

**The Relationship between Lump Sum Workers Compensation
Payments, Social Security Preclusion Periods and Gambling**

“Losing what you win”

Project Report

**by Welfare Rights Centre,
Sydney NSW**

funded by the Trustees of the Casino Community Benefit Fund

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Executive Summary

This research project examines the relationship between lump sum workers compensation payments, Social Security preclusion periods and gambling. The project was conceived following an increase in the number of clients being assisted by the National Welfare Right Network (NWRN) because they had gambled away their lump sum compensation payments. Due to the operation of Social Security legislation, the recipient of a compensation payment is subject to a Social Security compensation preclusion period. Thus, people can have entirely expended their compensation monies yet not be able to receive Social Security. Too often this results in destitution for themselves and their families.

The funding to undertake this project was provided by the New South Wales Casino Community Benefit Fund.

This examination of the relationship between gambling, Social Security and the receipt of lump sum compensation payments has identified inadequacies in the compensation system and in Social Security law and policy. The recommendations resulting from this research aim to improve the current compensation and Social Security systems so as to minimise the chances of people facing impoverishment as a result of gambling their lump sum compensation payment away.

The research undertaken for the report included:

- Analysis of client files from NWRN member organisations and interviews with their clients;
- A Freedom of Information request to the Department of Family and Community Services requesting specific data relating to the number of people affected by the compensation provisions in the Social Security Act;
- Research of Internet sites and publications;
- Use of a detailed questionnaire completed by Problem Gambling Counselling Services; and
- Discussions and interviews with Department of Family and Community Services, Centrelink, NSW Workcover, NSW Compensation Court, Social Security Appeals Tribunal, Administrative Appeals Tribunal and the Legal Aid Commission.

The report explains;

- Social Security law and policy and the effect of compensation on Social Security payments;
- Workers compensation payments;
- The impact of problem gambling on lump sum compensation and Social Security payments; and
- Examines an alternative approach of structured settlements.

The research led to a number of recommendations which are detailed throughout this report. The report concludes that additional research and analysis is required in order to draw conclusive evidence of an

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interrelationship between lump sum compensation, gambling and Social Security payments, however the recommendations that have been made can improve the current system so as to limit the chance of people facing impoverishment following the expenditure of their compensation monies.

1.0 Social Security Act 1991 and compensation payments

1.1 Overview of the effect of Social Security legislation on compensation payments

The Social Security Act is Commonwealth legislation and details the eligibility criteria for all Social Security payments.

The compensation provisions of the Social Security Act have been designed to prevent injured workers receiving workers compensation payments, and receiving income support from the Commonwealth for the same injury or illness that caused their loss of income. The rationale is to avoid "double dipping". This means that all compensation containing a component for economic loss will affect a person's Social Security entitlement, even where the economic loss component is not quantified.

Workers compensation will affect Social Security payments differently depending on whether it is paid as periodic compensation or as a lump sum (more detail provided at sections 1.5 and 1.6). The following Social Security payments are affected by compensation payments:

- | | |
|--------------------------------------------|-------------------------------------------------|
| - Age Pension | - Partner Allowance |
| - Carer Pension | - Sickness Allowance |
| - Disability Support Pension | - Wife Pension |
| - Disability Wage Supplement | - Disability Education Supplement |
| - Special Needs Disability Support Pension | - Special Needs Disability Support Wife Pension |
| - Parenting Payment (partnered) | - Parenting Payment (single) |
| - Mature Age Allowance | - Mature Age Partner Allowance |
| - Widow Allowance | - Special Benefit |
| - Newstart Allowance | - Youth Allowance |

1.2 Historical changes to the Social Security Act in relation to compensation payments

There has been an incremental extension of the compensation provisions since their introduction in 1983. Changes to the rules, have in most cases, been less advantageous to people receiving Social Security payments. These changes can be characterised as:

- The extension of compensation provisions to nearly all payment types. When the compensation provisions were introduced they applied solely to Sickness Benefit;
- Changes to how the Social Security payment of a person's partner is affected by a person receiving compensation income;
- Changes to how compensation income is assessed;
- Changes to the formula used to determine the length of a compensation preclusion period; and
- Changes to the discretions that apply to compensation recipients appealing to have their compensation preclusion period waived.

1.3 Overview of the application of Social Security legislation on workers compensation payments

There are essentially four stages where people receiving compensation can be affected by the compensation provisions of the Social Security Act, but not all people progress through each of these stages. The Social Security system has different rules for each of these stages.

- **Stage One**

The period of time immediately after an accident that could lead to a compensation claim, but the injured worker is not yet receiving compensation payments (see Section 1.4).

- **Stage Two**

The period of time a person starts to receive compensation payments as periodic compensation, to compensate for loss of income (see Section 1.5).

- **Stage Three**

The period of time a person receives a lump sum compensation payment, to compensate for previous or future loss of income (see Section 1.6).

- **Stage Four**

The period of time a persons compensation lump sum has been totally spent, but due to the compensation provisions of the Social Security Act they are precluded from receiving a Social Security payment (see Section 1.7).

1.4 After an accident and before compensation is received

Social Security legislation prevents payment of a pension or allowance to a person unless that person takes action to obtain compensation. Claim forms for all Social Security payments which are affected by compensation, require the claimant to answer Yes or No to the question, "Have you claimed or are you entitled to claim compensation or damages from an accident or injury?" If the customer answers Yes, Centrelink obtains further information about the compensation claim from the insurance company or other body from which the injured worker is claiming compensation. Centrelink then issues a "compensation clearance" in order to pay the claim. Any Social Security payments made to the person during this time will be recovered by Centrelink if the person starts to receive compensation.

1.5 The effect of Social Security legislation on periodic compensation payments

Where a person receives periodic payments of compensation their Social Security payment is, in most cases, reduced by the full amount of the periodic payments, which is different to how other income is treated by Social Security legislation (the exception is where the person was in receipt of Social Security when they had the accident which led to the compensation).

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The compensation income test involves a "direct deduction", or a dollar-for-dollar deduction. For example, if a person receives \$100 per fortnight in compensation, their Social Security payment of \$364.60 (Sickness Allowance, single rate) will be reduced by \$100 per fortnight, so that the person would only receive a total of \$364.60 (ie a combination of \$100 compensation and \$264.60 in Sickness Allowance payments). However, if a person was working casually and earned \$100 a fortnight, then Social Security legislation provides that the ordinary income test be applied. The ordinary income test allows for an income free amount and then a gradual reduction to a person's Social Security payment.

The application of the ordinary income test for a person working part-time and earning \$100 a fortnight will result in their allowance being reduced by \$20. This means that the person would receive \$344.60 in allowance and \$100 in earnings and therefore their gross fortnightly income would be \$444.60, as opposed to the compensation recipient who would have a gross income of \$364.60.

Thus the result of the direct deduction method can leave a person in a more precarious financial position than if they were working and at a time when they may be faced with increased expenses such as medical expenses incurred as a result of their accident.

