self-employed are very similar to employees in being dependent on a particular business for their income: Audrey VandenHeuvel and Mark Wooden, 'Self-Employed Contractors in Australia: How Many and Who Are They?' (1995) 37 *Journal of Industrial Relations* 263.
6. See Richard Hall, Bill Harley and Gillian Whitehouse, 'Contingent Work and Gender: Evidence from the 1995 Australian Workplace Industrial Relations Survey' (1998) 9 *Economic and Labour Relations Review* 55.

Administrative Appeals Tribunal

Assets test: principal home

HEWITT and SECRETARY TO THE DFaCS (No. 2002/348)

Decided: 15 May 2002 by N. Bell.

Hewitt owned a duplex property comprising two self-contained units in Burwood on the same title. She resided on the top floor while the ground floor was rented out. She was receiving age pension when Centrelink obtained a valuation that increased the value of the ground floor part of her property. Applying the assets test in the *Social Security Act 1991* (the Act) reduced her pension from $211.65 to $84.55 per fortnight.

The issue

The issue was whether it was correct to include the value of the downstairs part of the property as an asset in calculating the rate of pension. It was common ground that the principal home was exempt from such inclusion per s.1118(1) of the Act. It was therefore necessary to consider whether the whole or only part of Hewitt's property was her principal home. That term is defined in s.11 of the Act:

> **11.(5)** A reference in this Act to the principal home of a person includes a reference to:
>
> (a) if the principal home is a dwelling-house — the private land adjacent to the dwelling-house to the extent that the private land, together with the area of the ground floor of the dwelling-house, does not exceed 2 hectares; or
>
> (b) if the principal home is a flat or home unit — a garage or storeroom that is used primarily for private or domestic purposes in association with the flat or home unit.

The facts

Hewitt was born in 1923. A member of her family built the property when she was very young. It was built as a duplex, comprising two units. She, her parents and her sister moved into the ground floor unit when she was about 16 years old. Her aunt occupied the upper floor unit. Hewitt lived there until she was 33 years old and got married. She then moved to her husband's house until she moved back to the property in 1967 or 1968. At present she rented the ground floor unit for $240.00 per week.

Access to the ground floor unit was through double doors on the front porch. For the upper floor unit it was through a single door on the right side of the porch and up an internal staircase. There was one water meter and Hewitt paid the water bill for both units. There were separate meters for electricity and gas. There was one laundry for the whole property but Hewitt used it as a storeroom. She kept a washing machine and dryer in her bathroom, and her tenants had a washing machine on the verandah at the back of the unit they occupied. There was also a garage but the tenants did not use it. Hewitt looked after the courtyard at the back of the property and the paved area at the front. She never entered the ground floor unit without the tenants' permission although she did hold a key to it.

Hewitt had owned the property since 1977. Her husband's name was never on the title. She had discussed with the Council the possibility of converting the property to strata title to enable the sale of the ground floor unit and had been advised that the Council would be unlikely to consent to such a conversion. She would have to obtain a search of the property at a cost of $88.00 for Council to supply details of the original approval of the building of the duplex. She would have to hire a surveyor with expertise in town planning and a consultant to act on her behalf. She would have to satisfy the requirements of the Land Titles Office and the Department of Urban Affairs and Planning and would have to comply with a State environmental policy. She

was also advised by the Council that it has a concern to preserve low cost accommodation and that there may be other issues such as safety requirements, including the need for fire doors. In addition she would have to establish a separate water meter for each unit. This would all be very costly and, according to Hewitt, beyond her means.

The reasons

There was no dispute about the facts and the AAT accepted Hewitt's evidence. It noted the decision of *Secretary, DETYA v Ovari* (2000) 98 FCR 140 concerned the AUSTUDY Regulations but centred on an identical definition of 'principal home'. Their Honours said:

