



Compensation preclusion periods and the impact of COVID-19

Acknowledgments

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Contents

- 2 Acknowledgments
- 5 About Economic Justice Australia
- 5 Introduction
- 6 Executive Summary
- 7 Recommendations
- 8 The context: Impact of COVID-19 on availability of community support services and material assistance
 - 8 EJA members
 - 8 Access to support services
- 8 The compensation provisions of the Social Security Act
 - 8 Definition of 'compensation'
 - 9 Calculation of a person's CPP
 - 10 Discretion to waive a person's CPP

10 What guidance is provided for decision-makers in considering CPP waiver?

10 Departmental guidelines for applying the section 1184 discretion

11 CPP case studies from EJA member centres

11 Case study 1 – TOM

11 Case study 2 – GEORGE

13 Case study 3 – WILLIAM

13 Case study 4 – ADAM

15 Case study 5 – ANNABELLE

16 Observations and recommendations from EJA member centre case studies

17 AAT CPP case law review

18 Ill health

18 Emotional state

19 Decision making capacity

20 Financial circumstances

20 Addictions

21 Incorrect or insufficient legal advice

21 Unjust operation of legislative amendment

22 Changed circumstances

22 Other

23 Appendix AAT CPP cases

23 Acronyms

24 Addictions

27 Incorrect or insufficient legal advice

44 Other

49 Ill health

59 Emotional state

61 Decision making capacity

66 Financial circumstances

About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres, providing specialist advice to people on their social security issues and rights. EJA members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.

EJA provides expert advice to government on social security reform to make it more effective and accessible. Its law and policy reform work:

- strengthens the effectiveness and integrity of our social security system;
- educates the community; and
- improves people's lives by reducing poverty and inequality.

EJA's policy positions are informed by its members' unique access to client-related experience, and research projects examining structural and systemic issues affecting access to social security rights and entitlements.

See our website for more information at www.ejaustralia.org.au.

Introduction

The Compensation recovery provisions of the Social Security Act 1991 (Cth) (the Act) are designed to prevent 'double compensation' or 'double dipping'—that is, payment of social security income support to people with compensable injuries for periods covered by compensation payments. The over-arching rationale for these provisions is to avert cost shifting by employers, insurers and state and territory authorities to the Commonwealth.

Where a person receives compensation that includes payment for loss of earnings or earning capacity, these provisions enable:

- dollar for dollar deduction of periodic compensation payments from the person's social security income support entitlement, ongoing and retrospectively; and
- application of a compensation preclusion period (CPP), during which specified social security income support payments are not payable to the person, ongoing and retrospectively.

People subject to a CPP can expend their lump sum compensation payment well short of the end of their CPP—for reasons including unavoidable expenditure on unanticipated medical and legal costs not covered in the settlement, repayment of loans, financial investments and loans, uncontrolled expenditure on gambling or illicit drugs. Social security law provides for waiver of the whole or part of a person's CPP in the 'special circumstances' of an individual's case.

The COVID-19 pandemic has had severe impacts on the Australian community at large. The economic impacts for individuals were, until recently, significantly ameliorated by extraordinary social security measures introduced from April 2020.

These temporary measures included:

- substantial increases to payment rates (doubling the rate of Newstart Allowance and certain other payments), via the addition of the Coronavirus Supplement;
- relaxation of income and assets tests; and
- waiver of waiting periods, including residential waiting periods.

EJA's member centres have seen a significant increase in people subject to CPPs seeking assistance during the pandemic.

Along with the increase in the number of people seeking legal advice and advocacy regarding CPP cases, our members have also observed that it has been more difficult to assist clients to prepare for appeals against Centrelink decisions to refuse waiver of a CPP:

- clients cannot be interviewed face-to-face due to lock downs, public health restrictions and enforced working-from-home orders;
- clients could not access support services such as financial counsellors, disability advocates and gambling counsellors for assistance in explaining and documenting expenditure of lump sums;
- clients in need of ongoing charitable support, housing and accommodation advocacy, mental health services, or disability advocacy, have often found it impossible to access services due to general service overload.