CASE STUDY 1

Simon was working for a demolition company. He was helping to remove a front-end loader from the back of a truck when a ramp dislodged from the truck. Simon's right foot was crushed under the ramp by the full weight of the front-end loader. The injury to his foot aggravated a degenerative condition in his back which had not been a problem before. Simon received \$545 gross per week and, after tax, \$420 periodic compensation payments from the date of his foot injury. At first he was able to manage on periodic payments but his employment was terminated 18 months before his compensation claim was settled. His periodic payments were reduced to \$210 per week. His rent was \$160 per week and he found it difficult to live on the amount left and started to borrow money from friends and family. He used these loans for daily expenses and settled his debts when he received his lump settlement. When Simon was receiving periodic compensation of \$210 a fortnight, he was not eligible to receive any payment full or part of Disability Support Pension, due to the "direct deduction" income test.

Repayment of Social Security payments when a person receives arrears of periodic payments

Compensation payments made by the compensation payer are often not paid immediately after an accident. There may be a delay for months before an injured worker receives periodic payments, often because the insurance company disputes the claim for compensation. The injured worker normally claims Social Security payments for this period, and eventually receives the

periodic payments in a lump sum amount. Where the recipient or their partner received a Social Security payment during the period covered by the arrears of periodic payments, these payments will have to be repaid to Centrelink.

RECOMMENDATION 1

That the Social Security Act relating to people receiving periodic compensation payments be amended so that the ordinary income test is applied to the relevant Social Security payment claimed rather than the current "direct deduction" method.

1.6 The effect of Social Security legislation on lump sum compensation payments

Permanently incapacitated workers can be paid workers compensation as a lump sum. The typical ways a permanently incapacitated worker can obtain a lump sum payment include:

- Commutation of periodic payments into a lump sum;
- Lump sum payment for permanent injury and for pain and suffering; and
- Lump sum payment for damages at common law.

A permanently incapacitated worker who receives one of the above lump sum payments, will generally not be entitled to receive Social Security payments for a period of time. This is known as the "compensation preclusion period". If a worker received a Social Security payment during the preclusion period, this has to be repaid to Centrelink from the lump sum before the person receives it. This is called the "compensation charge".

Calculating the preclusion period for lump sum payments that are settled

The Social Security compensation preclusion period is calculated by applying a formula to the component of the compensation that is for the loss of income. This determines the length of the preclusion period. When compensation is paid as a lump sum and is settled out of court, Social Security legislation provides that the preclusion period is calculated according to a formula known as "the 50% rule". The 50% rule means that 50% of the gross compensation settlement is normally taken as a person's loss of income component. That loss of income figure is then used to calculate the Social Security compensation preclusion period.

The formula applied to determine the compensation preclusion period is as follows:

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50% of the gross amount of compensation
divided by
the current cut out point for payments of a pension to a single person under the
pension income test (currently \$592.50)

The figure that is reached from this formula then becomes the number of weeks a person is precluded from receiving a compensation affected payment, (which includes most Social Security payments, except payments paid in respect of children).

For example, if a person receives \$200,000 in compensation as part of a lump sum compensation settlement, then the amount determined to be for loss of income is \$100,000. This is because of the application of the 50% rule. That figure is then divided by \$592.50 (which is the cut out point for payment of a pension to a single person under the pension income test). This means that there would be a compensation preclusion period of 168.8 weeks.

A person's preclusion period may be partially or even completely served by the time the compensation lump sum payment is made. If, however, the person has an ongoing Social Security compensation preclusion period, this means that the person cannot receive any Social Security compensation affected payments until the preclusion period has been served, (unless there are "special circumstances") (see section 1.7).

CASE STUDY 2

Greg received periodic payments equivalent to his award wage for six months after an accident and then \$460 a fortnight until he received a lump sum payment of \$200,000. This was the amount remaining after repayment of periodic payments to the insurer. Of this, he received \$132,680 net after disbursements. The disbursements are set out below:

Expenditure	Amount
Health Insurance Commission	20,000
Legal costs	22,000
Medical reports	4,395
Photocopying fees	2,313
Barrister fees	3,000
Accountant fees	1,095
Court related fees	1,942
Conduct searches	256
Bank charges	130
Facsimile costs	83
Other incidentals	109
Total disbursements	55,319
Repayment of exwife's gambling debts	12,000
Net total received from solicitor	132,680

Greg received a Social Security preclusion period of 236 weeks (which was determined by halving \$200,000 which gives \$100,000) and then dividing this by \$432.72 (the cut out point for a single person to receive a pension under the pension income test at the time of settlement).

Needless to say there can be some problems with applying the 50% rule when there is a large discrepancy between the net and gross amounts of the compensation settlement. Similarly people may dispute the fairness of the 50% rule, with 50% being nominally for economic loss.

RECOMMENDATION 2

That the Social Security Act be amended so that the 50% rule used to determine the preclusion period for a person receiving a lump sum settlement be applied to the net amount the person receives after all disbursements, rather than the current gross amount of compensation.

Calculating the preclusion period for lump sum payments determined by the court

Where there is a determination or decision by a court in relation to a lump sum compensation payment, Centrelink will refer to the judgement and use the actual "economic loss" component of the compensation awarded rather than 50% rule.

It has, however, been the experience of the NWRN in assisting 51 injured workers between 1 April 2000 and April 2001 with their Social Security compensation preclusion periods, that the vast majority of these cases applied for a determination, but were settled before the matter was heard at the Compensation Court. This means most compensation recipients will be affected by the 50% rule rather than having a preclusion period based on the actual figure for economic loss.

When does the preclusion period commence?

The preclusion period commences from one of the following dates:

- The date of injury, where the person did not receive periodic compensation payments, or
- the date periodic compensation payments ceased to be paid.

1.7 Waiving compensation preclusion periods and compensation charges

Once a person receives a lump sum compensation payment, the underlying assumption of the Social Security and compensation systems is that the person will be able to manage the money until the compensation preclusion period has ended. The background of the person, and their experiences during the battle for compensation are not taken into account. In the eyes of the law the injured worker has been compensated financially for the loss of physical capacity and the loss of earning potential. Yet the journey from worker to compensated person is not a simple one, emotionally or financially. Many injured workers experience a great deal of difficulty because they have needed to rely on credit or savings to supplement their

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Social Security payment or periodic compensation income. At the same time they had to come to terms with the anger and grief that arises from the severe injuries that lead to lump sum compensation payments.

There is a discretionary power in the Social Security Act to disregard, in "special circumstances" the whole, or part of, a compensation payment, that results in a Social Security compensation preclusion period or compensation charge. Where this discretion is used, a person can receive Social Security payments where they would otherwise be subject to a Social Security preclusion period.

"Special circumstances" is not limited to, but can include, consideration of a person's

- Health;
- Emotional state;
- Decision making capacity;
- Straited financial circumstances;
- Addictions, including problem gambling;
- Incorrect or insufficient legal advice;
- Centrelink maladministration;
- Unjust operation of the legislation; and
- Changed circumstances since the receipt of the compensation.

Review and appeals process

Where a person requests that their preclusion period be reduced due to "special circumstances" and Centrelink does not reduce the preclusion period, the person has a right of appeal. In the first instance an appeal should be made to an Authorised Review Officer and, if necessary, to the Social Security Appeals Tribunal and then to the Administrative Appeals Tribunal.

The Administrative Appeals Tribunal has recognised gambling as a "special circumstance" and tribunals have reduced Social Security preclusion periods where the person was a problem gambler.

