

SOCIAL SECURITY

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Including Student Assistance Decisions

Opinion

Compensation payments

The issue of what payments attract a preclusion period and what payments do not has been the subject of increasing numbers of AAT and Federal Court decisions.

Lawlor and Secretary to the DFaCS was summarised in (2000) 4 SSR 1 at p. 7. In this decision, the AAT held that there was no compensation paid to Lawlor as the payment was not in respect of lost earnings or lost capacity to earn. The statement of claim included the words 'economic loss', but the Tribunal held that something more was needed before the Tribunal could be satisfied that the moneys paid included a component for loss of earnings or the capacity to earn. With respect, this is contrary to clear statements by the Federal Court.

In *Secretary to the Department of Social Security v Roberta Rosa Cunneen* [1997] 1033 FCA (a judgment which the Tribunal appeared to ignore) Foster J quoted at length and with approval from the judgment of Von Doussa J in *Secretary, Department of Social Security v Banks* (1990) 23 FCR 416, as follows:

It is clear that problems had arisen as a result of settlements in workers' compensation jurisdictions obscuring the fact that payments were being received in respect of lost earnings or earning capacity. Where social security benefits conditioned upon

such incapacity were also being received, undesirable 'double-dipping' was resulting, with the consequence that social security benefits were being misapplied. His Honour had regard to the Second Reading Speech for the Bill introducing the Social Security Amendment Act 1988 (Cth) which introduced the sections in question in order to identify the mischief which it was intended to rectify. The relevant passage is as follows (Hansard, House of Representatives, 13 April 1988, p. 1497):

This Bill contains measures to improve the administration and integrity of compensation recovery provisions. Where a person receives personal injury compensation that makes up for lost income the Social Security Act provides that pension or benefit may be reduced or recovered. This is one way in which social security expenditures are directed to those most in need.

Settlements of lump sum compensation particularly in the workers compensation jurisdiction are being manipulated to obscure the economic loss component and to avoid recovery of social security payments. To prevent this abuse the Minister announced on 8 February 1988 that, for future personal injury settlements made by agreement or by consent order, 50 per cent of lump sum compensation will be deemed to be in respect of economic loss [emphasis added]. This Bill gives effect to that proposal. Where,

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on the other hand, a court has made an order after a contested hearing specifying the economic loss component, the Secretary to the Department will continue to have regard to the characterisation given to the award by the court.

His Honour said of the relevant section that it introduced 'an arbitrary formula to be applied if the lump sum payment was made in settlement of a claim' (p. 422).

It is important for the integrity of the merits review mechanisms currently in place, and for any contemplated in the future, that there is consistency in decision making at all tiers of the review process.

If, as seems possible, a new welfare system is introduced with greater discretion given to decision makers at the primary level, the importance of the review Tribunals will be increased. It is vital that they be seen to be giving clear and consistent guidance to those decision makers.

The Interim Report of the Reference Group on Welfare Reform

The *Interim Report of the Reference Group on Welfare Reform* does not have enough detail, nor indeed did it purport to do so, for it to be possible to comment on extensively as yet. There are some aspects of the Report which appear to pick up on criticisms made in the Ombudsman's Report. The intention to build on the 'Life Events' model, which has been proposed by Centrelink, will help ensure that all those who are eligible for payments will receive them without the need for applicants to specify which payment they are eligible for. The entity with the greater knowledge, that is Centrelink, will be able to pick the appropriate payment. This should reduce one major ground of complaint and appeal by recipients of welfare payments.

One thing which is clear from the Report is that the decision makers within Centrelink will have much greater discretionary powers in making decisions about payments, or withholding payments — this is implicit in the idea of tailoring conditions to suit individual clients.

It is therefore vital that there is also a strong review mechanism in place to ensure that there is consistency, clarity and transparency in that decision-making process.

[A.B.]

CONFRONTING WELFARE TO WORK

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The Australian Government has foreshadowed major changes to our Social Welfare system through the *Interim Report of the Reference Group on Welfare Reform*. These changes could see an increased emphasis on getting people off welfare and back into work.

JOB futures a national community employment agency has invited a top US policy advocate on education, employment and training issues to Australia to discuss the overseas experience of Welfare-to-Work reforms.

Ms Hilary Pennington — who co-founded Jobs for the Future — has worked with all levels of US government as well as the UK government as part of the Welfare-to-Work debate.

The Australian Government's *Interim Report of the Reference Group on Welfare Reform* quotes some of the work of Ms Pennington's organisation in their report.

Most importantly they quote Jobs for the Future's *Business Participation in Welfare-to-Work: Lessons from the United States* a January 1999 report prepared for the London Business Forum on Welfare-to-Work.

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Melbourne: Y Hotel – Cato Conference Centre 489 Elizabeth Street Melbourne 3000	Tuesday, 16 May, 2000	2pm – 5pm
Sydney: Pacific International Inn 717 George Street Sydney 2000	Wednesday, 17 May, 2000	2pm – 5pm

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