

Avoid Social Security pitfalls

To advise their clients fully, lawyers working in the area of compensation need to be aware of the relevant provisions of the Social Security Act 1991 and be especially careful to contact the Department of Social Security prior to settlement of any claim.

Failure to do so could leave the practitioner open to an action for negligence by the client, as Senior Member Joan Dwyer of the Administrative Appeals Tribunal has pointed out in *Re VXY* (AAT No V92/604). After noting the omissions of the respondent's legal advisers, the Senior Member stated:

"... We consider that the problem of inadequate advice from barristers and solicitors as to the effects of the settlement of a compensation or damages claim arises far too frequently. The tribunal has concluded in a number of decisions such as *Re Hajar* at 720, that incorrect advice from a

solicitor is not to be treated as a special circumstance in a matter such as this because the person has a claim in negligence against his or her solicitor..."

That such a claim can be successful is demonstrated by the case of *Hutt & Piggott Wood and Baker* (Supreme Court of Tasmania, B20/1993), where Crawford J awarded damages for both economic loss and stress caused by the plaintiff's solicitor failing to advise her about the social security implications of the settlement. His Honour held that even though the failure to advise was on a matter not within the retainer, the solicitor was negligent because the relationship with the client gives rise:

"... to a duty of care on the part of the solicitor which requires the taking of positive steps, beyond the specifically agreed professional task or function, to avoid a real and foreseeable risk of economic loss being sustained

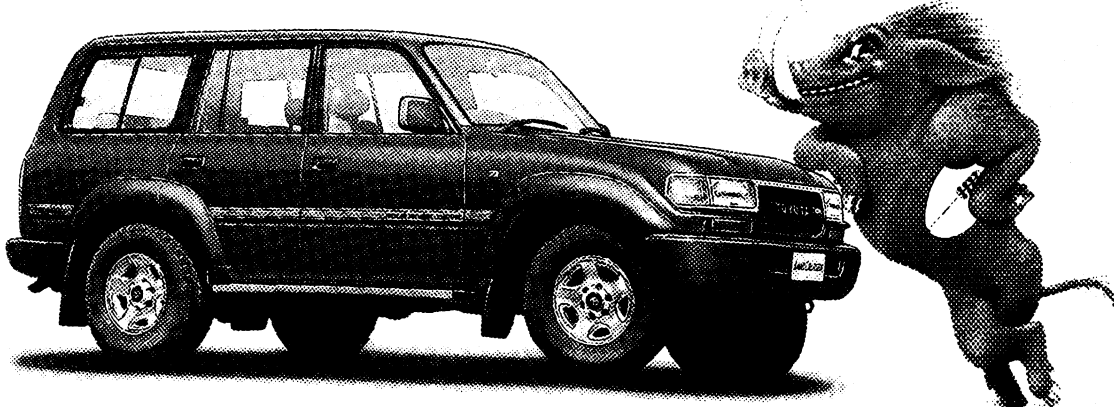
by the client...". In order to help solicitors keep abreast of the legislation, the Department of Social Security has appointed Mark Woodacre as the Compensation Liaison Officer for Western Australia and the Northern Territory.

He can explain the legislative provisions to solicitors and other interested parties such as insurers and unions, so that their clients can avoid the hardship and distress which often results from being unaware of the provisions.

As a further resource for practitioners, the department has published an information kit about compensation and social security entitlements — Ignorance Equals Risk. The kit is aimed at professionals who work with injured people and it gives examples of the ways in which compensation payments can affect social security payments.

Copies of the kit or information about social security law and compensation can be obtained by phoning Mr Woodacre on (09) 261 3470.

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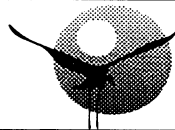


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