There is no exhaustive list about what is covered by "special circumstances". The chances of success are stronger if one or more circumstances that could be considered special are applicable. Essentially though, success in any request to have a compensation preclusion period reduced is contingent on:

- a person giving a full disclosure of information;
- timely investigation of material by Centrelink;
- financial hardship;
- discretionary assessment that the person's circumstances are sufficiently "special".

RECOMMENDATION 3

That the National Welfare Rights Network seek funding to produce a self advocacy booklet that can be provided to problem gambling counselling services and individuals. This will assist injured workers who have spent their compensation payment on gambling in appealing their compensation preclusion period based on "special circumstances". The booklet would include the variety of documentary evidence required to appeal the case based on "special circumstances".

Difficulty of waiving compensation preclusion periods due to problem gambling

Research on problem gamblers suggests that people who recognise their gambling problem often go to a great deal of effort to hide their behaviour from other people, even in circumstances where the disclosure of information could assist them.

CASE STUDY 3

Fred had a compensation preclusion period of seven years. The Welfare Rights Centre provided a detailed submission to a Centrelink Authorised Review Officer, requesting that due to "special circumstances" his compensation preclusion period be reduced and that he be paid Disability Support Pension from the date of his claim. His gambling issue did not become apparent until the late stage of negotiations with Centrelink. It was difficult for Fred to talk about it. He eventually acknowledged that he could not control his gambling addiction. The pattern of spending was high and his bank statements showed frequent withdrawals of large amounts of cash. Some days he gambled around \$2,000. Fred's gambling was accepted as constituting "special circumstances" and his preclusion period was reduced.

Alternatively, an individual with an addiction may not recognise that they have a problem and as a result they would not inform people of the reasons they are in trouble.

During interviews with members of the Social Security Appeals Tribunal the difficulties clients often have in disclosing gambling problems was noted. The Tribunal members stated "In many hearings clients hide their gambling problem but the Tribunal obtains this information by probing, the question is asked, "How was so much money spent?" It appears the people who reveal their gambling problem reluctantly, usually present it as having occurred with a number of other problems. This makes it extremely difficult for the decision maker to determine if the money was spent on gambling, similar to people presenting with alcohol or substance abuse." Tribunal members further stated, "There is a small number of clients who are quite vocal about their gambling problem and they usually have their preclusion period reduced".

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Financial hardship on its own is not enough to waive a compensation preclusion period and when gambling is involved it can be extremely difficult to determine where the compensation money was spent. As mentioned earlier, a person may have difficulty admitting that the reason they have no money is because of their gambling problem. Gambling may be a "special circumstance", but it has to be revealed for it to be considered. As a result, a person may simply appear at Centrelink or at a Tribunal presenting that they have financial problems, but this will not be considered enough to actually exercise a discretion to pay the person during a compensation preclusion period.

The discretionary nature of "special circumstances" is applied on a case-by-case basis. A variety of evidence is required to make a decision and includes personal evidence from questioning, third party documentary evidence, professional reports from gambling counsellors/psychiatrists/psychologists and bank statements showing a pattern of withdrawals.

For this project, we examined a number of cases where people had sought to have their compensation preclusion period shortened, because of gambling behaviours.

The existence of the "special circumstances" discretion for those people who have expended their compensation payments before the end of the Social Security preclusion period is an important element of the Social Security safety net in Australia. However, this discretion has a number of problems, namely:

- it is discretionary, and very often is not exercised by Centrelink staff because of moral assessments about "appropriate behaviour"; and
- the discretion is only available after a person has hit "rock bottom".

Face-to-face contact between Centrelink and an injured worker who has received a compensation payment, usually only occurs after the compensation money is spent. The injured worker usually has no money or very little money left and has been informed at a Centrelink Customer Service Centre, that they are not entitled to receive Social Security payment.

RECOMMENDATION 4

That Centrelink be required to provide intensive assistance to people with compensation preclusion periods who request this assistance, to access to Centrelink's Financial Information Service, Social Workers, Disability Officers, and referral to Commonwealth Rehabilitation Service.

1.8 Centrelink's administration of Social Security legislation relating to compensation payments

Centrelink Compensation Liaison Officers

Centrelink has Compensation Liaison Officers whose role is to undertake community education to inform solicitors and advise Centrelink clients about

Social Security legislation relating to compensation payments and their impact on entitlements to Social Security. It appears, however, that in recent years the role of these officers has changed to a more policy advice focus, reducing the role of education.

Centrelink has produced a detailed publication, "Compensation kit-What you need to know", however this appears only to be available to solicitors and Centrelink customers who request it.

RECOMMENDATION 5

That Centrelink re-establishes in the role of Compensation Liaison Officers an emphasis on community education and outreach to inform solicitors and advise Centrelink customers about Social Security legislation relating to compensation payments.

RECOMMENDATION 6

That Centrelink undertakes an extensive education program targeting compensation solicitors, to ensure these solicitors fully understand compensation preclusion periods, by initially providing them with the compensation kit "Compensation-What you need to know".

RECOMMENDATION 7

That Centrelink provides a copy of its compensation kit, "Compensation-What you need to know", to all people claiming Social Security payments who have indicated they have received or will receive compensation.

Centrelink Area Compensation Recovery teams

Each Centrelink Area Support Office has a Compensation Section, or Compensation Recovery team. The roles of these teams include the following:

- 1. Customers claiming Social Security payments are obliged to inform Centrelink of their compensation claim**

This information is then passed on to the compensation section which then obtains further information regarding the claim from the insurer and issues a "compensation clearance" before the person can be paid Social Security payments.

- 2. Insurers' obligation to inform Centrelink**

Insurers are obliged to write to Centrelink about an injured workers compensation settlement. Centrelink determines if there is a preclusion period, the length of the preclusion period, the compensation charge and the

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amount of this charge. Centrelink forwards a debt notice for any compensation charge to the insurer. Social Security legislation provides that the compensation charge be paid before the compensation money is released to the injured worker or their solicitor.

3. Providing solicitors with estimates of preclusion periods

Compensation Recovery Teams provide estimates of the length of any Social Security preclusion period. This estimate is usually returned to the solicitor by fax within five working days.

To give an example of the number of people affected by the compensation provisions in the Social Security Act, Centrelink Area South Metro, in the financial year 2000/2001:

- Undertook 10,357 compensation clearances;
- Provided 4,183 estimates to solicitors; and
- Determined 6,457 compensation charges.

4. Informing injured workers about the preclusion period

Centrelink sends a letter to the person receiving the compensation settlement about the length of the preclusion period, but only where the person has lodged a claim for Social Security, or requested such information in writing from Centrelink. This may be the only contact injured workers have with Centrelink about their preclusion period. There is often no face-to-face contact with Centrelink, until a person attends a Centrelink office to be told they are not entitled to Social Security. This contact may not occur until after the compensation money is spent and the person is left with very little or no money.

RECOMMENDATIONS

That compensation solicitors be required to request compensation debt and compensation preclusion period estimates from Centrelink for their clients well before settlement.

2.0 Workers compensation payments

2.1 The scope of this report

Worker's compensation payments in NSW are designed to assist workers who have sustained a work-related injury and, due to that injury have a decreased earning capacity, require medical treatment, or have a temporary or permanent incapacity. There have been a number of changes to workers compensation legislation since 1 July 1987 and this has influenced both the level of assistance that injured workers are entitled to, and how they receive their payments. *The Workplace Injury Management and Workers Compensation Act 1998* applies to workers injured on or after 1 August 1998. This legislation emphasises the return to work for injured workers, resolving disputed claims quickly, greater availability to commute periodic payments and restrictions for partially incapacitated workers to receive periodic payments.

