

he was not receiving periodical income, and was not double dipping by applying for a disability support pension.

The Department submitted that the current amended version of s.1163A should apply because the relevant law for determining whether Reid was entitled to disability support pension payments was that which was in force at the time he applied for the pension on 30 January 1998. The Department argued that it was irrelevant when WorkCover made its s.42A decision.

The Department contended that the requirements of s.1163A(1)(a) to (c) were satisfied. Reid was entitled to periodic payments under s.35 of the WRCA, the entitlement to periodic payments was converted into an entitlement to a lump sum by virtue of s.42A of the WRCA, and the lump sum LOEC payments were calculated by reference to a period.

The Department also submitted that the s.42A LOEC payments were interim assessment payments, the final quantum of the LOEC payments not yet having been determined by WorkCover. Each interim assessment was in itself a lump sum payment within the meaning of s.1163A(1)(e). The Department referred to *Secretary, Department of Social Security v Banks* (1990) 20 ALD 19 to support its submission.

The Tribunal indicated that it considered s.1163A was not applicable because it considered that 'clear language must be used if it is intended that s.1163A is to draw on events in the past' (Reasons, para. 41). The Tribunal referred to s.1165(1) and (1A) which clearly indicate an intention to draw on events in the past. It noted that no such language was evident in s.1163A(1) and 'accordingly as one of the essential ingredients of s.1163A(1) is missing, it can have no operation in the present case' (Reasons, para. 41).

Formal decision

The decision under review was set aside and the matter remitted to the respondent for calculation of the old and new lump sum preclusion periods in accordance with the Tribunal's reasons.

[M.A.N.]

Newstart allowance debt: settlement of civil action and waiver

SECRETARY TO THE DFaCS and GALATIS
(No. 2000/728)

Decided: 21 August 2000 by
J. A. Kiosoglous.

Background:

Galatis received job search and newstart allowance between 1991 and 1993. In this time he failed to provide accurate details about his earnings and income. As a result a debt of \$18,765.17 was raised in June 1994. As a result of the overpayment Galatis was also prosecuted.

There were a number of conversations between Galatis' solicitor and the Commonwealth Director of Public Prosecutions (CDPP), concerning the amount of the overpayment figure. In essence, the discussions centered around a proposal that if Galatis pleaded guilty to the offences then the amount outstanding would be reduced to approximately \$11,000.

In December 1996, Galatis pleaded guilty to the charges and provided a bank cheque for \$10,649.80. When sentencing, the fact that this payment was made was noted by the magistrate as a full repayment of the overpayment.

Legislation

This case turned on the meaning of s.1237 AAB(1) of the *Social Security Act 1991* which states as follows:

1237AAB.(1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Submissions

It was submitted on behalf of Galatis that any amount more than the amount paid by Galatis should be waived under s.1237AAB(1). The argument was as follows:

- the CDPP had agreed to the amount paid by Galatis as full restitution. This was confirmed by the prosecution's silence on this matter when Galatis was sentenced.
- the Department was bound by 'their representatives silence'.
- the CDPP acted as an agent for the Commonwealth.

- the Commonwealth had therefore waived that portion of the debt over and above the amount already paid.

It was submitted that the words 'civil action' refers to a 'cause of action' and that 'Commonwealth' includes the CDPP.

The submission of the Department was that there was no 'civil action' in that this term referred to 'civil proceedings'. It was further argued that the CDPP is not the 'Commonwealth' for the purposes of this waiver provision and that there was no delegation to the CDPP. It was submitted that the CDPP was only dealing with the overpayment in relation to the charges, as distinct from the overpayment under the Social Security Act.

Findings

The Tribunal considered the meaning of the words 'Commonwealth' and 'civil action'. In doing so, the Tribunal first distinguished much of the past case law since this concerned the making of reparation orders. In this case, there was no reparation order since the magistrate believed that the entire overpayment had been repaid.

In relation to the meaning of 'Commonwealth' the Tribunal did not accept the argument that the CDPP was acting as an agent for the Commonwealth. The Tribunal found there was no specific instrument or delegation establishing this relationship. The Tribunal also said that the CDPP would be 'very busy people' if they were acting as officers of the CDPP and under the Social Security Act.

The Tribunal also considered case law in relation to the authority of the prosecutor to make binding agreements in relation to civil matters. The Tribunal concluded that there are legislative limits concerning who can exercise the waiver provisions of the Social Security Act. Without delegation and clear evidence that the Secretary agreed to the settlement the Tribunal was not satisfied that the 'Commonwealth' had agreed to the settlement as is required by the waiver section.