> 12 The term 'principal home' as such is not defined in the regulations. Regulation 15(1) only deals with some specific situations in which there might be some room for argument as to the physical extent of the 'principal home'. It could not be doubted that a suburban residence of the kind described was a home of the respondents' family. The adjective 'principal' is directed to excluding holiday homes and the like. No such suggestion is raised in the present case.
>
> 13 Therefore the Monash property is an asset (any kind of property) but once identified as the 'principal home' it is to be excluded by reg 15 from the family assets for the purposes of the AUSTUDY assets test. Provided the property in question is properly characterised as a principal home, the regulations do not provide for apportionment by reference to any non-domestic uses to which the home may be put. This is in contrast with the specific provision in s.51(1) of the Income Tax Assessment Act 1936 (Cth) where the words 'to the extent to which' have been held to authorise and require apportionment: *Ronpibon Tin No Liability v Federal Commissioner of Taxation* (1949) 78 CLR 47, 55, 58-59.
>
> 14 The regulations are concerned with the value of assets. To the extent that a person or a person's family has assets, such assets can be turned into money and the person is less in need of taxpayer-funded financial support for study. The regulations fix an arbitrary limit under which a person may have assets and still receive support. Thus the focus is on value, that is to say the money equivalent of assets.
>
> 15 There was no evidence, nor did the AAT find, that the market value of the Monash property was increased or decreased by the fact that it was partly used for business purposes. Given the nature of the property, such a variation seems inherently unlikely. Nor was there any evidence or finding that some physical part of the property was exclusively used for business purposes.
>
> 16 As his Honour noted, there are cases such as that dealt with by the AAT in *Di Primio v Secretary, Department of Social Security* (1993) 31 ALD 233 which involve somewhat unusual premises, but they turn on their own facts.

The Secretary submitted that Hewitt's property was a different kind of dwelling to that considered in *Ovari*. The AAT said that while there is a distinction between a four-bedroom suburban house and a two-storey suburban house comprising two self-contained three-bedroom dwellings, much of the reasoning in *Ovari* was applicable in this matter. There was no dispute that the property was Hewitt's principal home. There was no provision in the Act for apportionment. There was, in this case, as in *Ovari*, no evidence that the market value of Hewitt's property was increased or diminished by its partial use for income generating purposes.

While the Full Court in *Ovari* noted that no part of the property in that case was exclusively used for business purposes, the AAT was mindful of the Court's comments in relation to the use, by doctors, of a portion of the doctor's principal home exclusively for the practice of medicine. In commenting on the hypothesis put forward by the Department in that case, of two doctors, one of whom practised from home and the other from a surgery at separate premises, the Court noted that the different results in rate of pension arising from the circumstances of each of the doctors are not anomalous as those different circumstances lead to different results.

The AAT noted Hewitt did not wish to leave her home, as she would need to, to realise the value placed on the ground floor of her property. She felt safe and protected in her home, with friendly and helpful neighbours she had known for many years. She had lived in the property continuously since 1967 or 1968 and prior to that spent the years from age 16 to 33 there. These matters served, in the AAT's view, to attract the 'long-standing social and political policy' referred to in *Ovari* — 'that a family home has a special importance beyond its value as an economic asset'.

For these reasons, the AAT considered that the whole of the Burwood property was Hewitt's principal home within the meaning of s.11(5) of the Act. However, the rental income of $240.00 per week she derived from the use of her home could be taken into account in the calculation of her rate of pension by the application of the income test provisions of the Act.

Formal decision

The Tribunal set aside the decision under review and remitted the matter for reconsideration with the direction that the whole of the Burwood property was Hewitt's principal home within the meaning of s.11(5) the Act.

[K.deH.]

Assets test: principal home; value of land

REID AND SECRETARY TO THE DFaCS
(No. 2002/0652)

Decided: 2 August 2002 by J. Cowdrey.

Background

Reid owned 12 parcels of land in Dale Drive, Tiaro. He claimed newstart allowance which was rejected on the basis that the value of his assets exceeded the allowable limit. His rate of disability support pension was also reduced on the basis of the value of his assets. It was the value of these properties which was the issue of contention in this appeal.

Evidence

Reid gave evidence that he purchased the land in 1994 as an investment. He had attempted to sell the land but had been unsuccessful. One of the parcels of land was his principal place of residence. Due to the housing slump he withdrew the remainder of the land from sale. All the blocks, which were of varying sizes, either adjoined or were adjacent to his principal residence. He walked over the land on a regular basis and had planted out some of the blocks. Evidence was also provided by a licensed valuer, who indicated that a discount of 50% should be applied to the land if the blocks were sold as one item, rather than individually.

Submissions

Reid submitted that two hectares of land should be disregarded in assessing his level of assets on the basis that it was land which was used primarily for private or domestic purposes. He also argued that the value of the property should be reduced by the amount that he initially borrowed from family members to purchase the lots.

He further submitted that the value of the land should be assessed on the basis of a recent valuation. His valuer had comprehensive local knowledge and an ability to confidently assess sales evidence. He indicated that a bulk sale discount should apply.