This report, in analysing the effects of Social Security legislation on compensation payments for injured workers, is solely interested in the following compensatory payments and non-compensatory payments:

- Periodic payments;
- Commutation of periodic payments into a lump sum;
- Lump sum payments for permanent injury; and
- Lump sum payments for damages and common law.

2.2 Overview of existing administrative practice to implement workers compensation payments

After an injury, an injured worker must notify the employer about the injury as soon as possible and before voluntarily leaving the workplace where the injury occurred. This is normally done by entering the details of the injury into the workplace's Register of Injuries. The employer must notify its insurance company within 48 hours of becoming aware the injured worker is likely to be off work for more than seven days. Within three days the insurance company should contact the employer, the injured worker and the injured worker's treating doctor, to put into practice the "injury management plan".

When an injured worker makes a claim for compensation it should be lodged with the employer within six months of the date of the injury, or of the worker becoming aware of the injury. The employer must forward the completed claim for compensation to their insurance company within seven days.

RECOMMENDATION

That Department of Family and Community Services produce a pamphlet, to be distributed with Workers Compensation claim forms, to advise injured workers about compensation payments being affected by Social Security compensation preclusion periods and compensation charges.

2.3 Compensatory and non-compensatory payments

Injured workers are entitled to compensatory payments provided they are reasonable and appropriate and the injured worker does not pursue damages at common law. The compensatory payments include costs incurred by the injured worker in relation to:

- Ambulance services;
- Medical treatment;
- Hospital treatment;
- Rehabilitation treatment;
- Physiotherapy and Chiropractic treatment;
- Damage to artificial limbs and clothing;
- Occupational rehabilitation; and
- Home and vehicle modifications.

Other compensatory payments include:

- Lump sum payment for permanent injury;
- Lump sum payment for pain and suffering;
- Periodic payments for loss of earnings; and
- Commutation of periodic payments into a lump sum.

2.4 How are permanently incapacitated workers paid?

Payment for permanent injury

There are different ways that a worker can receive compensation when they have incurred a permanent incapacity, and these include:

- Ongoing periodic payments for loss of income;
- Payments for permanent injury and pain and suffering as calculated from the WorkCover Benefits Guide lump sum payment schedule;
- A commutation of the periodic payments for loss of income and components of the WorkCover Benefits Guide assessment of permanent injury schedule; and
- Lump sum amounts following a common law claim for damages. This amount could include compensation for loss of income as well as for pain and suffering and medical expenses.

Periodic compensation payments

When compensation is claimed, the insurer must begin payment of weekly compensation for loss of earnings within 21 days of receiving the claim, unless the claim is disputed. The payments are sent to the employer and the injured worker then receives the payments. If an injured worker has a permanent incapacity and cannot work, the injured worker receives their previous current weekly wage without any extras, ie overtime and penalty rates. This amount is capped to a statutory limit determined by Workcover's Benefits Guide. If an award does not cover the injured worker and a comparable award does not exist, then the injured worker is paid 80% of the worker's previous average weekly earnings. This is paid for the first 26 weeks after the injury. There are no payments during the first 26 weeks for dependants.

The statutory rate payable for an injured worker under an award or enterprise bargaining agreement with a permanent incapacity is:

- For the first 26 weeks after the date of injury their current weekly wage rate up to a maximum of \$1,139.10 per week; and
- For the second 26 weeks after the date of injury the statutory rate of \$267.90 per week if single and no dependants and up to \$601.50 per week if the worker has a dependant spouse and four dependant children.

Periodic payments are payable for one year after the injured worker is entitled to receive the Age Pension.

The injured worker receiving periodic payments is also entitled to be compensated for medical expenses, rehabilitation expenses and appropriate home and vehicle modifications. The injured worker receiving periodic payments can claim a lump sum payment for permanent impairment and can commute periodic payments into a lump sum payment.

There can be a delay from the time the injured worker stops working and starts to receive periodic compensation payments from the insurance company. Generally the insurance company will start to pay periodic compensation within 21 days of the injury, unless the claim is disputed. During this delay it is quite common for the injured worker to claim Social Security and/or rely on savings. An injured worker who receives Social Security payments whilst waiting for periodic compensation, will have to repay this to Centrelink when compensation is received.

At this time, the injured worker inevitably has ongoing living expenses and other financial commitments as if they are receiving an ongoing wage. Furthermore, during this period the worker is likely to have an increase in their usual expenditure because they are incurring medical and rehabilitation costs out of their own pocket. If the treatment is covered by Medicare, then the expense will be minimal but will be recovered by the Health Insurance Commission from any compensation moneys the worker receives. When the

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worker is paid compensation, then the insurance company will reimburse the worker for all "reasonable medical and rehabilitation expenditure". However, there can be delays in the reimbursement stage.

After the accident which gave rise to a person's injuries, many workers are vulnerable financially because of the unexpected changes in their financial position. It has to be remembered that of those people injured at workplace accidents, 78% are classified as labourers and related workers, tradespeople or plant and machine operators¹. Workers in these categories are unlikely to have resources sufficient to provide a financial buffer in times of emergencies such as workplace injuries.

It has been the experience of the NWRN that during this initial stage, workers with workplace injuries start to experience financial difficulties. Many workers who may be able to just keep their head above water whilst working find they can no longer cope with their financial situation even when there is only a week or two delay in payments. Credit is often used as a means of helping a person meet their immediate living costs. In some cases the credit is from friends and family members. In other cases it is through financial institutions via the use of credit cards and payday lending arrangements.

Commutation of periodic payments

An injured worker can agree to convert their periodic payments into a lump-sum payment. This is known as a commutation. In accepting a commutation the injured worker gives up any right to pursue further compensation for the same injury. The insurance provider normally prefers a commutation arrangement because it reduces its administrative costs. A commutation of periodic payments removes an insurer's liability to pay for future medical, hospital, rehabilitation and occupational rehabilitation expenses.

A commutation proposal has to be approved by the Compensation Court. The lump sum payable is determined by the nature of the injury, age of the injured worker, general health of the worker, other benefits the injured worker may be entitled to, pre-injury occupation, residence and ability to compete in an open employment market. The Compensation Court must be satisfied that the injured worker fully understands the effects of the commutation order. This is in relation to the discontinuation of liability by the insurance company and the effect of receiving Social Security payments. Any lump sum payable for permanent incapacity would also be included in the commutation amount.

Damages at common law

Damages at common law are available to an injured worker only if they can establish a breach of the employer's duty to take "reasonable care" for the safety of the worker. Proceedings cannot be instituted within six months of

¹ Workcover statistics for the period 30 June 1998 to 1 July 1999. Employment Industry claims, based on occupation.

when the worker gave notice of the injury to the employer and must be commenced within three years from the date of injury.

An injured worker must elect to either pursue a lump sum payment for permanent incapacity under the Table of Disabilities or pursue damages at common law, but cannot claim for both. A worker cannot keep the compensation benefits previously paid and the money received from damages at common law. The injured worker must repay the workers compensation benefits that have previously been received, should damages at common law also be awarded for the same injury.