In relation to the meaning of 'civil action', the Tribunal considered the definition of these words in the *Magistrates Court Act 1991* (SA). It also considered the dictionary meaning and case law. It concluded:

Applying common sense, and mindful of the various definitions as stated, the Tribunal considers that it is something of a stretch to hold that criminal proceedings in the South Australian Magistrate's Court come within the scope of 'civil action' as that term is

meant to be interpreted in s.1237 AAB of the 1991 Act.

(Reasons, para. 49)

The Tribunal therefore concluded that the waiver provision in s.1237AAB did not apply.

The Tribunal went on to consider the issue of estoppel on the basis of the argument that a decision maker is bound by the representations of another officer. The Tribunal noted that it could not exercise a common law discretion, but that a 'statutory framework' did not mean that Galatis could not argue rights under the common law.

The Tribunal considered that although the CDPP was silent when the issue of restitution was raised with the magistrate, the prosecutor did not have lawful authority to waive the debt on behalf of the Commonwealth:

It follows that the CDPP equally does not have the capacity to estop the recovery of such a debt, for it has no lawful standing (in the absence of a formal delegation) in that regard. Waiver and estoppel in that regard are conjunctive

(Reasons, para. 54).

The Tribunal also considered whether the magistrates' decision had any binding effect on the Department's capacity to recover the full amount of the overpayment. The Tribunal concluded that once the charges, in respect of that part of the overpayment that was not part of the prosecution were dropped, the magistrate had no jurisdiction to deal with that part of the overpayment that was not before him. Consequently the judgment did not give rise to claim for estoppel.

Formal decision

The Tribunal set aside the decision under review and decided that the Department was entitled to recover the part of the debt relating to the overpayment period — 8 November 1991 to 5 November 1993.

[R.P.]

Lump sum preclusion: special circumstances

SECRETARY TO THE DFaCS and EDWARDS
(No. 2000/752)

Decided: 28 August 2000 by D.W.Muller.

Background

Edwards was hit by a car and suffered an injury in September 1996. He claimed compensation which was settled in July 1999 and a lump sum payment of \$27,500 was made.

Edwards had not been working prior to the accident and it was agreed by the parties that there was no past economic loss because of this. However a figure of \$5000 was included as a 'nominal amount' for economic loss on the basis that he may have, at some time in the future, obtained work.

Centrelink decided that a preclusion period of 32 weeks applied. This decision was reviewed by the SSAT, which decided that special circumstances applied in this case. The special circumstances referred to were that:

- there was no causal relationship between the reasons for Edwards receiving his disability support pension (schizophrenia) and the basis upon which he received damages; and
- a very small portion of the damages related to economic loss. This was on the basis of a 'possibility' of future work.

The arguments

The submission presented by the Department was that the SSAT failed to consider s.1163(9) of the *Social Security Act 1991*. This section states as follows:

1163.(9) This Part operates in certain specified circumstances to affect a person's compensation affected payment because of compensation received by the person or the person's partner. This Part is not intended to contain any implication that, in addition to those specified circumstances, there needs to be some connection between the circumstances that give rise to the person's qualification for the payment and the circumstances that give rise to the person's or the partner's compensation.

It was argued that this subsection was included to cover situations where there was no causal link between the circumstances that gave rise to the granting of the pension and the circumstances that gave rise to the compensation payment. As this issue was specifically covered by

legislation, it could not form part of 'special circumstances'.

Special circumstances

The Tribunal considered the meaning of s.1163(9). It stated that the purpose of this subsection was to cover situations where there was no connection between the circumstances that gave rise to the pension and the circumstances that gave rise to the compensation payment. However, the subsection did not preclude the absence of a causal link being considered as a 'special circumstance'.

The Tribunal referred to one of the objects of this legislation, that is, to prevent 'double dipping'. The Tribunal found that this case was not one of double dipping and that the \$5000 set aside for future work was an amount to compensate for a 'remote possibility' of future work.

In conclusion, the Tribunal found that there were sufficient grounds to exercise the discretion under s.1184. The Tribunal noted that the failure of the SSAT to specifically refer to s.1163(9) did not mean that the Tribunal had not come to the right decision.

Formal decision

The Tribunal affirmed the decision under review.

[R.P.]

Disability support pension and wife pension debts: ordinary income on a yearly basis

LANGTON and SECRETARY TO THE DFaCS
(No. 2000/591)

Decided: 17 July 2000 by D. Muller.

The issue

In this matter the critical issue was how income from a brief period of casual employment should be treated for pension purposes.

Background

Mr and Mrs Langton were in receipt in 1997 of disability support pension (DSP) and wife pension (WP) respectively. In October and November 1997 Mrs Langton worked casually for two weeks plus one day, then had a week without work before working a further