



Administrative
Appeals Tribunal

**DECISION AND
REASONS FOR DECISION**

[2016] AATA 781

Division **TAXATION & COMMERCIAL DIVISION**

File Number **2016/2057**

Re **Ian Edwards**

APPLICANT

And **Commissioner of Taxation**

RESPONDENT

DECISION

Tribunal **Senior Member A C Cotter**

Date **5 October 2016**

Place **Brisbane**

The Tribunal affirms the decision under review.



[Sgd]

Senior Member A C Cotter

Catchwords

TAXATION – assessable income – lump sum payment for arrears of workers’ compensation – lump sum payment in arrears (LSPIA) tax offset – whether lump sum payment was assessable income for the income year it was received rather than the years to which it related – whether LSPIA tax offset was correctly calculated – whether the applicant is entitled to interest on the lump sum payment – lump sum payment was ordinary income derived and assessable in the year it was received - LSPIA tax offset was correctly calculated – decision under review is affirmed

Legislation

Safety, Rehabilitation and Compensation Act 1988 (Cth), ss 14, 19

Taxation Administration Act 1953 (Cth), s 14ZZK

Income Tax Assessment Act 1997 (Cth), ss 6-5, 995-1

Defence Force Retirement and Death Benefits Act 1973 (Cth)

Income Tax Assessment Act 1936 (Cth), ss 159ZR, 159ZRA, 159ZRB, 159ZRC, 159ZRD

Cases

Edwards and Comcare [2014] AATA 963

Tinkler v Federal Commissioner of Taxation (1979) 40 FLR 116

Federal Commissioner of Taxation v Dixon (1952) 86 CLR 540

Commissioner of Taxation v Inkster (1989) 24 FCR 53

Re Purdon and Federal Commissioner of Taxation (2001) 46 ATR 1161

Re Cooper and Federal Commissioner of Taxation (2003) 52 ATR 1199

The Commissioner of Taxes (South Australia) v The Executor Trustee and Agency

Company of South Australia Limited (1938) 63 CLR 108

Re Applicant and Federal Commissioner of Taxation (2006) 63 ATR 1008

Re Vargiomezis and Federal Commissioner of Taxation (2008) 73 ATR 984

Secondary Materials

Taxation Ruling TR 98/1, Income tax: determination of income; receipts versus earnings

REASONS FOR DECISION

Senior Member A C Cotter

5 October 2016

BACKGROUND

1. On Christmas Eve 2014, Mr Ian Edwards was notified of his success in an earlier application to this Tribunal for review of a decision made by Comcare. That matter arose out of a dispute over Mr Edwards' entitlement to compensation for incapacity under s 19 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) ("SRC Act") between 2000, when Mr Edwards left his job with the Australian Federal Police ("AFP"), and 2006, when he commenced part-time work as a self-employed photographer. Comcare had asserted that Mr Edwards was capable of working at least nine hours per week during the period, notwithstanding his accepted injuries (sustained in the course of his employment with the AFP). It maintained that the amount he notionally earned each week was correctly deducted from the incapacity payments he received.¹
2. The Tribunal in that matter set aside Comcare's decision and substituted the decision that Mr Edwards was able to earn "nil amount in suitable employment" for the purposes of s 19(2) of the SRC Act in the relevant period.² The reasons for that decision are not directly relevant here.
3. On or about 2 February 2015, as a result of the decision, Mr Edwards was paid a gross lump sum payment of \$86,088.77 ("the lump sum payment") by Comcare, pursuant to

¹ *Edwards and Comcare* [2014] AATA 963, [1]; and Exhibit 1, T Documents, T 15, page 150.

