

## compensation preclusion periods — no longer justifiable

**B**rian was working as a labourer when he injured his back at work. The injury left him unable to do that type of work and he supported himself from weekly compensation payments until he received a compensation lump sum payment, in 1998, of \$40,000. Under the compensation provisions of the Social Security Act, Brian was subject to a compensation preclusion period of 48 weeks. This meant that until the end of the compensation preclusion period, Brian was precluded from receiving Social Security (however Family Tax Benefit can be paid during a compensation preclusion period). During the preclusion period he had to support himself from his compensation lump sum payment (if a person has “special circumstances” however, the compensation period may be reduced).

At first glance, this may all seem fair enough. After all, the purpose of the preclusion period policy is to ensure that a person does not receive payment for the same inability to earn from two sources – the insurance company and Centrelink.

However, had Brian received the compensation lump sum payment before March 1997, his preclusion period would have been about 30 weeks. And had he received it after 1 July 2001, the preclusion period would have been 36 weeks.

### *Why the discrepancies?*

#### *law changes*

The compensation preclusion period is calculated either on the basis of the amount specified for lost earning capacity in the judgement, if an award of compensation is made by verdict of a court, or by applying a formula to the gross amount a person receives under a settlement agreement. The formula basically treats 50% of the gross settlement as compensation for lost earning capacity.

This 50% of the lump sum payment is then divided by a figure to give the number of weeks (or years) that a person is precluded from receiving Social Security.

Before March 1997 the figure used as the divisor amount was male average weekly earnings (at the time, about \$650 per week).

In March 1997, the rules changed so that the divisor amount became the amount of income that would reduce a person’s pension payment to nil (this is known as the “pension cut-off figure”). In March 1997, the pension cut-off figure, for a single person, was \$410 per fortnight.

From 1 July 2000, the pension income test cut-out figure was substantially increased as part of the GST compensation package. At present a single person’s pension is not cut off until they earn about \$550 per fortnight.

***government should act***

The effect is that people receiving compensation payments between March 1997 and July 2000 have much longer preclusion periods than those receiving compensation before March 1997 and after July 2000. For example, a person with a preclusion period of nine years under the March 1997 to July 2000 formula would serve two years less under the new formula.

Yet these same people have to make their compensation last in the face of the increased cost of living due to the GST for which other pensioners were compensated.

The blatant unfairness which has resulted from these changes requires the immediate introduction of a policy by the Federal Government to assist people who are currently serving excessively lengthy compensation preclusion periods solely as a result of being subject to the harsher rules which applied between March 1997 to July 2001. As a bare minimum, these people should have the post July 2001 divisor applied to their compensation package, so that their preclusion period is of similar length to those compensated after July 2001.

***general unfairness***

Other elements of unfairness also arise which affect all recipients of compensation lump sum settlements. The compensation money ought to have permitted a standard of living for the person commensurate with their pre-injury life. Yet the formula is based on the person adapting to life as a pensioner despite the fact that they may have prior financial commitments or disabilities which require greater expenditure. These people often run out of money before the preclusion period ends.

In other cases, prudent compensation recipients seek to secure their housing. Often they may purchase a home or pay off a mortgage. However, if they do so and leave themselves short for the remainder of the preclusion period, they will be unable to access a Social Security payment unless some other special circumstance arises. Special circumstances are only found in a small number of cases. The 50% formula usually sets the preclusion period at a length which would prevent home ownership.