These impacts of COVID are clearly relevant to the circumstances of many of our members' CPP clients, yet our members' observation from their casework is that COVID-related factors are rarely if ever considered by Centrelink review officers and the Administrative Appeals Tribunal (AAT) in deciding whether there are 'special circumstances' to waive or shorten a CPP and enable access to income support.

Executive Summary

In this report we outline the legislation and policy guidelines for considering 'special circumstances' waiver of a CPP, and present compelling case studies from our member centres which highlight COVID-related issues that can impact on a person's capacity to self-support to the end of their CPP. We also review recent AAT case law, and discuss the AAT's application of the legislation and the relevant Departmental policy guidelines.

Our review of CPP case law makes it clear that it is as difficult as ever for claimants to argue successfully that their CPP should be reduced or waived completely.

While the AAT is a tribunal that welcomes self-represented claimants, particularly in relation to AAT Tier 1 proceedings, claimants are often unaware of what may constitute 'special circumstances' at law. The reviewed CPP cases show that self-represented clients at AAT Tier 2 generally have inadequate evidence, including documentation of expenditure of their lump sum.

Unless a self-represented applicant has been advised that they should draw the AAT's attention to the personal impacts of lack of access to, for example, financial counselling or mental health services during COVID, they would be unlikely to present these issues as relevant to whether there are special circumstances to warrant waiver of their CPP.

Our review of the case law for the five years ending May 2021 indicates an inconsistent approach to determining what 'special circumstances' include, making it difficult to predict how COVID-related factors might be encapsulated in consideration of whether special circumstances warrant waiving a CPP. It remains unclear whether arguments regarding the economic and social impacts of COVID-19 would be successful, given we have been unable to locate any cases where such submissions were made or commented on by the AAT Tier 2.

Our review also shows that claimants with no remaining compensation funds have been unsuccessful even when it is established that they have not recklessly spent their payout, as the lack of recklessness in itself is not enough. Again, representation and access to financial counselling services for assistance in identifying and collating evidence may have meant a different result for some of these claimants.

In recognition of their vulnerability to the health and economic impacts of the pandemic and to ameliorate potential hardship, other cohorts of people who would not ordinarily be entitled to social security payments were able to access income support under the special coronavirus support measures. In contrast, our member centres' case studies illustrate how people serving CPPs in abject hardship were left without support.

As has been the case in so many contexts, COVID has served to highlight a long-standing need for policy reform. The Departmental guidelines regarding application of the CPP waiver discretion are in urgent need of revision. Current Departmental guidelines fetter decision-makers in the exercise of the discretion provided by the legislation, leaving people in destitution who may have strong grounds for waiver.

Recommendations

EJA's 2016 research¹ identified the most promising avenues for providing compensation claimants more support regarding potential issues in managing a compensation lump sum, and facilitate early intervention, including:

1. exploring whether it is possible, in the case of CPPs, for high-risk cases to be flagged in the Centrelink system, for example, where there is knowledge of cognitive impairment, or drug/alcohol addiction, to facilitate some outreach;
2. re-examining the role of employers and lawyers in intervening early and raising awareness regarding the purpose of the social security compensation provisions, responsibilities of managing a lump sum, and the relationship with the income support system;
3. improving information and financial guidance for people with lump sum payments, perhaps through the development of tailored information products (for use by existing outlets of financial information, such as the Financial Information Service and MoneySmart);
4. reconsidering Centrelink's communications strategy in relation to CPPs.