² *Ibid*, [25].

s 14 of the SRC Act and calculated in accordance with s 19 of that Act.³ The net payment after deduction of tax was \$52,548.77.⁴

4. Following receipt of the payment by Comcare, Mr Edwards lodged an application for a private ruling, saying that the lump sum payment “will cause elevated tax and also cessation (sic) of Centrelink entitlements for current financial year”.⁵ Attaching a letter and accompanying table from Comcare showing the incapacity adjustments over the period,⁶ Mr Edwards added:

*I should not be financially disadvantaged as a result of receiving this amount as a lump sum in 2015. This was income from that period [30 November 2000 to 26 April 2006] and should be calculated for taxation purposes over the 6 years.*⁷

5. The private ruling confirmed that the lump sum payment received from Comcare was assessable in the year in which it was received. Provided the lump sum payment in arrears was more than 10 percent of Mr Edwards’ normal taxable income, the ruling also stated that he would be entitled to a lump sum in arrears offset.⁸
6. When Mr Edwards subsequently lodged his income tax return for the income year ended 30 June 2015, he reported total income of \$116,354.00, which included the lump sum payment.⁹
7. The Commissioner subsequently issued a notice of assessment to Mr Edwards, stating the taxable income of \$116,354.00 and allowing a tax offset for lump sum payment in arrears (“LSPIA tax offset”) of \$3,669.00.¹⁰
8. Mr Edwards objected to the notice of assessment.¹¹

³ Exhibit 1, Supplementary T Documents, ST 4, page 367; IE5 Comcare Payment Summary dated 30 June 2015.

⁴ Exhibit 1, T Documents, T 15, page 148, Attachment for Private Tax Ruling dated 6 February 2015.

⁵ Exhibit 1, T Documents, T 15, page 145, Private Ruling Application dated 6 February 2015.

⁶ Exhibit 1, T Documents, T 15, pages 160-161, Comcare letter (with table) to Mr Edwards dated 30 January 2015.

⁷ Exhibit 1, T Documents, T 15, page 149, Attachment for Private Ruling dated 6 February 2015.

⁸ Exhibit 1, T Documents, T 16, page 163, Australian Taxation Office Private Ruling dated 24 March 2015.

⁹ Exhibit 1, T Documents, T 18, pages 178 and 175, Mr Edwards’ tax return for year ended 30 June 2015 dated 31 July 2015.

¹⁰ Exhibit 1, T Documents, T 19, page 210, notice of assessment dated 25 September 2015.

¹¹ Exhibit 1, T Documents, T 21, pages 213-224, objection form dated 23 November 2015.

9. During the course of the consideration of the objection, it was found that Mr Edwards' income tax liability for the income year ended 30 June 2005 was excessive, in that it failed to take into account losses in the preceding income year.¹² Following a conversation with the objection officer, Mr Edwards requested that his notice of assessment for the year ended 30 June 2005 be amended, to take into account those previous year losses.¹³
10. Mr Edwards' objection was allowed in part. As a result of his being allowed to claim losses for the 2005 income year, the LSPIA tax offset for the 2015 income year was increased;¹⁴ a notice of amended assessment was issued on 11 April 2016, showing an increased LSPIA tax offset of \$5,924.00.¹⁵
11. Dissatisfied with that outcome, Mr Edwards seeks a review of the Commissioner's decision disallowing his objection.

ISSUES FOR THE TRIBUNAL

12. The issues raised by Mr Edwards' application can be summarised as follows:
 - (a) Whether the lump sum payment paid by Comcare to Mr Edwards was assessable income derived in the income year ended 30 June 2015;
 - (b) Whether the Commissioner correctly calculated the LSPIA tax offset; and
 - (c) Whether Mr Edwards is entitled to interest on the lump sum payment for income in arrears.
13. Those issues were further refined during the course of the hearing. I elaborate below.

THE LEGISLATIVE FRAMEWORK FOR REVIEW

14. The relevant statutory provision is s 14ZZK of the *Taxation Administration Act 1953* (Cth). It provides that the applicant for review of a reviewable objection decision is, unless the Tribunal orders otherwise, limited to the grounds stated in the taxation objection to which

¹² Exhibit 1, T Documents, T 2, page 12, reasons for decision dated 31 March 2016.

