

**Detained in connection with person's conviction**

Section 1160 of the *Social Security Act 1991* provides that a social security benefit is not payable if a person is in gaol. Section 23(5) defined 'in gaol' to be:

'the person:

- (a) is imprisoned in connection with the person's conviction for an offence; or
- (b) is being lawfully detained in a place other than a prison, in connection with the person's conviction for an offence; or
- (c) is undergoing a period of custody ending trial or sentencing for an offence.'

Einfeld J decided that neither (a) nor (c) were relevant. The issue was whether Bulsey was detained in connection with his conviction for an offence.

The phrase 'in connection with' has been interpreted widely, and Einfeld J found that although it did not require a causal relationship, there must be some real relevance between the conviction and the detention. The DSS argued that the intention of the *Social Security Act* was, that a person serving a term of imprisonment should not receive social security benefits. There was still some connection with Bulsey's conviction because he continued to serve his sentence while he was detained in hospital. Einfeld J found that:

'the relevant inquiry is not whether the conviction of the person so confined continues, but whether the detention in the hospital is itself connected with the conviction'.

(Reasons, p.9)

Patients other than prisoners were detained in hospitals because of their mental condition under the *Mental Health Services Act*. If a psychiatrist asserted that the person was suffering from a mental illness which warranted detention for treatment, and the person needed to be detained for their own welfare or for the protection of others, then they would be detained. Detention depended entirely on the person's mental state and not whether the person had been convicted of an offence. In Bulsey's case no evidence was lead that his conviction was related to his mental illness.

The decision to release Bulsey from hospital will have nothing to do with his status as a prisoner. He will be released when he is well enough. If he is still under sentence he will be returned to prison to serve the remaining portion of this sentence. If

Bulsey's sentence ends before he is released from hospital, this will not affect his detention in hospital. Einfeld J concluded that Bulsey's detention was not connected with his conviction for an offence.

Einfeld J observed that while Bulsey had been in hospital he had had no income whatsoever. This had significantly affected his quality of life, impeded his rehabilitation and was 'cruelty to an Australian citizen' (Reasons, p.3), which was an unintended consequence of the operation of the *Social Security Act*.

**Formal decision**

The Federal Court dismissed the appeal.

[C.H.]

## Compensation preclusion: adjustment for special circumstances

**SECRETARY TO DSS v THOMPSON**

(Federal Court of Australia)

**Decided:** 11 November 1994 by Einfeld J.

In February 1989 Thompson received a lump sum payment of \$575,000 in settlement of his damages claim for injuries sustained by him in the course of his employment. Receipt of this sum triggered a preclusion period under s.1165 of the *Social Security Act 1991*. This meant that unless the discretion in s.1184 were exercised in his favour, he would be precluded from receiving certain benefits and pensions until at least 12 January 1999. Under s.1184 the Secretary could shorten the preclusion period by treating the whole or part of the lump sum compensation payment as not having been made, if the Secretary thinks it appropriate to do so in the special circumstances of the case.

Having exhausted his settlement moneys, Thompson applied for disability support pension in July 1992. His claim was refused on the basis of the preclusion period. The SSAT found that there were sufficient special

circumstances to warrant disregarding so much of the compensation period as would cause the preclusion period to end in November 1992.

The AAT varied the decision so as to terminate the preclusion period in March 1995. First, the period was reduced by 8 years and 2 months by deducting \$81,200 from the compensation part of the lump sum. This represented \$20,000 lost in a failed business venture and \$61,000 dissipated due to Thompson's psychological imbalance and social and intellectual disadvantage. Secondly, the AAT reduced the period by another year, to take account of Thompson's background, psychological state and poor management skills. Thirdly, it offset against these reductions an extension of 4 months to account for the time Thompson had been receiving benefits as a result of the SSAT decision.

The DSS did not challenge the AAT's findings that there were special circumstances, but disputed the method of adjustment of the preclusion period.

The Court said that all circumstances of the case were relevant under s.1184, including circumstances not specifically related to a particular portion of the compensation payment. It was open to the AAT to consider the general factors such as Thompson's mental health and social conditioning, and to direct its mind to the effect on him of any reduction in the preclusion period and decide on some time by which the preclusion period should be reduced.

The Court rejected the DSS argument that the AAT erred in law in failing to 'go through the mechanical process of justifying the reduction by working back to or from a decrease in the compensation sum'. To invalidate a decision on such grounds 'would in my opinion be to take legalism and bureaucratic pedantry too far'. Provided that the AAT properly concludes that the length of the preclusion period should be reduced by virtue of special circumstances, it 'may express that opinion in terms of the length by which the period should be reduced, without specifying the corresponding reduction in the compensation sum'.

The DSS argued that in deducting the amount of \$81,200 directly from the compensation payment for purpose of calculating the preclusion period, the AAT was deeming an amount as being for economic loss, contrary to the Court's decision in *Secretary to DSS v*

*Hulls* (1991) SSR. The Court said that the problem in the instant case was entirely different to that considered in *Hulls*. 'The \$18,200 was not identified on a separate basis from that on which it was originally awarded, but because of what subsequently happened to it'. The AAT was attempting to justify how the reduction in the preclusion period was reached, in order to better inform the parties. 'The law should not encourage decision-makers to engage in theoretical mathematical exercises

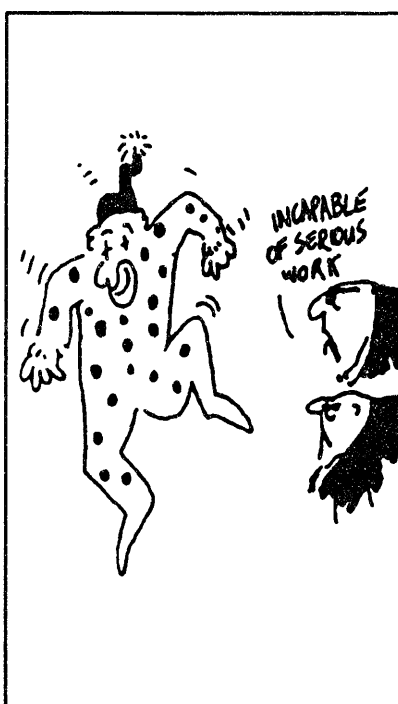
that only distort the true nature of and reasons for their decision'.

The final aspect of the AAT's calculation was the extension by four months of the preclusion period. While the AAT had no power to extend the period, only to reduce it, the adjustment was best characterised as an offset against other adjustments made. The Court saw no basis for remitting the matter on that one aspect 'which does not of itself adversely affect the interests of either party and where in

substance as distinct from form the Tribunal did not err'.

The Court dismissed the appeal with costs.

[P.O'C.]



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