We reiterate these recommendations. Further, we make the following recommendations in the light of our review of EJA members' case studies, the Departmental guidelines on applying the s1184 discretion, and recent AAT cases:

5. that the guidelines on application of the S1184K(1) discretion in the Social Security Guide be reviewed;
6. that the guidelines on application of the S1184K(1) discretion in the Social Security Guide explicitly spell out that the discretion should be exercised based on the entirety of the person's circumstances, with consideration given to broad economic and social contexts, including the impacts of pandemics and natural disasters;
7. that Services Australia and the AAT conduct training for Centrelink delegates and AAT members on issues faced by vulnerable cohorts when managing compensation lump sums, including in times of pandemic or natural disaster, to ensure that the breadth of relevant issues is explored in decision-making;
8. that Services Australia develop a guide for identifying and assisting customers affected by family violence, including for use by staff in consideration of application of the S1184K(1) discretion, along the lines of the guide developed by the Insurance Council of Australia²;
9. that the AAT develop a factsheet on the CPP special circumstances waiver provisions for self-represented appellants that includes guidance on evidence that may be relevant³;
10. that Services Australia develop an information kit for compensation recipients, informed by consultation with relevant stakeholders, which: explains the CPP provisions in clear, accessible language (with translation into community languages); and provides information regarding community supports, including financial counselling services and community legal centres.
11. that Services Australia ensure that people subject to a CPP who have expended their lump sum and have no means of support are offered support and targeted referrals by departmental social workers, for both material assistance and advocacy in accessing community services.

1 Available at <https://www.ejaustralia.org.au/wp/wp-content/uploads/2017/01/NWRN-waiting-periods-and-poverty-traps-research-Dec-2016.pdf>

2 Available at https://insurancecouncil.com.au/wp-content/uploads/2020/01/2021_07_REPORT_Family_Violence.pdf

3 There are factsheets on the AAT website re other social security topics, such as DSP and debts, but not re CPPs: see <https://www.aat.gov.au/resources/fact-sheets/centrelink-reviews>

The context: Impact of COVID-19 on availability of community support services and material assistance

EJA members

EJA members' clients have been unable to be interviewed face-to-face for varying periods from April last year, due to state/territory lock downs and public health restrictions—with working-from-home imposed for some centres for protracted periods, the longest being in Victoria⁴.

Phone interviews are not ideal where clients are in distress, and not conducive to disclosure of personal circumstances or sensitive information—for example, where a person has expended funds on illicit drugs, or where a person with an acquired brain injury has made ill-considered irrecoverable loans to family members. Advising a client in these cases generally requires long interviews, scrutiny of bank statements and financial documents, and obtaining reports from doctors and community support organisations. Scanning and emailing swathes of documents is impossible for many clients in such situations—for practical reasons or due to distress, cognitive impairment and/or mental health issues. Many such clients lack family and social supports.

Access to support services

Clients in need of charitable support, mental health services, or disability advocacy often found it impossible to access services during COVID lock-downs, due to closure of face-to-face services, and general service overload. Clients also could not access support services such as financial counsellors and gambling counsellors for assistance in explaining and documenting expenditure of lump sums.

The pervasive impacts of COVID-related demand, and funding contraction, are ongoing for these services⁵.

The compensation provisions of the Social Security Act

Definition of 'compensation'

'Compensation' is defined in sub-section 17(2) of the Social Security Act (the Act) as:

(a) a payment of damages; or

(b) a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme; or

(c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme; or

(d) any other compensation or damages payment;

(whether the payment is in the form of a lump sum or in the form of a series of periodic payments and whether it is made within or outside Australia) that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury.

⁴ And more recently, in NSW

⁵ See Anglicare's report, *Life after LOCK DOWN Social and Economic Impacts of COVID-19 on Disadvantaged Australians*. Sue King, Liping Yan, Jeanette Mollenhauer, John Bellamy, Penny Andersen and Hayley Lukabyo. MAY 2021. https://www.anglicare.org.au/media/7836/6556_ac_winter-2021-life-after-lockdown-report-apr21-dp-digital.pdf

Payment of a compensation lump sum to a person, either as an award or under a settlement, may result in a 'charge' and/or a CPP:

- a 'charge' will be raised by Centrelink if the person has been receiving specified social security income support payments, meaning they will be required to repay Centrelink the amount of specified payments paid since the date of the accident giving rise to the CPP⁶; and/or
- a CPP into the future, if future economic loss was paid as part of the lump sum,⁷ meaning that specified social security income support payments will not be payable to the person during the CPP⁸.

