



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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#### Important Information

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IN THE HIGH COURT OF AUSTRALIA  
MELBOURNE REGISTRY

BETWEEN:

**MATTHEW CHAPLIN**  
Appellant

and

**SECRETARY, DEPARTMENT OF SOCIAL SERVICES**  
First Respondent

**LEGAL AID NSW**  
Second Respondent

**FIRST RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

## PART I INTERNET PUBLICATION

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1. This outline of oral submissions is in a form suitable for publication on the internet.

## PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

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### **Ground 3 and Notice of Contention: Ordinary income can be taken into account when “received” if it is not known when it was earned (RS [54]-[66], [67]-[71])**

2. Ground 3 is the critical ground. If the Secretary succeeds, Grounds 1 and 2 fall away. If the Secretary fails, the other grounds are of little consequence.
3. Point 1067G-H1 is a step in a Module that is directed at “*working out*” the rate of a person’s Youth Allowance: ss 556, 1062 and 1067G; Point 1067G-A1.
4. The “*method statement*” in Module A directs the decision-maker in working out the rate according to modules in the calculator.
5. Elements of the modules (including the income test in Module H) turn upon on the Secretary’s “*satisfaction*”, evaluative factual conclusions, opinions, administrative determinations, and retrospective adjustments based upon events that had not occurred at the time of payment. For example:
  - a. Point 1067G-C1 and s 16B(1)(b): satisfaction – “*partial capacity to work*”.
  - b. Point 1067-G6(3): satisfaction and determination – estimate is current and reasonable.
  - c. Point 1067G-G8(2): determination – “*amount of spending or savings*”.
  - d. Point 1067G-G12: evaluative conclusion, determination – “*fair market value*”.
  - e. Point 1067A(9): evaluative conclusion – “*exceptional circumstances*”, “*unreasonable*”.
  - f. Point 1067G-H2, H23B and s 4: opinion– “*member of a couple*”.
  - g. Point 1067G-H3, H5 and s 542A(1)(e): satisfaction – motivation for exemption.
  - h. Point 1067G-H16 and s 19C: satisfaction and determination – “*severe financial hardship*” and “*unavoidable or reasonable expenditure*”.
  - i. Point 1067G-H24: evaluative conclusion – “*reasonable predictability or regularity*”.
  - j. Point 1067G-H25 and s 17: retrospective adjustment – compensation for prior period.
6. Rather than a debt “*crystallising*” by operation of law, the rate calculation process contemplates periodic and retrospective administrative action: cf J [232] (Kennett J).

7. To apply the income test in Module H, the decision-maker must “*work out*”, on a fortnightly basis, the amount of a person’s “*ordinary income*”.
8. The definition of “*ordinary income*”, which relevantly operates by reference to the phrase “*earned, derived or received*”, is framed to gather a broad range of income types: *Read v Commonwealth* (1988) 167 CLR 57 at 69 (Brennan J) [*JBA, C21/430-1*].
9. Point 1067G-H23 is a rule to allocate ordinary income amounts to particular fortnights and prevent the double-counting of ordinary income: J [192], [198].
10. On the Full Court’s construction, Point 1067G-H23 operates only “*where appropriate*”: Point 1067G-H1.
11. On the Notice of Contention construction, Point 1067G-H23 allocates income when the decision-maker can say that it was first earned, derived or received.
12. On either construction, Point 1067G-H23 operates practically and sensibly to “*work out*” a person’s fortnightly income by reference to the evidence.
13. Applied in this way, Point 1067G-H23 advances the means-testing purpose of Module H and avoids windfall gains from disregarding known income.
14. A construction that results in income amounts being disregarded does not advance the statutory policy of Point 1067G-H23, Module H or s 1067G.
15. The Secretary’s construction does not expose social security recipients to debts being raised on the basis of “*random*” reassessments: cf AS [47]. The circumstance that exposes a recipient to reassessment is a failure to comply with statutory reporting obligations.
16. The suggestion that windfall gains could be avoided by the exercise of compulsory powers (AS [80]) ignores the Tribunal’s unchallenged finding that it would not be feasible to contemporaneously collect granular income information: T [35], [38].

**Ground 1: The Full Court’s assessment of the appellant’s entitlement (RS [34]-[48])**

17. The Full Court did not hold that a debt could be raised under s 1223 merely because a decision-maker failed to be satisfied on the material available that a person had been entitled to the payments they had received: cf AS [38].
18. The debt raised against the appellant was based on a positive reassessment by Tribunal of the appellant’s entitlement to Youth Allowance based on evidence of his income: RS [35]; J [85]-[86]. The Secretary provided the Tribunal with evidence of the

calculations that established the appellant's precise entitlement to Youth Allowance: RBFM, 32-59. The Full Court was aware of, and relied upon, the positive finding made by the Tribunal as to the appellant's entitlement: J [205].

19. It was common ground that payslips evidenced the fortnight in which the relevant amounts were received: RS [47]; J [81]-[82].

20. Rather than embodying an "*approximation*" or "*estimation*", the calculations reflected a deterministic method of accounting for "*received*" income: cf AS [38], [53].

21. The majority below considered that a positive finding as to a person's entitlement of this kind was necessary to raise a debt under s 1223: J [114], [147]-[148], [153].

**Ground 2: Alleged failure to focus on particular fortnightly payments (RS [49]-[53])**

22. The majority did not contemplate a debt being raised on the basis that the appellant had under-reported his income in aggregate across the debt period: cf AS [57]-[58].

23. Section 1223 provides that a debt arises where a person was not entitled to a particular social security payment, or part of that payment, that they received: s 1223(1) and (9). The majority was plainly aware of this: J [51].

24. When their Honours discussed whether the appellant was "*entitled to the whole of the payments*", that is what was contemplated: J [14(c)]; RS [51].

25. The majority was clear that that the appellant's entitlement to Youth Allowance was to be assessed on the fortnight-by-forenight basis contemplated by the Youth Allowance Rate calculator: RS [51]; J [14(d)].

26. Whether a debt arose under s 1223 turned on whether a fortnightly payment to the appellant exceeded his entitlement in that fortnight.

27. If, as is suggested at ARS [12]-[14], and contrary to the formulation of Ground 2 in the Notice of Appeal, the appellant's argument concerns the construction of 1067G-H1 and H23 rather than s 1223, this ground adds nothing.

Dated: 15 April 2026

  
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