HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	M92/2025
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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

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

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

Part II: Propositions

2. Point 1067G-H23 of the Act (**Point H23**) prescribed how Mr Chaplin's employment income was to be taken into account when calculating his entitlement to youth allowance payments: when "first earned, derived or received". Section 1223(1) provided for when a debt arose: when a person was "not entitled" to the benefit of a social security payment or part thereof. Mr Chaplin unintentionally, but erroneously, reported his after-tax instead of pre-tax income for the relevant period in 2014-2015: AS [9]-[10]; J [75]; AAT2 [46]. He earned that income before he received it: J [70], [172], [178]-[180], [221].

3. The Secretary has broad information-gathering powers under the Administration Act. By the time the Secretary exercised them in 2024 to obtain material from Mr Chaplin's employer, the dates on which Mr Chaplin *earned* income in "cross-over" weeks of his fortnightly youth allowance instalment periods could no longer be ascertained: J [102]-[103]; Rep [7].

4. Under s 1223, the Secretary may only demand a debt if the Secretary can be satisfied that a person was not entitled to a particular social security payment or part thereof. It is not sufficient for the Secretary to be "not satisfied" that the person was entitled to an amount paid or an aggregate of those amounts (Grounds 1 and 2). Points 1067G-H1 and H23 are prescriptive and do not permit the flexible approach to calculation of a debt that the majority embraced, which wrongly permits income that was "earned" to be taken into account when it was "received" (Ground 3).

Ground 1: error in identifying the "decision" under review

5. The majority erroneously held that the decision under review was a "reassessment" of entitlement and that the calculation of "the debt" was "premised on the decision-maker failing to

be satisfied that the recipient was entitled to the amount received": J [153], [110], [200]; AS [26]; cf RS [44]. This approach inverts the statutory test: AS [40], Rep [11]. Section 1223(1) does not provide that a debt is taken to arise if a decision-maker is *not satisfied* that a person was entitled to a payment. It requires a decision-maker to be affirmatively satisfied that a person was *not entitled* to a payment, as Kennett J held in dissent: J [217], [251]; AS [51]-[55]. The majority erred by conflating a decision to demand a debt with a decision to make a payment: J [156]-[158]; cf J [249]-[252].

6. The text of s 1223(1) supplies the integers that must be identified before a decision of overpayment can be made: (1) the "social security payment"; and (2) "the amount of the payment" to which the person was "not entitled". Only upon the identification and comparison of those two integers can the difference be identified as "a debt due to the Commonwealth": AS [46], [48]-[50], [53]; J [225]-[226], [231], [238], [248].

7. There is an "objective truth" regarding each integer: J [200]-[201]. The question posed by s 1223 is capable only of a "single correct answer": AS [51]; J [226], [232]. This is reinforced by: (a) repeated use of the definite article in s 1223(1) – "the benefit", "the amount", "the debt"; (b) there is no division of liability and quantum – a debt cannot be recognised and *then* quantified; (c) s 1223(1) says "the debt is taken to arise when the person obtains the benefit of the payment"; (d) anomalous results arise if a debt can be raised, potentially years later (there is no limitation period: s 1234B, commenced 2017), based on absence of satisfaction of entitlement: AS [47], [65]; J [251].

8. A policy concern about a potential "windfall" cannot override the statutory language. The Court should not strain the Act to impose on a social security recipient the burden of re-establishing their entitlement to disprove an alleged debt, potentially many years after a payment was made. Legislation does not pursue its purposes at all costs and the Act has beneficial purposes: AS [45]; Rep [20]; *Mammoet* (2013) 248 CLR 619 at [40]-[41]. The solution lies with the Secretary, who can exercise his powers and establish adequate procedures under the Administration Act: ss 8(a)(v), 192. The consequence in this case flows from legislative choices made in the Act: J [246].

Ground 2: failure to focus on entitlement to particular fortnightly payments

9. Section 1223(1) operates with respect to specific social security payments. Contrary to the majority (J [14(c)], [154]-[155], [157], [159]), it does not permit the Secretary to compare the total aggregated amount of payments made over the relevant period with the total aggregated amount of income earned (or received) over the same period. Rather, the two integers must be applied in

respect of each fortnightly instalment period: AS [58]. For the decision-maker to "know" (J [166]) there is an overpayment, the overpayment must be tied to a particular fortnight: Rep [12]-[13].

10. Mr Chaplin's case does not "distort what the majority said": cf RS [52]. The majority used the fact of under-reporting to produce the conclusion that Mr Chaplin owed a debt: J [3], [6], [14(c)-(d)], [110], [166]. That approach fails to apply the statutory scheme: Administration Act, s 43(1) and (3); Act, points 1067G-A1, H1, H23, s 1223.

Ground 3 and Notice of Contention: failure to give effect to "first earned, derived or received"

11. The majority erred by upholding a "hybrid" method using "earned" and "received", when all income was earned: J [196]-[198], [203]. Point H23 prescribes a single method of accounting for income, by reference to when a recipient "first earned, derived or received" the income: AS [64].

12. The words "where appropriate" in Point H1 (Step 1) do not justify disapplying Point H23 or a "flexible" construction of that provision: AS [71], [73]-[74]; cf J [196]. Rather, "where appropriate" directs a decision-maker to take into account points 1067G-H2 to H25 where objective facts exist upon which those provisions operate: AS [71]; cf J [203], [14(d)], RS [66].

13. The language of Point H23 is mandatory: "is to be taken into account". The word "first" prescribes a single method of accounting and does not only "prevent double counting": J [192]. The provision contains no reference to "the available material": cf J [198], RS [59]; Rep [22]-[23].

14. That test cannot change retrospectively, or vary continuously, based on an evolving state of the material available to a decision-maker: AS [63]. *First,* this is inconsistent with the "single correct answer" required by the Act, depriving its operation of certainty: J [238]. *Second*, it fixes a person's entitlement to the evolving state of documentation available to establish that entitlement. A person may receive no more than their entitlement at the time of payment and then be deemed to have been overpaid at a later time due to loss of documents: J [251]. *Third,* it is inconsistent with the legislatively mandated principles that the Act is to be administered in a way that is "fair", "courteous" and "prompt": AS [65].

15. What Mr Chaplin earned in each fortnight is no longer capable of being ascertained: AS [41]; Rep [3]. But that does not mean income is "ignored": AS [29]; cf J [194], RS [27]. Nor does it mean Point H23 is "not possible to apply": J [198]; AS [79]-[80]. It simply means the Secretary might not be able to conclude there is a debt: J [186], [246].

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