- **Civil Justice Foundation.** This organisation is being established by APLA with a view to receiving donations and bequests from members' clients. The aim is to develop a sizeable financial resource which can be channelled in years to come towards worthy pro-rights projects and campaigns. Members can consider offering the Civil Justice Foundation as a possible beneficiary when taking instructions from clients mindful to make charitable bequests.

If the members and the organisation can implement these identified targets, then we are on track to becoming the most powerful law association in Australia and one of its most effective lobby groups.

The target of 2,000 members by the year 2000 is achievable but requires the weight of all of us at the wheel. ■

***New APLA President* - Peter Carter**. As foreshadowed in the April issue of Plaintiff, Peter Semmler resigned as APLA President at the April meeting of National Council. The APLA Vice-President, Peter Carter, was elected by Council to fill the vacancy and will hold office until the election at the AGM in October.

Social Security payments reduced for pain and suffering?

Brendan Sydes, Sydney

Brendan Sydes

As part of the 1998 budget, the Commonwealth Government has proposed changes to the way non-economic loss payments are treated for Social Security purposes. Under the proposals, certain non-economic loss payments will be treated as income.

The current situation

Under the existing provisions of the *Social Security Act*, a lump sum payment that does not include a component for economic loss is treated as "income" only in the fortnight in which payment is received for allowances (Job Search Allowance etc) and disregarded altogether for pensions.

If a payment for economic loss is paid in instalments, each instalment is treated as income in the fortnight in which it is received.

Lump sum payments that are wholly or partly in respect of economic loss, on the other hand, attract an obligation to repay past pension and allowance payments and may preclude an entitlement to a pension or benefit for a fixed period after the receipt of the lump sum payment.

The proposed changes

The changes outlined in the budget affect the treatment of non-economic loss payments. These payments include common law damages awards or settlements that do not include a component of damages for economic loss. Also included are lump sums for permanent impairment, permanent disability or pain and suffering available under statutory compensation schemes.

Under the proposal, due to be implemented in June 1999, any amount of a lump sum payment for non-economic loss in excess of $10,000 will be treated as ordinary income spread over one year (26 fortnightly payments) from the date of receipt of the lump sum.

For example, a disability support pensioner who receives a payment of $25,000 for sexual assault under the NSW *Victims Compensation Act 1987* would be treated as receiving an income of $577 per fortnight for the twelve months after receipt of the lump sum. In this case and many others the effect of treating the damages or compensation payment as ordinary income over a twelve month period will be to disqualify or at least substantially reduce the injured person's entitlement to means tested Social Security benefits.

Under the proposals, the only way to avoid a non-economic loss payment being treated as income for Social Security purposes is if the compensation is paid in instalments. Even then, any initial payment in excess of $10,000 will be treated as income spread over the following 26 fortnights and the whole of any subsequent instalment in excess of $2,000 will be treated as income in the fortnight of receipt. Advising clients in cases where instalment arrangements do not conform to an initial payment of less than $10,000 and subsequent instalments of less than $2,000 will be very difficult, particularly if the client has other sources of income that need to be taken into account.

The rationale for the changes

According to the budget paper, the rationale for the changes is as follows:

- increased incentive for injured people to choose periodic payment of pain and suffering compensation. This seems to assume a level of choice that is simply not available in most statutory compensation schemes, let alone in claims that are not regulated by statute.
- increased pressure for insurers and compensation authorities to make periodic payments. It is not clear what evidence there is to support this assertion. In cases of even fairly moderate non-economic loss payments, instalments at a level low enough to ▶

avoid being treated as income would extend over many years. It is difficult to see insurers being attracted to the costs involved in administering such a system - some of the strongest resistance to the instalment payment system legislated (but not proclaimed) in Victorian workers' compensation claims has come from the private insurers responsible for administering the scheme.