¹³ Exhibit 1, T Documents, T 22, page 225, email from Mr Edwards to objection officer dated 14 March 2016.

¹⁴ Exhibit 1, T Documents, T 25, page 247, notice of objection decision dated 31 March 2016.

¹⁵ Exhibit 1, T Documents, T 26, page 249, notice of amended assessment dated 11 April 2016.

the decision relates. It goes on to relevantly provide that the applicant has the onus of proving that the assessment is excessive or otherwise incorrect, and what the assessment should have been.

CONSIDERATION

Was the lump sum payment assessable income derived in the income year ended 30 June 2015?

15. This issue in turn raises two sub-issues: the appropriate characterisation of the lump sum payment to Mr Edwards, and whether the lump sum payment was derived when it was received. I deal with those matters below.

The characterisation of the lump sum payment

16. There was no serious dispute between the parties on this sub-issue.
17. The starting point for the consideration of this question is s 6-5(1) of the *Income Tax Assessment Act 1997* (Cth) ("ITAA 1997"), which provides that assessable income includes income according to ordinary concepts, which is called "ordinary income".
18. It is well established that payments to compensate for loss of earnings have the character of income for tax purposes.¹⁶
19. In determining whether statutory compensation payments have the character of income, it is necessary to look at the words of the statute itself, as well as the circumstances in which the payment was received.¹⁷ In the present case, s 19(2) of the SRC Act provides that compensation for injuries resulting in an employee's incapacity to work is calculated by deducting from their normal weekly earnings the weekly amount that they earn, or are able to earn. As such, the compensation is directly referable to the amount of earnings that the employee would have received had it not been for his or her injury. It is therefore clear that the character of the payments is income based.¹⁸

¹⁶ *Tinkler v Federal Commissioner of Taxation* (1979) 40 FLR 116, 118-120 (Brennan J); and *Federal Commissioner of Taxation v Dixon* (1952) 86 CLR 540, 556-557 (Dixon CJ and Williams J).

¹⁷ See *Commissioner of Taxation v Inkster* (1989) 24 FCR 53, 69-70 (Lee J).

¹⁸ See *Re Purdon and Federal Commissioner of Taxation* (2001) 46 ATR 1161, [15] (MD Allen, Senior Member).

20. Simply because the compensation was paid in a lump sum does not alter its character;¹⁹ the lump sum payment was an aggregate of past weekly payments and was made in substitution for Mr Edwards' claim for weekly compensation.
21. In those circumstances, it is clear that the lump sum payment received by Mr Edwards had the character of ordinary income.

Was the lump sum payment “derived” when it was received by Mr Edwards?

22. As with the characterisation question, the starting point for my consideration of this sub-issue is s 6-5 of the ITAA 1997. Subsection (2) relevantly states that if the taxpayer is an Australian resident, their assessable income includes “the *ordinary income (they)*derived directly or indirectly from all sources... during the income year”. The word “derive” is said to have “a meaning affected by subsection 6-5(4)”.²⁰ That subsection in turn provides:

*(4) In working out whether you have **derived** an amount of *ordinary income, and (if so) when you **derived** it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct.*

23. That raises the question as to the appropriate accounting method to be adopted in the circumstances: the receipts or cash basis, or the earnings or accruals basis.
24. The Commissioner's representative, Ms O'Connor, referred me to the often quoted words of Dixon J in *The Commissioner of Taxes (South Australia) v The Executor Trustee and Agency Company of South Australia Limited (Carden's case)*, that the admissibility of the method which has been pursued must depend on its actual appropriateness.²¹ The inquiry should be whether, in the circumstances of the case, it is “calculated to give a substantially correct reflex of the taxpayer's true income”.²² Later in his judgment, Dixon J observed:

*Speaking generally, in the assessment of income the object is to discover what gains have during the period of account come home to the taxpayer in a realized or immediately realizable form.*²³

¹⁹ See *Re Cooper and Federal Commissioner of Taxation* (2003) 52 ATR 1199, [11] (M Allen, Member).