If an injured worker sues the employer for damages at common law, proceedings are commenced in a court to recover those damages. The injured worker has to prove the negligence of the employer or a fellow employee and has to meet the requirements of having a serious injury causing economic and non-economic loss. The amount received in common law damages can be affected by the injured worker's own negligence that contributed to the injury. This may include the worker not being compliant with the injury management plan and/or, by not undertaking reasonable and appropriate medical treatment to reduce the injuries received.

2.5 How compensation claims are settled

Settlement by consent

The injured worker may agree to settle a claim for compensation by accepting the insurance company's original offer for payment of periodic payments or lump sum payment of permanent injury. If the compensation claim is disputed or the injured worker does not accept the insurance company's offer, the matter may be settled at the Workers Compensation Resolution Service. The Workers Compensation Resolution Service does not have the jurisdiction to approve commutations of periodic payments. If the insurance company or the injured worker does not accept the conciliator's recommendation, the matter is then set for determination at the Compensation Court.

A proposal to commute entitlements must be approved by the Compensation Court.

The application for the Court's approval is listed for hearing by a judge (if there has been a dispute, the matter may be already before the judge). The workers representative must ensure that the client fully understands the implications of settling the claim in this manner. The practice which has been adopted is to invite the worker to sign a document entitled, "Consent to Commutation/Redemption Application". This is a comprehensive document which must be read, and if necessary, interpreted and explained.

The document relates to the orders which it is proposed the Court will make, orders that will end the worker's entitlements upon payment of the agreed sum. These orders are reduced to a further document which is signed by the representatives of both parties.

It has been the experience of the Welfare Rights Centre assisting 51 injured workers, between 1 April 2000 and 1 April 2001 with their Social Security compensation preclusion periods, that the great majority of clients apply for a determination, but their matter is settled either before the matter is heard by the Compensation Court, or after the hearing has commenced, but before any determination. That is, the majority of cases are settled out of court. The relevance of this for prospective Social Security clients is that 50% of the settlement will be deemed for economic loss. This 50%, as explained in section 1.6 of this report, is then used to calculate a preclusion period.

Workers Compensation Resolution Service

Should the insurance company refuse to pay the compensation claim, the injured worker must apply to the Workers Compensation Resolution Service for conciliation. The Workers Compensation Resolution Service handles conciliation of all claims prior to commencing proceedings in the Compensation Court. The conciliator may convene a face-to-face conference or may advise that the parties can apply to the Compensation Court for a determination of the dispute.

The Workers Compensation Resolution Service settles approximately 50% of disputed claims. These typically involve small amounts of money or cases where the insurer has not started paying periodic payments. Disputed claims involving large amounts of money that could not be settled, are referred to the Compensation Court.

Settlement by damages at common law

If an injured worker sues the employer for damages at common law, proceedings are commenced to recover those damages. The injured worker has to prove the negligence of the employer or a fellow employee and has to meet the requirements for economic and non-economic loss (as described in 2.4 above). The amount received in common law damages can be affected by the injured worker's own negligence that contributed to the injury on a percentage basis. This can include not being compliant with the injury management plan, and by not undertaking reasonable and appropriate medical treatment to reduce the damages the injured worker has received.

2.6 What money is deducted from the lump sum before the injured worker receives it?

If the matter is heard in the Compensation Court, the injured worker does not pay their representing solicitor or the insurer's legal costs, even if the injured worker loses the case, (unless the claim for compensation was fraudulently undertaken). Centrelink can, however, deduct any money owed as a compensation charge from the lump sum. This amount is usually paid by the employer or insurer direct to Centrelink.

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Verdicts in favour of workers in proceedings at common law are subject to no such restrictions.

Table 1 shows a sample of 10 clients assisted by the Welfare Rights Centre to reduce their Social Security compensation preclusion period. These 10 clients have had their preclusion period reduced, due to "special circumstances" where their compensation payment has been spent through gambling. The table shows the gross compensation payment and what was received following disbursements.

TABLE 1 Summary of 10 Welfare Rights Centre cases

How claim was settled	Reason for payment	Gross amount of payment \$	Disbursement of compensation payment prior to client receiving payment					Net amount of payment
			Legal costs	Health Insurance Commission	Medical reports	Centrelink compensation charge	Other	
Settled out of court	Damages at common law	200,000	22,000	22,000	3,130		22,189	144,000
Settled out of court	Commutation	75,000						75,000
Settled out of court	Lump sum for permanent impairment and commutation	72,000		7,200			5,904 (*)	58,896
Settled out of court	Lump sum for permanent impairment and commutation	75,000		7,500				67,500
Settled out of court	Lump sum for permanent impairment and commutation	151,979	5,000	15,000		14,000		117,979
Settled out of court	Damages and common law	1,011,633					300,000(##)	711,633
Settled out of court	Damages and common law	175,000	3,000	17,500			27,500(##)	127,000
Unknown if settled	Periodic payments					3,500		
Settled out of court	Damages and common law	171,097	10,000	20,207		13,070	30,909 (##)	127,000
Accepted insurance company's offer	Lump sum for permanent impairment	35,560	4,500	3,556		9,147		18,357
TOTAL		1,967,269	44,500	92,963	3,130	39,717	386,502 (##)	1,447,365

(*) Disbursements included unspecified amounts for orthopaedic surgeon, medical reports and barristers, solicitors, fees.

(##) Disbursements were unspecified amounts but included repayment of periodic payments, Health Insurance Commission debt and legal costs.

2.7 Occupation of people who claim compensation for permanent incapacity

Based on Workcover statistics for the period 30 June 1998 - 1 July 1999, Table 2 shows the total number of new and ongoing employment injury claims for permanent incapacity, based on occupation.

Manager and Administrators	541
Professionals	565
Para Professionals	634
Tradespersons	3,249
Clerks	522
Salespersons and Personal Service Workers	801
Plant and Machine Operators and Drivers	2,426
Labourers and related workers	5,583
TOTAL	14,321

Labourers and related workers had the highest number of injuries related to permanent incapacity (5,583), followed by tradespersons (3,249), and plant and machine operators (2,426). These three occupational groups together accounted for 78.6% of total permanent disability injuries.

RECOMMENDATION 10

That the Department of Family and Community Services and Centrelink sponsor a trial advertising campaign of regularly updated information about Social Security compensation preclusion periods in trade union magazines in the industries where most workers receive compensation payments.

2.8 How injured workers are informed about the Social Security compensation preclusion period when receiving a compensation lump sum payment

When an injured worker consents to settle their compensation matter, they are required to complete and sign the document, "Authority to settle Workers Compensation claim". This document states, "I acknowledge that my legal representatives have explained to me that if I have been receiving Department of Social Security benefits, I may have to repay part or all of the amount I have received. I understand that the Department of Social Security will not provide a final repayment figure, but only an estimate, of any amount to be repaid to it, until after it has been given the full settlement details....."

If the compensation claim is for the commutation of periodic payments, the document, "Consent to Application for Commutation/Redemption", is signed by the injured worker. This document states on page 2, "I agree that I

have had explained to me my obligations under the Social Security Act and the effect that those obligations will have upon the amount I receive from the lump sum".