Calculation of a person's CPP

Sub-section 93V(1) of the Act states:

For the purposes of this Part, if a person receives a lump sum compensation payment, the person is subject to a compensation preclusion period throughout the lump sum preclusion period.

A person's CPP is calculated under a formula prescribed by section 1170 of the Act:

(1) Subject to subsection (2), if a person receives both periodic compensation payments and a lump sum compensation payment, the lump sum preclusion period is the period that:

(a) begins on the day following the last day of the periodic payments period or, where there is more than one periodic payments period, the day following the last day of the last periodic payments period; and

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(2) If a person chooses to receive part of an entitlement to periodic compensation payments in the form of a lump sum, the lump sum preclusion period is the period that:

(a) begins on the first day on which the person's periodic compensation payment is a reduced payment because of that choice; and

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(3) If neither of subsections (1) and (2) applies, the lump sum preclusion period is the period that:

(a) begins on the day on which the loss of earnings or loss of capacity to earn began; and

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(4) The number of weeks in the lump sum preclusion period in relation to a person is the number worked out using the formula:

Compensation part of lump sum

Income cut-out amount

(5) If the number worked out under subsection (4) is not a whole number, the number is to be rounded down to the nearest whole number.

⁶ Part 3.14 of the Act requires a compensation payer to reimburse the Commonwealth any compensation affected payments received by the claimant during the CPP. A compensation payer will ordinarily receive notice of the applicable charge to be deducted from the compensation lump sum.

⁷ It is important for claimants to ensure that Centrelink is aware if future economic loss does not form part of the LSCP as a CPP should not arise in those circumstances. See for instance *McLeod v Secretary, Department of Social Services* [2016] AATA 853.

⁸ We highlight that not only the DSP is subject to CPP. See section 17 of the Act for a full list of payments affected.

Under section 17 of the Act, the ‘**compensation part of lump sum**’ is:

- 50% of the payment, where the payment was made either by consent judgment or settlement, or the payment represents the claimant’s entitlement for periodic payments chosen to be received by way of lump sum settlement; or
- where neither of these criteria applies, the amount considered by the Secretary (the delegate) to be for lost earnings or lost capacity to earn.

Section 17(8) of the Act defines the ‘**income cut-out amount**’ as the fortnightly amount above which no pension is payable to a single person under the ordinary pensions income test.⁹

Discretion to waive a person’s CPP

Sub-section 1184K(1) of the Act¹⁰ enables waiver of a person’s CPP, by providing that whole or part of compensation a compensation payment can be treated as not having been made or not liable to be made “if the Secretary thinks it is appropriate to do so in the **special circumstances** of the case”.

There is no definition of ‘special circumstances’ in the Act for the purposes of applying the s1184K discretion to waive or reduce a CPP.

What guidance is provided for decision-makers in considering CPP waiver?

Departmental guidelines for applying the section 1184 discretion

Original decisions that a person is subject to a CPP are made by delegates in Services Australia’s Compensation Recovery Unit, as are decisions as to whether or not to disregard all or part of a CPP.

The Department of Social Services provides guidelines for decision-makers in applying the CPP waiver discretion as part of its online Guide to Social Security Law. These guidelines, which are publicly available at <https://guides.dss.gov.au/guide-social-security-law/4/13/4/20>, are intended to reflect longstanding leading AAT and Federal Court cases involving consideration of ‘special circumstances’. The guidelines make reference to the Federal Court’s commentary in Secretary, Department of Social Security and Hales¹¹ (Hales) regarding the need to establish whether the person’s situation is ‘unusual, unforeseen or exceptional’:

The discretionary nature of the special circumstances provisions makes it impossible to give a precise list of factors that should be taken into account when considering whether the provisions should be applied.

There is usually not one factor which makes a situation unusual, unforeseen or exceptional, but a combination of factors applying to each individual.