²⁰ See *Income Tax Assessment Act 1997* (Cth), s 995-1.

²¹ (1938) 63 CLR 108, 154.

²² *Ibid.*

²³ *Ibid.*, 155.

25. Turning specifically to the present case, Ms O'Connor submitted that income from employment is accounted for on a receipts basis, even though it may relate to a past income year; it is derived, for the purposes of s 6-5, in the year that it is received.²⁴ In support of that proposition, she relied on several authorities, including *Re Applicant and Federal Commissioner of Taxation*,²⁵ *Re Cooper and Federal Commissioner of Taxation* ("*Cooper's case*"),²⁶ and *Re Vargiomezis and Federal Commissioner of Taxation*.²⁷
26. *Cooper's case* was considered particularly analogous to the present circumstances. It concerned a lump sum payment in arrears of invalidity benefits paid pursuant to the *Defence Force Retirement and Death Benefits Act 1973* (Cth) ("the DFRDB Act"). Mr Cooper contended in that case that the payment was derived in the years to which it related, rather than the year of receipt; the payment, he said, was derived when he became entitled to benefits under the DFRDB Act. The Tribunal rejected that argument and found that the lump sum payment was made in the year of receipt. Although Mr Cooper had a right to claim statutory compensation, that right was dependent on certain things happening in accordance with the statutory regime. Until such time as the requisite decisions had been made by a proper person, Mr Cooper had no right to compensation and there was no amount that could be applied or dealt with on his behalf, or as he directed, for the purposes of s 6-5 of the ITTA 1997.²⁸
27. Based on those authorities, it was submitted on behalf of the Commissioner that no amounts "came home" to Mr Edwards in any realisable form, and there was no amount that could be applied or dealt with on his behalf or as he directed, until the 2015 income year. Therefore, the lump sum payment was said to have been derived in that year and was assessable income in that year, rather than in the years to which the payment related.²⁹
28. Mr Edwards contended that the lump sum payment was not derived in the 2015 income year. Rather, he said it was derived and assessable in the years to which the payments

²⁴ Exhibit 3, Respondent's Outline of Submissions dated 1 September 2016, [21].

²⁵ (2006) 63 ATR 1008.

²⁶ (2003) 52 ATR 1199.

²⁷ (2008) 73 ATR 984.

²⁸ See Exhibit 3, Respondent's Outline of Submissions dated 1 September 2016, [22] and [23].

²⁹ *Ibid*, [24].

related (namely the 2001 to 2006 income years). That contention was based on two arguments. First, Mr Edwards asserted that the previous decision of this Tribunal in *Edwards and Comcare* “allowed the lump sum to be generated as a judgment debt” which in turn became a “recoverable debt”.³⁰ Relying on Taxation Ruling TR 98/1, he submitted that the earnings or accrual method, rather than the receipts or cash method, should be employed, such that the income is considered derived when it is earned.³¹ Mr Edwards’ second argument was that the assessment was excessive because he was denied the right to use the appropriate accounting method.³²

29. He also submitted that I should not accept the Commissioner’s contentions for three reasons. First, he said that the Commissioner had failed to address Taxation Ruling TR 98/1 as “the most applicable document in this matter”. Second, he asserted that no reference had been made to his private ruling, “which recognises the income is derived in 2000-2006”. Finally, he submitted that I should totally disregard the authorities on which the Commissioner relied as they were not referable to the specific circumstances of his case.³³

30. Before I deal with Mr Edwards’ substantive submissions and his reliance on Taxation Ruling TR 98/1 in particular, I should briefly address his arguments as to why I should disregard the Commissioner’s contentions.

