

LETTER TO THE EDITOR

it is a device which results in considerable cost-shifting onto the Commonwealth budget in relation to people who should be adequately compensated by the system designed for that purpose. I would add that the social security system is a needs based system and a person who has access to, say, a compensation lump sum in some cases a very considerable lump sum, can reasonably be expected to use at least part of that money for their own support before calling on the taxpayer through the social security system. I believe that this principle should apply irrespective of the suggested basis, often not necessarily agreed between parties, for which the lump sum was paid. Adopting the practice of describing lump sums as containing no economic loss thwarts the very objective the 50% rule was introduced to achieve. I would argue that 50% is, generally, a generous approach especially when taken together with the AWE divisor.

AWE Divisor

The current divisor in the 50% rule is "all male" AWE. It has been decided that the "employees (all persons)" figure is more appropriate as it more correctly reflects the level of wages paid to persons subject to the compensation provisions and it recognises the fact that there are women in the workforce. The current all persons AWE Figure is about \$520 per week.

Other Budget Matters

There are a number of other matters in the Budget concerning the compensation provisions of the Act, including:

- extending the recovery provisions to cover wife pensioners who receive compensation in their own right (this will ensure consistent treatment of all wife pensioners - wife pensioner partners of compensation recipients are already within the legislation).
- a number of technical amendments to preserve the integrity of the provisions.

I am especially concerned to ensure that the legal profession are aware of the law concerning the affect of

compensation payments on Commonwealth social security income support payments and you may consider including this letter in your next publication. I will be writing to you again to seek your co-operation in having inserted in your publication a more detailed article on compensation matters which I will provide when the legislation is settled.

In addition I would be happy to discuss with your organisation any or all of the measures announced in the Budget concerning compensation matters. My office (06) 2774980 would be happy to arrange a meeting at a mutually convenient time. The contact is my adviser Mr Greg Rudd.

*The Hon Con Sciacca MP
Parliamentary Secretary
to the Minister for Social Security*

The President's response to this letter is as follows:

Thank you for your letter of 13 September 1993. There are a number of issues which arise from your letter.

Firstly, I note your comments in relation to the possibility of professional negligence actions against legal practitioners in respect of a failure to advise people of possible preclusion from income support from the Department of Social Security in the event of lump sum compensation being received by way of settlements of claims.

I am conscious of the need for solicitors to provide a complete service to their clients and to be aware of these matters in order that they can fully inform their clients of the consequences of litigation and the settlement of that litigation. To that end, it is my intention to publish the full contents of your letter in the Law society's regular monthly journal "Balance".

Of concern, however, are the changes announced in the Budget in relation to application of the Social Security Act to lump sum payments.

If I may be so bold as to say so, it would appear that the premise for the changes is that the majority of people working in this area are not to be

trusted, and no regard whatsoever appears to have been given to the particular legislative regimes of various jurisdictions.

You may not be aware that in all but a few limited circumstances actions for "economic loss" in the Territory have been abolished, particularly in the case of motor vehicle accidents and work related injuries which are of course the vast majority of personal injury actions. It is still possible to obtain lump sum compensation, particularly in respect of loss of utility according to a "table of maims". On the formulation proposed, those amounts are taken into account in determining a person's entitlements to income maintenance pursuant to the Act. Similar comments apply to any payments which might apply in respect of pain and suffering and lump sum payments in respect of future medical expenses.

I am sure you will agree that in such circumstances the approach proposed is unjust in the extreme.

What appears to have occurred, therefore, is that what is generally regarded as a fair rule, namely the 50% rule, has been varied in such a way as to give it an unfair operation in many cases, apparently on the basis of a perception that the system was being written to "escape" the provisions of the Act. I respectfully suggest that this is not a proper basis for such a dramatic change; rather, the appropriate solution would be for the Department to be more vigilant in its consideration of such settlements. I therefore urge you to reconsider the position before the changes come into effect on 1 January 1994.

The result of this change, together with the change in the AWE Division (which your letter did not spell out will result in significantly lower lump sum exclusion periods) will, I suggest, have serious adverse consequences on victims of accidents.

Should you wish to discuss the matter further please do not hesitate to contact me on (089) 430400.

*Neville Henwood
President*