

Similarly, if a jury awarded a lump sum of damages in a personal injury claim, all of those damages (the lawyers argued) would be available to the DSS, for recovery of past sickness benefit payments, even though the damages covered future loss of earnings, loss of enjoyment of life, pain and suffering and medical expenses as well as past loss of earnings.

However, a careful reading of the new provisions in the light of s.108(1) suggests that the new provisions do not have this broad effect. Section 108(1) lays down the qualifications for sickness benefit and describes the incapacity for which sickness benefit is paid: this is '[incapacity] for work by reason of sickness or accident (being incapacity of a temporary nature)'—'throughout the relevant period', that is, the period when sickness benefits are paid. Because s.115B only allows the DSS to recover sickness benefit from those compensation payments which are (in the Director-General's opinion) 'in respect of [the same] incapacity' as the sickness benefit, the compensation payments which are available to the DSS must be limited.

The limits are of two types: first, the compensation must be for incapacity during 'the relevant period' (see s.108(1))—the period when sickness benefit was paid. (The omission, from the new provisions, of express reference to the 'same period' could be regarded as tidying up the Act, rather than as a significant change.)

Secondly, the compensation must be for 'incapacity for work' during that period: any compensation paid for medical expenses, pain and suffering etc., is not available under s.115B (or ss.115C and 115D) for recovery of sickness benefit payments.

The DSS would still have a discretion, under the new provisions, to go behind a compensation award and decide whether compensation, nominally for a different period or for a different aspect of the incapacity (e.g. pain and suffering), was really for the same incapacity as the sickness benefit and therefore available for recovery. However, the exercise of this discretion is subject to review by the AAT which could form a different opinion and substitute its opinion for that of the Director-General.

The force of these arguments, and the limits on the DSS's power to recover sickness benefit payments from compensation or damages awards, could be tested either before the AAT, in an application for review of a decision by the Director-General, or before the Federal Court, in an application for an order of review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

(c) The new provisions expand the discretion given to the Director-General to waive recovery of sickness benefit. Under s.115E, the Director-General may treat any compensation payment 'as not having been made or as not being . . . liable to be made' because of 'special circumstances'. This discretion is considerably wider than the discretion in the old s.115(4A) which did not allow the Director-General any discre-

tion where current payments were concerned, or where sickness benefit had been recovered from the person liable to pay compensation or from that person's insurer: see *Saqq* (1981) 5 SSR 53.

Transitional arrangements

The new provisions apply only to compensation payments made from 1 August 1982, with one exception: a compensation payment, made before that date to a person who receives sickness benefit after that date, is subject to the new provisions—*Social Services Amendment Act 1979*, s.39(2)(2A).

The replaced s.115 will continue to apply to sickness benefit and compensation payments not covered by the new provisions—*Social Services Amendment Act 1979*, s.39(3).

SOCIAL SECURITY LEGISLATION AMENDMENT BILL

This Bill was introduced in the House of Representatives on 23 September 1982. It gives effect to a number of changes and initiatives announced in the Federal Budget, and makes a series of detailed changes to the Act. In brief outline, the bill provides that:

- a person receiving *supporting parent's benefit* cannot be treated as a dependant child of another person so as to entitle the second person to a pension, benefit or allowance;
- the amount of '*free income*' for single pensioners will be increased from \$20 to \$30 a week (with similar increases for married pensioners);
- there will be a *uniform income test* for unemployment and sickness beneficiaries, regardless of the person's age;
- there will be *increases* in family allowances, handicapped child's allowance, supplementary assistance for rent, unemployment and sickness benefits;
- there will be an *incentive allowance* (for invalid pensioners undertaking training), a *mobility allowance* (for a disabled person who is employed or undergoing training) and a *rehabilitation allowance* (for a person undertaking treatment with the Commonwealth Rehabilitation Service); and
- a new '*family income supplement*' is to be introduced. A maximum allowance of \$10 a week for each child in a low-income family will be paid to that family's breadwinner, if the family is not receiving basic income support from the Commonwealth, is eligible for family allowance and passes the (stringent) 'disadvantaged person' income test set out in the *Health Insurance Act*, s.5B, for free health care. The weekly allowance can be reduced, according to a sliding scale, if the family's income rises above that income test.

Commencement

The new schemes are to come into operation on the following dates

- incentive allowance: 1 February 1983.
- rehabilitation allowance: 1 March 1983.
- mobility allowance: 1 April 1983.
- family income supplement: 1 May 1983.

NEW REPRINT OF SOCIAL SECURITY ACT

A complete reprint of the *Social Security Act*, up-to-date as at 1 August 1982, is now available from the Australian Government Publishing Service, at a cost of \$8.00. It replaces the 1980 reprint, which in turn replaced the 1970 reprint: it seems the production of up-to-date copies of Commonwealth legislation is now getting the priority which it needs.

As with most reprints, this one will remain up-to-date for only a few months. When the *Social Security Legislation Amendment Bill*, now before Parliament is passed, substantial changes will be made to the *Social Security Act*: perhaps the next reprint will appear inside 18 months'

Statistics

STATISTICS

These tables are based on information supplied by the Department of Social Security.

	June* 1982	July 1982	Aug. 1982	Sept. 1982
Applications lodged	111	72	65	64
Decided by AAT	7	4	4	10
Withdrawn	21	20	5	17
Conceded	38	10	19	24
No jurisdiction	1	2	0	4
Awaiting decision at end of month	808	842	879	888
Medical appeals	66	51	45	44
Other appeals	24	19	14	14
Unknown	20	2	6	6
ACT	2	2	0	0
NSW	46	16	31	23
NT	0	0	0	0
Qld	20	13	9	11
SA	7	7	4	4
Tas.	3	6	4	4
Vic.	26	25	15	21
WA	7	3	2	1

*The June figures, published in the August 1982 Reprinter, have been revised.