'Rationale for the lump sum preclusion period':

> lump sum compensation payments are treated on the basis that people who cannot work because of a compensable injury should not receive income support for the same period from both the Social Security system and compensation payments.

In conclusion the Tribunal found that there were sufficient grounds to warrant the exercise of the discretion under s.1184K.

Formal decision

The AAT affirmed the decision of the Social Security Appeals Tribunal.

[R.P.]

Compensation preclusion period: special circumstances

THOMAS and SECRETARY TO THE DFaCS (No 2003/842)

Decided: 29 August 2003 by B.J. McCabe.

Background

Thomas was injured in a motor vehicle accident in May 1996. He settled his compensation claim on 12 March 1999 for a lump sum compensation payment of $390,000, of which he received $282,000 in his hand. A preclusion period was imposed until 13 April 2005, during which he was not able to receive compensation-affected social security payments.

There was no money remaining from the settlement and Thomas requested that the preclusion period be reduced, due to his 'special circumstances', so that he could receive Centrelink payments. This request was refused by Centrelink and by the SSAT.

The legislation

Section 1184K, formerly s.184, of the *Social Security Act 1991* ('the Act'), provides a discretion allowing all or part of a compensation payment to be treated as not having been made (thus reducing the preclusion period) if there are special circumstances.

Evidence

The AAT noted that Thomas 'frankly admitted that he did not spend his settlement monies wisely' (Reasons, para. 6). Large sums were given to friends, and debts of $50,000 were cleared. Thomas also paid debts of a friend and his family in anticipation of this family moving their business from the Gold Coast to Mackay, living with Thomas, and Thomas becoming a silent partner in their business. He bought and renovated a large enough house in anticipation of this. The friend did not move to Mackay. The house was sold for less than the purchase price and Thomas bought a remote 100-acre property for $62,000 from the proceeds, on which he lived in a shed. He had intended to develop the property to self-sustainability, but found it was not suitable for growing anything. The property had been on the market for several months at the date of hearing, and Thomas was not confident it would sell. He had sold his Harley-Davidson bike, obtained a Triumph motorbike and retained an old Holden ute.

He was unable to support himself, had no money in the bank and was without income.

Discussion

The AAT referred to Keifel J in *Groth* v *Secretary, Department of Social Security* (1995) 40 ALD 541, at 545, as explaining that the legislative discretion can only be applied where there are exceptional circumstances which clearly distinguish the case from others.

Being in difficult financial circumstances is not considered unusual. Particular attention was paid to *Secretary, Department of Family and Community Services and Szoke* [2001] AATA 353 in which Szoke had recklessly dissipated all her compensation funds.

The AAT considered Thomas had also been reckless; that he was 'in a mess of his own making' (Reasons, para. 15).

> That is not the end of the matter, however. Even the foolish and the profligate must be protected in appropriate circumstances through the exercise of the discretion embodied in s 1184 [sic]. Mr Thomas is marooned in the bush on his only realisable asset. He says it is difficult to sell at anything like the price he paid for it. If he leaves the property, the chances of selling it will presumably diminish even further. He is unlikely to get a job in the area. He cannot sell the vehicles — the bike is in working order but will not sell for much, and the ancient and unreliable Holden utility is presumably almost worthless. He may be the author of his own misfortune, but I am satisfied the circumstances of that misfortune set him apart from the usual run of cases, and certainly allow his case to be distinguished from cases like *Szoke* and *Re Mazurak and Secretary, Department of Family and Community Services* [2002] AATA 883.

(Reasons, para. 16)

Formal decision

The AAT set aside the decision and substituted a new decision that the length of the preclusion period should be reduced by 12 months.

[H.M.]

Family tax benefit: maintenance income; inclusion of monies received for maintenance of non-FTB children

HORSEY and SECRETARY TO THE DFaCS (No. 2003/802)

Decided: 15 August 2003 by K. Beddoe.

The issue

The issue in this matter was whether maintenance payments received in respect of children who were not FTB children, should be included in the calculation of annual maintenance income for FTB purposes.

Background

The applicant had three children Jacqueline, Joshua and Daniel, and was entitled to FTB in the financial year ending June 2001. In that year, the father of the older two children paid some $5010 in child support (including an arrears amount) in accordance with an assessment by the Child Support Agency, but Centrelink was unaware of this assessment and calculated FTB on the basis of a lower monthly maintenance amount. In addition, Horsey did not have the care of Jacqueline and Joshua at any time during the 2000/2001 year, but did not advise Centrelink of this as she believed Centrelink and the Child Support Agency cross-matched their data. Centrelink became aware of this change in care arrangements only in February 2001 from which time FTB benefits in respect of these two children were ceased.

An Authorised Review Officer determined that an overpayment of family tax benefit (FTB) for the year ending June 2001 had occurred in respect of the applicant's two children, Joshua and