Unfortunately, many injured workers do not understand what is going on when the compensation preclusion period is explained. The solicitors office, as much as the courtroom, is a foreign and uncomfortable place to many people. It is difficult for them to understand what is being explained, and often where they do understand, they do not remember the information.

RECOMMENDATION 11

The Department of Family and Community Services, Centrelink and NSW Compensation Court jointly sponsor a regularly updated advertising campaign about Social Security compensation preclusion periods, by, at the very least, placing posters in the foyers of NSW Compensation Courts.

RECOMMENDATION 12

That solicitors representing injured workers provide a copy of Centrelink's compensation kit, "Compensation - What you need to know" to the injured worker. The injured worker to sign a document stating they have received this compensation kit.

3.0 The impact of problem gambling and its relationship with lump sum compensation payments and Social Security

3.1 Overview

As can be seen from the previous sections 1 and 2 of this report Social Security and workers compensation rules and the interrelationship, are all very complicated.

The aim of this research project was to examine the impact of problem gambling on recipients of lump sum compensation and the interrelationship of this with Social Security payments, and in particular, preclusion periods.

The serious impact of problem gambling on people's lives is fairly well documented. About 1% of the adult Australian population experiences a spectrum of mild to severe gambling problems². Various research reports have revealed that the self-reported income of "problem gamblers" varies considerably, from less than \$10,000 to over \$60,000 per year³. Survey after survey of agencies dealing with problem gamblers has indicated that just over half the gamblers surveyed had incomes below \$400 per week, and were therefore in the income range likely to be in receipt of, or in need of, Social Security payments.

People with gambling problems, their families and their communities pay a high price as a result of gambling addiction. The low levels of individual or family income for many gamblers, mean that the money available for gambling is limited. To support the addiction, credit and debt becomes an option, sending the individual, and often their family, into a cycle of debt and often a desperate desire to recoup losses ("chasing losses").

To better understand gambling and its impact on low income individuals as it relates to receipt of lump sum compensation and Social Security payments, for the purpose of this report we:

- Requested, through Freedom of Information, statistical information from the Department of Family and Community Services relating to the number of people affected by compensation provisions and the number of people who had sought waiver of compensation preclusion period;
- Conducted a survey, via a questionnaire, amongst gambling counsellors in NSW;
- Examined client files from member organisations of the NWRN. We looked specifically at files where the person was identified as having a gambling problem.

² Public Health Association of Australia notes available from www.phaa.net.au

³ Client and Service Analysis reports prepared by Jackson Ac, Thomason, N. Ryan, V., Smith, S. . . Analysis of clients presenting to Problem Gambling Services

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- Conducted a literature search to determine if there was any previous research in this area; and
- Conducted interviews with the following organisations: Department of Family and Community Services, Centrelink, Social Security Appeals Tribunal, Administrative Appeals Tribunal, Legal Aid Commission, NSW Workcover and NSW Compensation Court.

3.2 Freedom of Information request

In summary the information requested from the Department of Family and Community Services was:

- Number of clients who claimed Social Security payments in New South Wales, but were affected by compensation preclusion periods;
- Number of decisions and outcome of decisions relating to waiving of preclusion periods, by Authorised Review Officer, Social Security Appeals Tribunal and Administrative Appeals Tribunal;
- Total amount of compensation payment expended by clients on gambling and who subsequently lodged appeals to have preclusion period waived; and
- Reasons given by clients, and frequency of these reasons, for having preclusion periods waived.

The Department eventually responded stating that much of the information we had requested was not available as the specific data requested was not collected. However, the following data for the month of April 2001 was provided.

TABLE 3: NSW compensation affected Social Security recipients for April 2001 (except Area Pacific Central)

Event occurring in reporting period- April 2001								Total
	Less than 6 months	6-12 months	1 to 2 years	2 to 3 years	3 to 4 years	4 to 5 years	Greater than 5 years	
Commenced a preclusion period (1)	888	306	411	99	31	35	83	1853
Ended a preclusion period (2)	299	322	416	86	27	14	19	1183
Commenced an income support payment after ending a preclusion period (3)	46	71	118	27	12	5	2	281
Received a compensation lump sum settlement	381	187	249	48	19	9	47	940
Claimed an income support payment after a settlement (4)	151	103	128	18	12	2	3	417
(1) Regardless of when the preclusion period is to be applied and regardless of when the compensation lump sum is received. (2) Also includes customers who have ended their preclusion period prior to the reporting period but who only had the preclusion calculation recorded in the reporting period. (3) Maximum time between preclusion end and payment commencement is two years. (4) Maximum time between settlement and payment claim is two years.								

From this data we can at least deduce that in the month of April 2001 alone some 4,500 people had significant interaction between the Social Security payment and a workers compensation lump sum payment. Of these 1,853 actually commenced a preclusion period ranging from less than 6 months to greater than 5 years. On this basis, some 22,000 people in NSW alone would be affected by a compensation lump sum preclusion period each year.

3.3 Results from questionnaire to gambling services

Statistical information about the characteristics of Social Security recipients and compensation recipients who have gambling related problems is extremely limited. No such study regarding the relationship between gambling, Social Security and compensation payments has previously been undertaken. For the purposes of this research, a questionnaire was developed. The purpose of the questionnaire was to further examine the relationship between gambling, Social Security and compensation payments.

The Casino Benefit Fund and the NSW Department of Community Services (DOCS) provided lists of all organisations that provided gambling counselling services throughout NSW. Each organisation was contacted about whether or not they would be interested in responding to the questionnaire. A major hurdle for the services was that they did not collect information about a person's source of income when the person first sought assistance. The gambling services only inquired whether or not the person was a low or high income person. The organisations which agreed to participate in the research changed their initial intake sheets to ask whether or not a person was receiving Social Security.

The questionnaire was then distributed to the 33 Problem Gambling Counselling Services throughout New South Wales which had agreed to participate in the research. Organisations from both metropolitan and rural areas participated in the research project.

The questionnaire was divided into several sections:

1. The Social Security payment the client was receiving;
2. Whether the compensation payments that the clients had received or claimed were periodic or a lump sum;
3. The medical/health conditions of the client;
4. Gambling related issues, ie the preferred form of gambling, and gambling venue, the average amount of money spent on gambling and the frequency of the client's gambling; and
5. General questions about age, ethnicity and social and economic impacts of gambling on the client.

Statistical results of the questionnaire

The return rate of the questionnaire was 69%, from which we identified at least 90 people receiving Social Security payments and receiving ongoing problem gambling counselling for the months of April, May and June 2001.

The information collated from the questionnaires provided the following data:

- **Social Security payment received:**

- 36% received Newstart Allowance or Youth Allowance;
- 29% received Disability Support Pension;
- 12% received Age Pension; and
- 11% received Parenting Payment (single)

The high percentage of people receiving Newstart and Youth Allowance who gambled is of interest as these people receive the lowest rates of Social Security payment.