31. On the issue of when income was derived, the private ruling specifically referred to, and relied upon, paragraph 42 of Taxation Ruling TR 98/1:

*Income from employment would normally be assessable on a receipts basis. Salary, wages or other employment remuneration are assessable on receipt even though they relate to a past or future income period.*³⁴

After noting that the lump sum payment Mr Edwards received represented back payments for the previous financial years of 2000-2001 to 2005-2006, the private ruling stated:

³⁰ Exhibit 4, Applicant Outline of Submissions, undated, page 2, [1].

³¹ See Taxation Ruling 98/1, *Income tax: determination of income; receipts versus earnings* (“TR 98/1”), [9]-[11].

³² Exhibit 4, Applicant Outline of Submissions, undated, page 3, [2].

³³ Exhibit 4, Applicant Outline of Submissions, undated, page 7.

³⁴ Exhibit 1, T Documents, T 16, page 166, private ruling reasons for decision dated 24 March 2015.

*Regardless of what period the payment is for, under the receipts basis, this payment is included in your assessable income for the 2014-15 financial year.*³⁵

That private ruling, relying on Taxation Ruling 98/1, is completely consistent with the position which has been adopted by the Commissioner throughout. It is therefore difficult to see how reliance on either Taxation Ruling 98/1, or on the private ruling, would assist Mr Edwards.

32. The issues raised by this application have been the subject of much consideration by the courts and this Tribunal over a long period of time. In the absence of specific submissions as to why particular cases are distinguishable from the present matter and therefore are not relevant, I am not prepared to accede to Mr Edwards' request that I completely disregard the authorities on which the Commissioner relies. Naturally, if I reach my own conclusion that a particular case is distinguishable or otherwise to be confined to its own peculiar facts, I will say so.
33. As I mentioned earlier, Mr Edwards' first substantive argument was that the Tribunal's decision in his favour in *Edwards and Comcare* allowed the lump sum to be "generated" as a judgement debt which then became a "recoverable debt". The significance of that submission is to be found in paragraphs 9 to 11 of Taxation Ruling TR 98/1:

9. The 'earnings' method is often referred to as the 'accruals' method or the 'cash and credit' method. Under the earnings method, income is derived when it is earned. The point of derivation occurs when a 'recoverable debt' is created.

10. The term 'recoverable debt' is used to describe the point of time at which a taxpayer is legally entitled to an ascertainable amount as the result of having performed an agreed task. A taxpayer may have a recoverable debt even though, at the time, they cannot legally enforce recovery of the debt.

*11. Whether there is, in law, a recoverable debt is a question to be determined by reference to the contractual agreements that give rise to the legal entitlement to payment, the general law and any relevant statutory provisions.*³⁶

34. There are a couple of observations I have concerning Mr Edwards' argument. First, I have some reservations as to whether the lump sum could be considered a "judgment debt" in the strict sense of the term. The Tribunal in *Edwards and Comcare* determined that the

³⁵ Ibid.

³⁶ TR 98/1, [9]-[11].

decision under review be set aside and that another decision be substituted in its place.³⁷ Neither of those decisions concerned the award of an ascertainable amount of money that could be readily described as a “debt”. Rather, the decision had to be considered by Comcare, which in turn undertook a calculation of the amount payable, after which payment was made to Mr Edwards. Second, it seems to me that there is an inherent weakness in Mr Edwards’ argument, in that any “debt” which ultimately arose (or was “generated”, to use Mr Edwards’ term) actually crystallised in the 2015 income year, not some earlier year or years. That crystallisation was dependent on a number of things occurring. All of them were in the 2015 income year – the Tribunal hearing, the favourable decision, and the reconsideration of the matter by Comcare in light of that decision, followed by its calculation of the applicable back payments in respect of each of the years in question. Until all of those matters happened, there was no “debt”. Nor, until then, was Mr Edwards “legally entitled to an ascertainable amount”.