- to quote the budget paper "there is strong evidence that lump sum payments are dissipated quickly, leaving the person without adequate income." It is hoped that encouragement of periodic payments will "improve the adequacy of longer term incomes for injured people". Quite apart from the strong streak of paternalism evident in this argument, it will be interesting to see just what evidence the Government is referring to.
- the background to the changes also suggests that disregarding lump sum compensation for non-economic loss for Social Security purposes is "unduly generous". It is argued that there is a "significant inequity" between the current treatment of non-economic loss lump sums and lump sums that are wholly or partly in respect of economic loss.

The unjustified assumption in this argument is that a damages or compensation payment that is not in respect of lost earnings or earning capacity should be treated as "income" for Social Security purposes in the first place. Will treatment of non-economic loss payments as income for tax purposes be next? A simpler and more equitable solution would be to exempt all non-economic loss payments from the definition of "income" in the *Social Security Act*.

The proposed provisions are not due for implementation until June 1999. The Government hopes that the delay will give State governments and insurers sufficient time "to consider whether any changes to the way in which their schemes pay compensation for non-economic loss is desirable".

The Victorian Government has already amended its workers' compensation legislation (the *Accident Compensation Act 1985*) to provide for payment of permanent impairment awards in instalments. Having passed amendments in June 1997 under its usual cloak of secrecy and without consulting lawyers or the Department of Social Security, the Government later realised that this "drip feed" method of payment would disqualify injured workers from Social Security benefits - an embarrassing situation in Victoria where so many incapacitated workers are forced off weekly benefits and on to Social Security benefits after two years.

After pressure from lawyers and unions, the Government agreed not to implement the changes until a method could be found to reduce the impact on social security benefits. The changes proposed in the budget may be a method of smoothing the road for Victoria to implement its serial payment system as well encouraging other States to follow the Kennett Government in its attacks on the rights of the injured.

In 1993 a proposal to extend the lump sum preclusion and recovery provisions in the *Social Security Act* to non-economic loss payments was defeated in the Senate after submissions by welfare groups and plaintiff lawyers. APLA members should consider the effect of the changes on their clients and prepare to join efforts to lobby against the amendments. ■

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Nominations for Civil Justice Awards

The annual conferring of the Civil Justice Award is a highlight in the APLA calendar. Past recipients of the Award are John Gordon, Peter Cashman and Peter Long.

The Civil Justice Award recognises outstanding achievement by lawyers (and non-lawyers) in the promotion and attainment of civil and political rights in our community. The Award is conferred during the formal dinner at the APLA Annual Conference.

The National Council seeks nominations from APLA members for recipients of the 1998 Civil Justice Award. If you are aware of a person who has made a significant contribution and would care to nominate them for an award, please write a short note nominating that person addressed to Peter Carter, APLA National President, at Carter Capner, GPO Box 1860, Brisbane, QLD, 4001 (DX 151 Brisbane). Nominations should be in a sealed envelope marked "Private and Confidential".

Pain no gain with compo savings plan

CLAIRE HARVEY

WELFARE recipients who win injury compensation payouts of more than $10,000 face losing welfare money under a $50 million saving measure in the Federal Budget.

Pensioners and the unemployed could lose their social security payments for up to a year if they receive a lump sum compensation payout for pain and suffering, the Opposition claimed yesterday.

But Prime Minister John Howard defended the measure as "perfectly fair", explaining it was intended to encourage compensation money to be paid out in regular instalments rather than as a lump sum.

A jobless person who lost a leg in an accident and got a $25,000 payout would lose his unemployment benefit for one year under the plan, Labor Senate leader John Faulkner said, while an aged pensioner who fell in a supermarket and won $15,000 damages would lose $46 a fortnight from their pension for a year.

"It is another indication of the fact that the Government's surplus is built on the backs of the most vulnerable, the most needy and the most disadvantaged in the community," Senator Faulkner said.

Mr Howard said the scheme was the result of negotiations with the States.

"When the detail of it is examined, it is perfectly fair," he said in question time.

Social Security Minister Jocelyn Newman said one-off payouts quickly dissipated and did not offer long-term support.

"It strengthens the concept of the social security system as a safety net rather than the preferred source of income support," Senator Newman said.

"It provides incentives for people to choose periodic, non-economic loss compensation payments over one-off lump sums."

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