- **Medical/health conditions:**

Clients were diagnosed with a range of medical conditions. The most reported conditions were:

- 11.7% suffered from severe depression;
- 9% suffered from mental illness;
- 9% had suicidal thoughts;
- 7.2 % suffered severe anxiety; and
- 7.2% suffered psychiatric disability

- **Preferred form of gambling**

- 61% only gambled on the poker machines;
- 94% gambled on the poker machines as well as another form of gambling; and
- 1 person gambled on the horses only

- **Preferred gambling venue**

- 23% only gambled at the club;
- 14% only gambled at the pub;

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- 58% gambled at the club and at other gambling venues; and
- 41% gambled at the pub and at other gambling venues
- **Amount of money spent in a fortnight on gambling**

The amounts spent on gambling per fortnight ranged from \$50 to \$1,800.

- 11.7% spent approximately \$400 per fortnight on gambling; and
- 35% of clients would not disclose the amount spent on gambling

- **Frequency of gambling**

- 34.2% of people reported that they gambled several times a week;
- 17.1% stated they gambled weekly;
- 10.8% gambled daily; and
- 45.9% of clients reported they gambled on the day they received their Social Security payment

The high percentage of people who report gambling on the same day as receiving Social Security payments is significant given the large number of requests for emergency payments and hardship payments made by Social Security recipients to Centrelink. In recent years Centrelink has tightened its guidelines on who can actually receive emergency assistance, and this has had a significant impact on the charities that provide alternative assistance when a person is unable to receive Centrelink type payments.⁴ One possible option for people with a gambling problem could be to arrange for their Social Security payments to be paid in smaller amounts, for example, weekly payments rather than a larger fortnightly amount. Another option could be to facilitate "Centrepay" to pay for some bills, and essential services. Naturally, both these options are contingent on the individual acknowledging they have a problem.

- **Locality of clients**

- 14.4% live in the Fairfield local government area;
- 18% live on the central coast (Gosford and Wyong local government areas);
- 8.1% live in the Albury local government area; and
- 4.5% live in the Dubbo local government area

- **Other information**

⁴ D.Shannahan, *The Australian* "Uncharitably redirected to St Vinnies". (28 October 2000)

- 19.8% of clients separated from their partners due to problem gambling;
- 18.9% of clients' relationship with their children broke down due to problem gambling;
- 17.1% of clients became homeless due to problem gambling; and
- 49.5% of clients reported gambling to overcome loneliness

The very high response rate to the question about loneliness is a clear indication that gambling was a strategy to deal with loneliness and isolation. This widespread sense of isolation raises a number of significant policy issues about appropriate ways of engaging people in society. It is not surprising that many of the participants indicated that their preferred form of gambling was poker machines and that their preferred venue for gambling was hotels and clubs, particularly as clubs cultivate a friendly and social atmosphere to encourage individuals to attend, which may lead to increased gambling.

3.4 Results from examination of NWRN files

For the purposes of this report we examined in excess of 50 client files from member organisations of the NRWN throughout Australia.

These were files where the person had received a lump sum compensation payment and had requested the compensation preclusion period be reduced due to financial difficulties. For many of these clients gambling was a component of the reason they faced financial hardship.

Due to a lack of resources, we concentrated on 14 of these clients in order to examine the cases in depth and to interview the clients.

For these 14 clients, compensation matters had settled out of court with the average time from injury to settlement being three and a half years. The 14 clients received a total of \$3,233,636 gross lump sum compensation and spent a total of \$1,855,391 on gambling. This amounts to 57% of the total gross compensation monies being expended on gambling.

Table 4 shows the occupation of these clients and type of injury as well as their preferred venue and form of gambling.

TABLE 4: Profile of 14 gambling related cases

	Occupation	Injury	Form of gambling	Gambling venue
Client 1	Unknown	Unknown	Poker machines	Pub, casino
Client 2	Manual labour	Spinal injury	Poker machines	Pub
Client 3	Manual labour	Knee reconstruction	Poker machines	Pub, clubs
Client 4	Welder	Amputation of fingers	Table games	Casino
Client 5	Manual labour	Neck and spinal injuries	Poker machines, TAB	Casino
Client 6	Printer	Arm injury	Exwife gambled	
Client 7	Luggage handler	Back injury	Horses	Pub TAB, TAB
Client 8	Machine operator	Spinal injuries	Unknown	Unknown
Client 9	Dishwasher	Back and leg injuries	Exhusband gambled	
Client 10	Meat packer	Spinal injuries	Poker machines	Club
Client 11	Chef	Spinal injury	Keno	Keno live sites
Client 12	Machine operator	Crushed foot	Table games, poker machines	Clubs, casino
Client 13	Manual labour	Spinal injury	Poker machines	Club
Client 14	Nurse	Neck injury	Poker machines	Club

A number of these clients who consented to being involved were interviewed about their compensation payments which were spent on gambling. Their explanation as to why their compensation money was spent through gambling included the following comments:

- "To overcome depression resulting from injuries received at work";
- "I don't care about anything, when I drink and I lose all control over money";
- "My father was an alcoholic and I started using drugs when I was teenager";
- "My husband influenced me in how the compensation money would be spent";
- "I treated the money as though it would last forever";
- "I would not wake up wanting to go to the club, I would find myself there with him (partner) at the club";
- "To avoid boredom and to stop feeling depressed", and
- "I just went crazy gambling, in the hope of winning back what I had lost".

In all of the cases examined, the person turned to help only once they had "hit rock bottom". To access Social Security the person then had to demonstrate "special circumstances" which is difficult to do (see section 1.7).

3.5 Literature review

An extensive Internet and publication search found only one article specifically related to Social Security payments and gambling. This was in the Productivity Commission's report "Australia's Gambling Industries" and it looked at the number of gamblers receiving Social Security as their main source of income. We were unable to find any research that specifically examined the relationship between compensation, Social Security and gambling.

3.6 Structured settlements - an alternative approach to compensation payments

One of the core problems for many people with gambling problems is the large amount of cash that is paid to them at the time of settlement. People do not necessarily understand how to preserve this money and use it to support them for many years. In some ways these large amounts of cash are equivalent to superannuation payments. Yet when a person becomes eligible for superannuation payments, there are very sophisticated investment options, supported by the taxation and Social Security systems that encourage the long term use of the capital to create income and protect against poverty.

A possible alternative to the payment of large lump sums to vulnerable individuals is the use of structured settlements. A structured settlement is an attempt to provide more sophisticated financial solutions for receiving large sums of money. Structured settlements are well established in Canada and are becoming popular in the United Kingdom and United States of America.

3.7 What is a structured settlement?

A structured settlement still requires the injured worker to claim workers compensation. An agreement must be reached about whether or not the employer is liable for the injury and a determination made as to the amount of damages to be paid. Where structured settlements differ is that rather than having the full lump sum compensation amount paid directly to the injured worker, the money is paid to a life insurance company, which then provides an annuity to the injured person.

The implementation of a structured settlement requires an injured worker receiving an up front lump sum payment and with the assistance of the compensation insurer, an independent arbitrator, or the injured worker themselves, paying the balance of the compensation payment into a premium annuity provided by a life insurance company. The annuity matches the compensation insurer's obligation to the injured worker for loss of income which is indexed to the CPI and paid direct to the injured worker. The annuity provides income support and other services required by the injured worker until death, or when Age Pension is received. The benefit to the compensation insurer is that they do not incur administration costs as they are not involved in periodically paying the injured worker.