The Departmental guidelines include a table of the factors for decision-makers to consider, along with ‘general principles’ for each factor, and ‘what to look for’.

Although the presentation of discretionary guidelines in such a table can be helpful for decision-makers, our analysis of member case studies and AAT decisions indicates that the Departmental CPP waiver guidelines are overly prescriptive, expressly discouraging further consideration of factors for which the ‘General Principles’ stipulate that the discretion should not be applied.

⁹ <https://www.servicesaustralia.gov.au/individuals/services/centrelink/age-pension/who-can-get-it/income-test-pensions> At July 2021 this amount was \$2,085.40

¹⁰ http://classic.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s1184k.html

¹¹ Available at <https://jade.io/article/114779>

As discussed below, the prescriptive nature of the guidelines appears to be blinkering decision-makers from considering impacts of disasters on individuals as 'special' because disasters such as COVID affect the whole community. This means that inadequate regard is generally had in decision-making to the 'combination of factors' that can affect an individual's capacity to self-support during COVID.

CPP case studies from EJA member centres

The de-identified¹² case studies below, provided by EJA member centres, indicate that decision-makers are generally not considering economic and social impacts of the pandemic, including lack of access to community supports, when deciding whether to reduce or set aside a CPP.

Case study 1 – TOM

Tom was injured in an accident at work and has not worked since. In 2016, he received a large lump sum payment, resulting in a CPP to 2021.

On receiving the lump sum, Tom repaid the balance of outstanding debts and purchased a new car to share with his daughter (who is a single mother and needs a reliable car). He was able to do this because his wife Jane was working, and they were able to live on her income.

In 2020, Jane lost her job and was unable to find employment due to the COVID economic downturn, and due to Jane's own health problems. With no cash reserves, Tom and Jane were forced to turn to charities for help. They had no realisable assets, other than the car, and were both suffering from chronic health conditions.

Nature of client's social security problem

Tom approached Illawarra Legal Centre (ILC) after lodging an appeal to the Social Services Division of the AAT Tier 1.

Centrelink had not recognised Jane's loss of work and declining work prospects as a special circumstance, and refused to waive the remainder of Tom's CPP. The AAT Tier 1 affirmed this decision.

Work performed by ILC

ILC argued that Jane's unanticipated loss of work was a special circumstance, and provided evidence of the couple's severe financial hardship. ILC also argued that Tom's compensation lump sum was not expended until towards the end of the CPP, and the cost and inconvenience of running the case at the AAT was greater than the sum at issue.

Outcome in client's case

The Secretary, Department of Social Services, settled this claim in the General Division of the AAT Tier 2. Tom was granted payment from the date of the AAT Tier 1 decision.

Case study 2 – GEORGE

George left school after year 10 and has always worked on farms in unskilled jobs. He was separated but living under the same roof with his ex-partner, Diane, and their ten year old son in regional NSW when Diane died. George then became the sole carer of their son.

George suffered a workplace injury a number of years ago. The matter went to court and he was awarded a considerable amount in compensation. Before Diane's death he used his compensation payment to support the household, paying their living and medical expenses and purchasing furniture and whitegoods. George also bought equipment for a small business for himself and his ex-partner. George was hoping to earn an income from his business but it collapsed due to misadventure. He also suffered financial losses as a result of the bushfires and was not insured.

¹² Names and potentially identifying details have been changed.

The bulk of George's compensation payment, however, was spent on his stepdaughter. He gifted her a car and lent her money to set her up in business. He kept lending her large amounts of money in cash and paid off her credit cards on a number of occasions. He later discovered that his stepdaughter had a drug problem.

When George contacted Welfare Rights Centre NSW (WRC), he was surviving on food vouchers. He had no funds left from his compensation settlement.

Nature of client's social security problem

George applied for Jobseeker Payment but the claim was rejected as he had a CPP running to 2023. George unsuccessfully appealed the decision to a Centrelink Authorised Review Officer (ARO).