35. That has many features in common with the situation described in *Cooper’s case*:

Until the Authority approved of the payment and, importantly, determined his classification, Mr Cooper had no right to any payment, no amount could be ascertained as due to him, and there had been no segregation of any amount due to... him from the fund... There was no amount that could be applied or dealt with in any way on his behalf or as he directed for the purposes of s 6-5(4) of the ITAA 1997 or that could be reinvested, accumulated, capitalised, carried to any reserve etc or otherwise dealt with on his behalf or as he directed for the purposes of s 19 of the ITAA 1936 in relation to years prior to 1997/98. In my opinion no amount “came home” to Mr Cooper in any realisable form until the 2000 year.³⁸

36. So, too, is it the position in Mr Edwards’ case. Until the 2015 income year, there was no amount that could be applied or dealt with on his behalf or as he directed. Nor was there any amount that “came home” to him in a realisable form until that year. As was observed in *Cooper’s case*:

Any other conclusion would, in my opinion, be strange to say the least. It would require a conclusion that in the years before 2000 the “entitlement” of Mr Cooper was such that he should have brought to account for taxation purposes the income that he had not received and which at the time he had no right to receive.³⁹

³⁷ *Edwards and Comcare* [2014] AATA 963, [25].

³⁸ *Re Cooper and Federal Commissioner of Taxation* (2003) 52 ATR 1199, [15], (M Allen, Member).

³⁹ *Ibid*, [16].

37. For those reasons, I do not accept Mr Edwards' first argument, that he was legally entitled to a "recoverable debt" in the 2001 to 2006 income years, and that it was assessable income in the relevant years.
38. Mr Edwards' second argument, that the assessment for the 2015 income year was excessive because the Commissioner denied him the right to use the earnings accounting method, can be addressed relatively easily. Consistent with the Taxation Ruling TR 98/1, Mr Edwards had been adopting the receipts accounting method as being the most appropriate for him. As paragraph 42 states, salary, wages, or other employment remuneration are assessable on receipt, even though they relate to past or future income.⁴⁰ Under Taxation Ruling TR 98/1, a taxpayer who accounts for items of income on a receipts basis "should continue to adopt that method until it is no longer appropriate".⁴¹ That will occur when "the taxpayer's circumstances show the earnings method of accounting is the more appropriate method by which the income should be determined for tax purposes".⁴²
39. For the reasons I have already outlined, particularly at paragraphs 34-36, the receipt of the lump sum payment in the 2015 income year did not provide any reason to change to an earnings accounting method. In the absence of any other reason for saying that the receipts method was no longer appropriate, I consider it was not open to Mr Edwards to change to the earnings method for the 2015 income year.
40. I therefore conclude that the lump sum payment was derived, for the purposes of s 6-5 of the ITAA 1997, in the year of receipt, being the 2015 income year. The lump sum was therefore assessable income in that year and not in the years to which the payment related.
41. I appreciate that this decision could, in turn, have unintended consequences, such as the raising of the debt by Centrelink in respect of overpaid benefits. While that is regrettable and while I sympathise with Mr Edwards and his family, it is the Tribunal's obligation to

⁴⁰ TR 98/1, [42].

⁴¹ Ibid, [31].

⁴² Ibid.

apply the law consistently.⁴³ I also note that a rebate is available for taxpayers who receive certain types of lump sums in a particular year, and that Mr Edwards has received the benefit of that statutory rebate in this instance⁴⁴

Did the Commissioner correctly calculate the LSPIA tax offset?

42. While he initially questioned the calculation of the LSPIA tax offset, Mr Edwards indicated at the hearing that he agreed with the calculation set out in the table annexed to the Commissioner's Outline of Submissions. That arrived at a LPSIA tax offset of \$5,924.00,⁴⁵ being the amount of the offset allowed in the Amended Notice of Assessment.
43. Having considered the statutory provisions,⁴⁶ and the Commissioner's relevant workings, I am satisfied that the calculation is correct. I therefore consider that Mr Edwards' concession was appropriate.

Is Mr Edwards entitled to interest on the lump sum payment for income in arrears?