In cases where the injured worker requires ongoing medical, rehabilitation and other services, beyond the date of settlement, this could be an appropriate means of meeting these ongoing needs. One proposal is that ongoing costs would also be part of the structured settlement and could include; alterations to the home and workplace, domestic or handyman help in the home, providing specific medical equipment or appliances and modifications to the injured worker's personal transport.⁵

⁵ "Structured Settlement Group", consisting of the Law Council of Australia, the Australian Plaintiff Lawyers' Association, Injuries Australia, the Insurance Council of Australia Limited and United Medical Protection

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Structured settlements could help to avoid the current situation that problem gamblers face when receiving lump sum compensation as they would not be in a position to gamble the lump sum money in its entirety.

The incorporation of a third party (life insurance annuity provider) overseeing the use of money for future loss of earnings and medical costs could reduce the current problems of people not being able to handle large lump sum payments. It has the potential to limit the number of cases where a client gambles away lump sum payments and is faced with a compensation preclusion period and unable to receive Social Security. A structured settlement, depending on the amount an injured worker receives, may avoid the need to access the Social Security system at all.

3.8 Problems implementing structured settlements

The success of structured settlements will depend on:

- the compensation recipient's certainty that the insurance company will continue to provide payment of the annuity in the future;
- simplicity of its management and administration; and
- flexibility to meet the needs of individual injured workers and taxation treatment of the structured settlement.

There is currently a voluntary system for the provision of structured settlements in the Worker's Compensation Act. However, more needs to be understood about:

- the Social Security income test arrangements that would apply to the structured settlement/annuity amount, particularly for people under Age Pension age;
- changes in the Social Security Act, to the way in which compensation amounts are treated, and compensation preclusion periods are calculated; and
- the treatment of structured settlements by the taxation system.

At present the Social Security Act provides that a person can receive an annuity to which the ordinary income test will be applied, but no asset test will be applied. This is compared with a compensation preclusion period where the amount of income that is considered to be received is not taken into account, rather a formula is used to determine the length of time for which they are not able to receive a Social Security payment.

RECOMMENDATION 13

That the Department of Family and Community Services further investigate the potential of structured settlements as a means to minimise the possibility of people facing financial difficulties as a result of being unable to manage a lump sum payment.

4.0 Conclusions

4.1 Relationships

In the course of this research it has been difficult to draw substantial conclusions regarding the relationship between gambling, Social Security and compensation payments for a number of reasons including:

- There has been no previous research conducted on this topic;
- The fact that the agencies that clients encounter (in relation to gambling, Social Security and compensation) are all separate and, this makes it difficult to establish any interrelationship. These agencies may include Centrelink, Compensation Court, insurance companies, and gambling counselling services; and
- Clients who have gambling problems are often reluctant to talk about the problem.
- Department of Family and Community Services was unable to provide, even under Freedom of Information application, the data we sought related to gambling and Social Security preclusion periods.

The research project has, however, highlighted issues which in our view require more extensive research and consideration from policy makers. The issues highlighted are:

- The payment of compensation in a lump sum means it can be difficult for people to manage and to make the money cover the period of the Social Security compensation preclusion period. This difficulty can lead to serious poverty (both for the compensation recipient and their family);
- The difficulty in managing large sums of money appears to be particularly hard for people with gambling problems;
- People who have a compensable injury have experienced a substantial change in their life often financially, physically and emotionally. This can lead to depression, and people may turn to gambling as a means to counter boredom and loneliness; and
- The range of opportunities for gambling and the welcoming nature of many gambling establishments in all likelihood increases the risk of people gambling.

4.2 Severe financial circumstances

It is apparent that people who have expended their compensation monies through gambling can end up in severe financial circumstances often for a number of years. They have been through a very stressful time from being injured through to the process of claiming and receiving compensation. Once the money is gone, people are then caught by the Social Security compensation preclusion period with their only chance being to establish they have "special circumstances" to warrant the shortening of the preclusion period. As explained in section 1.7, this is difficult to establish and often takes considerable time.

4.3 Further research

While more research is required to further establish the interrelationship between problem gambling, lump sum compensation and Social Security preclusion periods, this report has found that the present Social Security/compensation system can be reformed to lessen the chance of people being in financial hardship. At the very least, there is a need for a greater amount of information to be provided to compensation recipients and solicitors about the exact implications of a Social Security compensation preclusion period.

The exploration of alternative means of providing compensation payments through structured settlements and changes to the interrelationship with the income test could play an important role in easing the transition from worker to disabled and compensated individual. However, these measures must be voluntary and any move to this end should first require a thorough examination of the impact of the receipt of lump sum compensation payments versus payment through structured settlements and the impact of these on a person's entitlement to Social Security, as well as any taxation implications.

5.0 Recommendations

Recommendation 1

That the Social Security Act relating to people receiving periodic compensation payments be amended so that the ordinary income test is applied to the relevant Social Security payment claimed rather than the current "direct deduction" method.

Recommendation 2

That the Social Security Act be amended so that the 50% rule used to determine the preclusion period for a person receiving a lump sum settlement be applied to the net amount the person receives after all disbursements, rather than the current gross amount of compensation.

Recommendation 3

That the National Welfare Rights Network seek funding to produce a self-advocacy booklet that can be provided to problem gambling counselling services and individuals. This will assist injured workers who have spent their compensation payment on gambling in appealing their compensation preclusion period based on "special circumstances". The booklet would include the variety of documentary evidence required to appeal the case based on "special circumstances".

Recommendation 4

That Centrelink be required to provide intensive assistance to people with compensation preclusion periods who request this assistance, ie access to Centrelink's Financial Information Service, Social Workers, Disability Officers and referral to Commonwealth Rehabilitation Service.

Recommendation 5

That Centrelink re-establishes in the role of Compensation Liaison Officers an emphasis on community education and outreach to inform solicitors and advise Centrelink customers about Social Security legislation relating to compensation payments.

Recommendation 6

That Centrelink undertakes an extensive education program targeting compensation solicitors, to ensure these solicitors fully understand compensation preclusion periods, by initially providing them with the compensation kit "Compensation-What you need to know".

Recommendation 7

That Centrelink provides a copy of its compensation kit, "Compensation-What you need to know", to all people claiming Social Security payments

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who have indicated they have received or will receive compensation.

Recommendation 8

That compensation solicitors be required to request compensation debt and compensation preclusion period estimates from Centrelink for their client well before settlement.

Recommendation 9

That Department of Family and Community Services produce a pamphlet, to be distributed with workers compensation claim forms, to advise injured workers about compensation payments being affected by Social Security compensation preclusion periods and compensation charges.

Recommendation 10

That the Department of Family and Community Services and Centrelink sponsor a trial advertising campaign of regularly updated information about Social Security compensation preclusion periods in trade union magazines in the industries where most workers receive compensation payments.

Recommendation 11

The Department of Family and Community Services, Centrelink and NSW Compensation Court jointly sponsor a regularly updated advertising campaign about Social Security compensation preclusion periods, by, at the very least, placing posters in the foyers of NSW Compensation Courts.

Recommendation 12

That solicitors representing injured workers provide a copy of Centrelink's compensation kit, "Compensation -What you need to know" to the injured worker. The injured worker to sign a document stating they have received this compensation kit.

Recommendation 13

That the Department of Family and Community Services further investigate the potential of structured settlement as a means to minimise the possibility of people facing financial difficulties as a result of being unable to manage a lump sum payment.

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