

APLA in the news

GST may increase consumer legal costs

Consumers with a legal grievance against big businesses may be among the hardest hit by a Federal goods and services tax, says a plaintiff lawyers' group.

Policy manager for the Australian Plaintiff Lawyers' Association, Mr Simon McGregor, said any GST that applied to the cost of litigation would only exacerbate an existing tax inequity that allowed business — but not individuals — to deduct legal expenses from their tax.

"Little people are already disadvantaged when trying to take on a business in court, be it a manufacturer or an insurer," Mr McGregor said.

"Allowing businesses to claim half of their legal fees as a tax deduction is a taxpayer subsidy for big business."

He said the average cost for an individual with a motor accident, worker's compensation or product liability claim is about \$20,000, assuming it is not settled. A GST could increase that by 10 to 15 per cent, he said.

APLA has asked the Government's tax reform task force to exempt individuals from a GST on legal services.

Mr McGregor said APLA was asking that individuals had the same right as business: to claim a tax deduction for their legal costs if a GST was to apply.

Head of the task force, Senator Brian Gibson, said the 650 or so submissions it had received were passed on to the Government "some time ago".

"Overwhelmingly [those making submissions] agree tax reform is required ... but virtually every industry or group says 'we're different' when it comes to a GST," he said.

Federal Cabinet met in Sydney yesterday amid speculation that the Government's tax reform package was on the agenda.

According to Senator Gibson, Cabinet is still considering whether to publish the report by his tax reform task force.

Treasury said yesterday no comment would be made "on speculation" about the tax package until it had been released, at a date not yet known.

Meanwhile, a report by a Senate Committee on Legal and Constitutional Affairs has criticised the current regime for

deductibility of legal costs.

The criticism was made in the context of a review of Commonwealth legal aid funding and the effect the current tax law had on individuals' access to justice.

In its June 1998 report, the committee said there had been widespread criticism of the deductibility rules, and was critical of the Government for not thoroughly reviewing them.

There is no reliable data on the amount of legal costs deductions claimed by business each year and only "anecdotal" evidence of the impact of deductibility on decisions by business about conducting litigation, according to the report.

Treasury defended the regime, saying "no inequity exists" because business was taxed on the "economic benefit" of litigation but individuals were not.

Mr McGregor said APLA's submission was based on the understanding that an effective GST would need to be broad-based. "There are no exceptions to the Government's GST policy," for legal services, Mr McGregor said.

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Pain to bring no gain for pensioners

JANET FIFE-YEOMANS

□ Legal writer

WHEN pensioner Edna Townsend tripped on a broken footpath, she fractured three bones and lay shaken on the ground for several minutes before anyone stopped to help.

Mrs Townsend, 86, was pleased to receive compensation for her pain and suffering from the local council, which had allowed tree roots to badly break up the footpath.

But under proposed federal government changes to the law, pensioners such as Mrs Townsend would be stripped of their pension, with compensation payments counted as income; a move condemned yesterday by pensioners' groups and lawyers.

Mrs Townsend's lawyer, Eugene Arocca, is now considering suing the Federal Government to test the law and get a court interpretation on whether the proposals are fair or whether they discriminate against people on aged pensions and

others on social security benefits. "We're not talking lots of money here, it's not like they've won Lotto or even as if the payments are for economic loss, which could be taken into account as income," said Mr Arocca, an accredited personal injury specialist in Melbourne.

"Someone who earns lots of money can get the same compensation for injuries they have received in accidents, but not have them taxed. This is discrimination against people receiving government benefits."

The Government plans to save more than \$48 million in benefits during the first three years when the changes become law next year. After the first \$10,000, compensation for pain and suffering will be deemed as income unless it is taken in small periodic payments.

The value of the benefits stopped will equal the money received.

A spokesman for Social Security Minister Jocelyn Newman said the measures were meant to reduce the tendency of

people to "dissipate large amounts of money unwisely" and stop benefits being used as "the preferred source of income".

But solicitor Tom Goudkamp, an official with the Australian Plaintiff Lawyers Association and a member of the NSW Law Society's personal injury committee, said the Government had forgotten there was no facility under the Motor Accidents Act, the Workers Compensation Act nor in common law to make periodic payments. All compensation came in a lump sum.

"It's extraordinary. They are doing it on the basis of trying to protect people from themselves," said Mr Goudkamp.

The APLA will be join groups such as the Australian Council of Social Services in opposing the changes.

David Deans, chief executive of the 140,000-strong National Seniors Association, said they believed compensation should be treated as an asset and not as income.

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