compromise followed by the Court's approval constituting a claim being settled 'otherwise', for the purposes of s.17(3)(a)(ii). The Tribunal therefore took the view that Centrelink had correctly calculated the preclusion period to expire on 20 January 2018. Before turning its mind to s.1184K, the AAT noted:

> I should record that shortly before the hearing in this case I became aware that the SSAT in five other (unreported) cases had taken a contrary view about the applicability of s17(3)(a) in the context of cases involving the approval of the Supreme Court of Victoria to compromises under the Victorian provision equivalent to Order 70: see Booth, *'Centrelink preclusion periods: interpreting the 50 per cent rule'* in Plaintiff, Issue 55, February 2003. My examination of the SSAT's reasons in those of the decisions I have been able to peruse has not, with respect to the various Members of the SSAT concerned, caused me to change the conclusions I have set out above.

(Reasons, para. 52)

Special circumstances

The AAT opined that the mere fact that the statutory formula created a discrepancy between what was offered and accepted by way of economic loss and the amount the statute assumed to be the case could not, of itself, be regarded as special. The AAT was, however, persuaded by Welch's personal circumstances:

> In my opinion, having regard to Bryce's medical conditions (which I consider to be exceptional and out of the ordinary), his complete inability to provide for himself physically or financially (other than through the trust fund), his parent's age and declining ability to care for him (physically and financially), and his probable need for increasingly expensive care arrangements, Bryce's situation can indeed be described as out of the ordinary and exceptional. It would, therefore, be appropriate, in my opinion, to treat some part of the compensation payment as not having been made.

(Reasons, para. 62)

The AAT considered that the amount of economic loss carefully calculated by Welch's advisers reflected the amount that could reasonably have been expected to be awarded by a Court. The AAT decided that a preclusion period which reflected the reality was, in the special circumstances of the case, a fair outcome. The AAT decided that the amount of $304,714 should be used to calculate the preclusion period, which was observed to be the same outcome as the SSAT, but for quite different reasons.

Formal decision

The AAT set aside the SSAT decision and determined s.17(3)(a) was applicable for the purpose of determining the compensation part of the lump sum and for the calculation of the preclusion period, but in the special circumstances of the case, it was appropriate to treat as not having been made that part of such amount as exceeded $304,174.

[S.L.]

Compensation preclusion period: inclusion of medical expenses forgone in the 'lump sum' compensation amount

BROAD and SECRETARY TO THE DFaCS (No. 2003/ 1017)

Decided: 10 October 2003 by R.G. Kenny.

Background

Broad sustained a workplace injury on 1 September 1998, and claimed compensation. He received periodic compensation payments from 1 September 1998 to 22 June 1999, and thereafter received disability support pension. On 2 August 2002 Broad entered a Deed of Discharge with WorkCover and his former employer, under which he would receive a lump sum payment of $232,500. WorkCover agreed to forgo $50,419.45 comprising medical, hospital, rehabilitation and disability payments made by WorkCover in relation to Broad's care management.

Centrelink calculated a preclusion period of 220 weeks, to apply from the day after the last day of periodic payments. The sum used to calculate the period was $261,695.92: the lump sum of $232,500, plus the $50,419.45 forgone by WorkCover, less periodic WorkCover payments of $21,223.53. Centrelink, on behalf of the DFaCS also sought recovery of $22,223.47, being disability support pension paid to Broad during the preclusion period.

The issues

Broad submitted that the sum used to calculate the preclusion period should have been $232,500, as that was the amount he had agreed to settle for. He considered the $50,419.45 in care expenses should not have been included in the lump sum. He also argued that the preclusion period should commence on the date of his injury, not the day after periodic payments ceased, and that he should be entitled to a pensioner concession card because the cut-out income figure used in the calculation was less than the relevant income threshold for the concession card.

The legislation

Section 1169 of the *Social Security Act 1991* ('the Act') states that a *compensation affected payment* is not payable during a *lump sum preclusion period*. The formula to work out a *lump sum preclusion period* is found in s.1170. Section 17(1) defines *compensation affected payment*, which includes disability support pension. The definition of *compensation* in s.17(2) requires that a payment is made wholly, or in part, for lost earnings or lost earning capacity arising from personal injury. Section 17(3) provides that, where a claim is settled, the *compensation part* of a lump sum compensation payment is 50% of the payment. Section 17(4) provides that periodic payments are removed from the calculation of the preclusion period, if they are liable to be repaid on receipt of the lump sum.

Of particular relevance in this case is s.1171, which reads:

> (1) If:
>
> (a) a person receives 2 or more lump sum payments in relation to the same event that gave rise to an entitlement of the person to compensation (the multiple payments); and
>
> (b) at least one of the multiple payments is made wholly or partly in respect of lost earnings or lost capacity to earn;
>
> the following paragraphs have effect for the purposes of this Act and the Administration Act:
>
> (c) the person is taken to have received one lump sum compensation payment (the single payment) of an amount equal to the sum of the multiple payments;
>
> (d) the single payment is taken to have been received by the person:
>
> (i) on the day on which he or she received the last of the multiple payments; or
>
> (ii) if the multiple payments were all received on the same day, on that day.
>
> (2) A payment is not a lump sum payment for the purposes of paragraph (1)(a) if it relates exclusively to arrears of periodic compensation.