44. The third and final component of Mr Edwards' application concerned a claim of lack of fairness and equity by the Australian Taxation Office ("ATO") in its dealings with him. That had several facets. First, he sought compensation (in the form of interest and Consumer Price Index ("CPI") adjustment) in respect of the lump sum payment that he received following his successful application to the Tribunal, and which he said should have been paid to him years earlier. After outlining a number of grievances against the ATO and its handling of his objection, he claimed that he had suffered damage as a result of its negligent advice and/or actions. In particular, he said that the ATO had failed to: apply legislation without being arbitrary or overly discretionary; provide a decision making process that was unbiased and fair; allow a right to choose the appropriate accounting method; and observe and adhere to Taxation Ruling TR 98/1. He also alleged that the

⁴³ See *Re Cooper and Federal Commissioner of Taxation* (2003) 52 ATR 1199, [12]; and *Re Applicant and Federal Commissioner of Taxation* (2006) 63 ATR 1008, [24].

⁴⁴ See *Income Tax Assessment Act 1936* (Cth), ss 159ZR-159ZRD; and *Re Cooper and Federal Commissioner of Taxation* (2003) 52 ATR 1199, [12].

⁴⁵ Exhibit 3, Respondent's Outline of Submissions dated 1 September 2016, Appendix B, Lump Sum Tax Offset Calculation.

⁴⁶ *Income Tax Assessment Act 1936* (Cth), ss 159ZR-159ZRD.

ATO had provided false and misleading information and had obstructed his objection process.⁴⁷

45. Some of the above matters, such as the choice of the appropriate accounting method, the application of the legislation and the observance of Taxation Ruling TR 98/1, have been discussed earlier; I do not propose to repeat my comments here.
46. Several points need to be made concerning the claim for interest and a CPI adjustment. First, and most importantly, I do not consider that I have the jurisdiction to deal with such a question in the context of the present application. It goes far beyond the matter with which I am currently concerned, namely the review of the Commissioner's decision of 31 March 2016 disallowing Mr Edwards' objection to the Notice of Amended Assessment for the income year ended 30 June 2015. In any event, the payment in question was made, not by the ATO, but by Comcare, which is the body responsible for the administration of the SRC Act. Any questions concerning the lump sum payment and its calculation is a matter for Comcare (which is not a party to the present application), not the ATO. In response, Mr Edwards suggested that I could re-open his earlier proceeding against Comcare. Putting aside questions of possible reconstitution of the Tribunal and whether it would be *functus officio* in any event, that, too, is a matter beyond my jurisdiction in this proceeding.
47. Similarly, any claims for damages consequent upon negligence or breach of duty are matters for the courts and beyond my current jurisdiction.
48. To the extent that Mr Edwards still maintains complaints against particular officers of the ATO, I suggest that he take those matters up with the ATO directly, or alternatively, with the Inspector-General of Taxation.
49. In summary, questions of whether Mr Edwards is entitled to interest or a CPI adjustment, or whether he is entitled to other relief against Comcare or the ATO, are beyond the Tribunal's current jurisdiction.

⁴⁷ Exhibit 4, Applicant Outline of submissions, undated, pages 3 and 15.

CONCLUSION

50. For the reasons outlined above, I consider that the lump sum payment was ordinary income derived, and assessable, in the year it was received (being the 2015 income year).
51. There is no dispute concerning the calculation of the LSPIA tax offset. In any event, I am satisfied that the Commissioner's calculation is correct.
52. As to the matters raised by Mr Edwards in respect of interest, CPI adjustment or other compensation, they are beyond the Tribunal's current jurisdiction.
53. Accordingly, the decision under review is affirmed.

I certify that the preceding 53 (fifty - three) paragraphs are a true copy of the reasons for the decision herein of Senior Member A C Cotter

.....[Sgd].....

Associate

Dated 5 October 2016

Date of hearing	5 September 2016
Applicant	In person
Solicitors for the Respondent	Australian Taxation Office Legal Services