

# C *ompensation Changes*

When settling compensation claims it is standard practice for lawyers to advise their clients that settlement will affect current and future entitlements to Social Security payments. Recent changes to the Social Security Act 1991 will mean that lawyers will yet again have to alter their advice to clients.

The new changes will mean:

- that the method of calculating compensation preclusion periods, that is the period of time a person must wait before being able to receive an affected Social Security payment, will change for all compensation payments received on or after 29 March 1997;
- spouses of people who receive lump sum compensation payments on or after 20 March 1997 will no longer be subject to a preclusion period;
- the preclusion period provision will apply to Aged Pensions and will affect those people who receive lump sum compensation settlements on or after 20 March 1997.

#### **How to calculate a compensation preclusion period**

All lump sum compensation payments received before 20 March 1997 will continue to be calculated by the then current compensation preclusion formula. The formula requires the lump sum component for loss of income to be divided by the "all persons average weekly total earnings" figure (currently \$566.60) to obtain the number of weeks for which a person would be precluded from receiving affected Social Security payments.

For example, John settles a compensation claim and receives a compensation settlement of \$500,000. By using the then current rules:

The 50% rule, which assumes that 50% of all the settlement is for loss of earnings, is applied to obtain the loss of income component. This is then divided by \$566.60 to obtain the preclusion period in weeks.

$$\frac{\$250,000}{\$566.60} = 441.22 \text{ weeks or } 8.5 \text{ years without any Social Security entitlement}$$

If John obtains a judgment for the same matter and the decision provides that only \$100,000 of the lump sum was for loss of income, the preclusion period determined by \$100,000 divided by \$566.60 would be 177 weeks, ie. 3.4 years.

#### **Application of the new law**

The new rules mean that any lump sum received on or after 20 March 1997 will be affected by a changed compensation preclusion formula, which will dramatically increase the duration of the preclusion period. The new formula means that the compensation for loss of income will be divided by the "single pension cut out point" (currently \$397 per week) and not the "all persons average weekly total earnings" figure (\$566.60 per week). If we use the example above, where John obtains a compensation of \$500,000 the preclusion period would be 629.72 weeks or 12.11 years, an increase of over 4 years.

#### **Different Treatment for Spouses**

As of 20 March 1997 partners of compensation recipients will no longer be affected by compensation preclusion periods, meaning that a partner of a compensation sum recipient could in the future receive a Social Security payment. However, that partner would still be subject to

the Social Security income and assets test rules. Under these provisions, the spouse might still be ineligible for a Social Security payment.

#### **Different Treatment for Older People**

Before 20 March, people who receive lump sum compensation payments are not precluded from receiving Age Pension once that person turns Age Pension age (currently 65 years for men, 60.5 years for women). All people who receive compensation on or after 20 March will also be precluded from receiving Age Pension until the end of the compensation preclusion period.

For further information, a copy of *Periodic and Lump Sum Compensation Payments and Social Security Payments* is available from the Welfare Rights Centre. Send a cheque for \$15 to:

Welfare Rights Centre  
5B/414 Elizabeth St  
SURRY HILLS NSW 2010

## Psychiatric Medico-Legal Assessments

*including work-related and /or post traumatic stress disorder*

Dr Ian V Jackson will be visiting the Territory to carry out medico-legal assessments. Details are as follows:

**DARWIN:** Friday 9 May 1997

*Private consulting area, Darwin Private Hospital*

**ALICE SPRINGS:** Monday 12 May 1997

*Dr Jackson's consulting room, FAI Building*

Bookings and/or copies of Dr Jackson's CV are available through Dr Jackson's secretary by telephoning 03 9420 1428 or fax 03 9427 1514.