

Social security update:

Four considerations in common law case preparation and settlement

Recent changes to social security legislation means plaintiff lawyers need to familiarise themselves with the provisions, and consider the impact, so clients can be fully and properly advised. Louise Hanby D'Wynn identifies four considerations for lawyers in case preparation and management.

1. Age of Pensions Eligibility

The age at which men become eligible to receive an aged pension is 65 years. Practitioners ought to note that recent amendments to the *Social Security Act* preclude receipt by women born before 1 July 1935 from receiving an aged pension at age 60 years. The following sliding scale applies:

Women born between	Eligibility*
1 July 1935 and 31 December 1936	60½
1 January 1937 and 30 June 1938	61
1 July 1938 and 31 December 1939	61½
1 January 1940 and 30 June 1941	62
1 July 1941 and 31 December 1942	62½
1 January 1943 and 30 June 1944	63
1 July 1944 and 31 December 1945	63½
1 January 1946 and 30 July 1947	64
1 July 1947 and 31 December 1948	64½
1 January 1949 and later	65

* Eligibility for Age Pension at age

2. Age of Superannuation Eligibility

The above material may be read concurrently with the age at which superannuation preserved benefits may be claimed by men and women, which has traditionally been the age of 55 years.

Date of Birth	Preservation Age
Before 1 July 1940	55
From 1 July 1960 to 30 June 1961	56
From 1 July 1961 to 30 June 1962	57
From 1 July 1962 to 30 June 1963	58
From 1 July 1963 to 30 June 1964	59
On or after 1 July 1964	60

The significance of parts 1 and 2 above is that in preparing a common law claim for an injured female plaintiff, regard may be had to the above statutory provisions when seeking instructions as to economic loss, and in rebutting submissions that a female plaintiff would not have worked to age 60 or 65 years.

3. Preclusion

When acting for older plaintiffs who are near aged pension age, but not yet in receipt of a pension, it should not be assumed that the preclusion from receipt of a pension will cease at age 65 years. The preclusion formulae does not take that variable into account and older plaintiffs of working age are treated identically to those younger.


4. Asset Test for Eligibility

The standard preclusion estimate enquiry forms do not assist in ascertaining whether, following receipt of damages, a plaintiff might exceed the assets test for eligibility to receive a full pension.

Some assets are not included in such assessments, such as the person's primary residence and some annuities. Some examples are listed below, and practitioners ought to note that where a plaintiff is married or in a defacto relationship, the assets tests will be assessed with reference to the assets held by the couple.

Currently a couple with their own home can have up to \$200,500 in additional assets before their pension is affected. Then the rate of an aged pension is reduced on a sliding scale until they are found to have \$435,500 of assets in addition to their own home, whereupon they will have no aged pension entitlement.

A couple who do not own their own home may have up to \$301,500 in assets before their eligibility to receive an aged pension is affected, and up to \$538,500 in assets before losing aged pension entitlements altogether.

Given that lodgment of preclusion estimate enquiry forms will not assist in solicitors being able to ascertain the effect of receipt of damages upon an entitlement to receive a pension, the most practical advice would be to refer clients to a financial advisor who can advise as to the type of investment which will enable plaintiffs to retain the benefit of their damages and their pensions. This is particularly important where damages include not only pain and suffering, but also special damages by way of medical and like expenses, where it is clearly intended that the damages pay for specific types of treatment care, rather than for expending upon day-to-day living expenses. 

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