Discussion

It was noted that the care management expenses forgone by WorkCover ($50,419.45) did not come within the definition of *compensation*, having no

relation to lost earnings. The AAT considered the application of s.1171, referring to *Navrital and Secretary to the DFaCS* (2002) 69 ALD 777, a case with similar facts, where an earlier version of s.1171 applied (s.17(2B) as then in force). Despite some difference in wording, the AAT concluded that the effect of the provisions was the same. Section 1171 applies to deem various payments made in relation to a single event to be one aggregated lump sum compensation payment. Thus, no matter that the $50,419.45 had no relation to lost earnings, once it was aggregated with the $232,500 which did incorporate lost earning capacity, the total sum must be used in calculating the preclusion period.

The AAT affirmed the calculation of the preclusion period, and the commencement date. Consideration was given to whether there were any special circumstances warranting treating some of the compensation payment as not having been made. The AAT concluded that there were no such special circumstances in this case.

Ineligibility for a pensioner concession card during a preclusion period by application of s.1061ZA(1) was also affirmed. This section provides that qualification for a pensioner concession card on a particular day requires that a social security pension is payable for that day. As disability support pension is not payable during a preclusion period, Broad was not qualified for the card.

Formal decision

The decisions to impose a preclusion period of 220 weeks from the day after the last payment of periodic compensation, and to reject a claim for a pensioner concession card were affirmed.

[H.M.]

Parenting payment: incorrect claim and start date for payment

RUMMENY and SECRETARY TO THE DFaCS
(No. 2003/803)

Decided: 15 August 2003 by K.L. Beddoe.

Facts

Rummeny gave birth on 26 February 2002. She lodged a claim for family tax benefit (FTB) on 4 March 2002 and, when she asked Centrelink whether she was entitled to any other payment, she was advised that she was not.

After receiving advice from an acquaintance, Rummeny contacted Centrelink on 22 June 2002 regarding her potential entitlement to social security payments. She was advised to claim parenting payment (PP), which she did on 2 July 2002. Her claim was granted and she was paid from 22 June 2002.

There was no dispute regarding Rummeny's qualification for PP from the date of her son's birth, except for the requirement that she lodge a claim for that payment as required by s.11 of the *Social Security (Administration) Act 1999* ('the Administration Act'). Rather, the key issue to be decided by the AAT was whether Rummeny's claim for PP could take effect earlier than 22 June 2002.

Legislation

Subsection 15(1) of the Administration Act provides:

> For the purposes of the social security law, if
>
> (a) a person makes a claim for a social security payment; and
>
> (b) the claim is an incorrect claim; and
>
> (c) the person subsequently makes a claim for another social security payment for which the person is qualified; and
>
> (d) the Secretary is satisfied that it is reasonable that this subsection be applied;
>
> the person is taken to have made a claim for that other social security payment on the day on which he or she made the incorrect claim.

The AAT decided that this subsection could apply to allow Rummeny's PP claim to be paid from the day she lodged her FTB claim, if FTB could be considered to be a 'social security payment'. Section 23(1) does not include FTB in the definition of social security payment. However, the AAT then considered s.15(4) of the Administration Act, which provides:

> For the purposes of this section, a claim made by a person is an incorrect claim if:
>
> (a) the claim is for a pension, allowance, benefit or other payment under a law of the Commonwealth, other than this Act or the 1991 Act, or under a program administered by the Commonwealth, that is similar in character to a social security payment, other than a supplementary payment; and
>
> (b) when the claim was made, the person was qualified for a social security payment, other than a supplementary payment.

The Tribunal found that s.15(4) operates to include FTB in the definition of social security payments and that consequently, s.15(1) can apply. Further, the AAT applied s.29 of the Administration Act, and decided that, as the incorrect claim was lodged within four weeks of the child's birth, the benefit could be backdated to his birth.

Finally, the AAT distinguished this case from that of *Secretary to the DFaCS and Valori* [2002] AATA 252 on the grounds that in this case, the appellant specifically enquired about alternative or additional payments at the time of lodging the FTB claim, and was advised that she was not entitled to any other payment.

[E.H.]

Exempt assets: is a self-contained flat part of a principal residence?

SECRETARY TO THE DFaCS and LEUNG
(No. 2003/796)

Decided: 21 July 2003 by M.D. Allen.

Background

Leung lived in a three-bedroom house. A self-contained flat at the same address and on the same Certificate of Title was determined by Centrelink to be an assessable asset for the purposes of social security law. The SSAT set aside this decision, directing that no asset value was to be attributed to the flat.

The issue

The issue in this case was whether the self-contained flat at Leung's residential address was an assessable asset, or, being part of his principal home, an exempt asset.

The legislation

Section 11(1) of the *Social Security Act 1991* ('the Act') defines 'asset' as meaning property, or money. Section 11(5) defines 'principal home', as follows:

> A reference in this Act to the principal home of a person includes a reference to
>
> (a) if the principal home is a dwelling house the private land adjacent to the dwelling house to the extent that the private land together with the area of the ground floor of the dwelling house does not exceed two hectares or,