George was now a single parent and the work opportunities available to him were greatly reduced. The impact of COVID on the job market made his already restricted job search all the more difficult. In the ARO decision letter, the ARO acknowledged that George had no funds and was the sole carer of his son, following his ex-partner's sudden death. However, the ARO did not consider the entire and accumulated effect of George's circumstances in the context of the social and economic impacts of COVID, namely:

- Financial circumstances:
 - the seriousness and extenuating circumstances that George was living day to day, struggling to provide for himself and his young son, with no income and no funds;
 - George and his son were relying on donations from local charities to survive—these charities were, and continue to be, overwhelmed by requests for assistance due to COVID impacts;
 - George and his young son faced a real and imminent risk of becoming homeless—accommodation services were under intense pressure due to COVID impacts;
 - George had no liquid assets to support himself and his young son;
 - George's continued commitment to find suitable paid work, despite his diminished capacity as a result of the accident and COVID.
- Emotional state and changed circumstances:
 - the distress and shock suffered by George and his son regarding Diane's death—George found Diane dead in their home;
 - the unforeseen need for George to assume sole care of his son;
 - the fact that George's ten year old son had recently lost his mother and now was enduring his father's distress regarding their financial situation and impending homelessness;
 - George's ongoing psychological and physical trauma as a result of the accident, compounded by the trauma associated with the death of his ex-partner;
 - lack of family support.
- Decision making capacity:
 - George finished school in Year 10;
 - the setbacks experienced from the loss of George's business;
 - unrecoverable monies loaned to George's stepdaughter.

The ARO recognised that George's situation was difficult, but concluded that he had exercised choice in how the settlement monies were spent and that his situation was a result of his own actions. The ARO also stated that there is a legitimate expectation that settlement monies are used to support oneself until the end of the CPP.

Work performed by WRC

WRC assisted George in gathering further evidence for an appeal to the AAT. Since exhausting his compensation payout, George has been trying to survive and raise a young child on Family Tax Benefit and rent assistance alone. Now that he has full care of his son, he is only able to work within school hours and not during school holidays, which precludes him from most casual farm work. Before he was awarded his compensation, George had no experience dealing with large sums of money. He has never earned a regular income and has always struggled to make ends meet. A WRC lawyer represented George at his hearing at AAT. George gave

evidence about his situation and his concern for his son's welfare, and the lawyer made submissions about George's special circumstances. The Tribunal decided that George did have special circumstances making it appropriate to reduce his compensation preclusion period. George is now receiving JobSeeker Payment. He and his son are no longer at risk of homelessness.

Case study 3 – WILLIAM

Nature of client's social security problem

William's JobSeeker Payment claim was rejected by Centrelink due to a CPP. William had received a compensation settlement as a result of a workplace accident. When he approached Canberra Community Law (CCL) for assistance, William was experiencing extreme financial hardship and faced eviction from community housing. He found it difficult to access the Centrelink office during COVID and was not able to work through the issues or disclose personal issues over the phone. He went to charities for help, but they were overwhelmed with demand during the pandemic.

Work performed by CCL

CCL interviewed William by phone over many hours to gain an understanding of his situation. Over time, he disclosed a history of trauma. He had started gambling to cope with trauma, anxiety and depression. He had attempted to address his gambling addiction through Gamblers' Anonymous, but his gambling spiralled out of control after he received the compensation payout. His fragile emotional state was deteriorating, but he was unable to access a bulk-billing psychologist due to unprecedented demand on mental health services during COVID.

CCL helped William to gather extensive supporting documentation for an appeal against the CPP, including financial statements prepared by a financial counselling service, and doctors' reports showing that his gambling was being medically treated as an addiction. CCL drafted a submission to the ARO and made oral submissions arguing for the CPP to be reduced based on special circumstances.

Outcome of client case

The ARO agreed to waive the William's CPP from the date of his JobSeeker Payment claim, resulting in William receiving an arrears payment. CCL worked with William and his psychologist on measures to assist William to manage his money.

Case study 4 – ADAM

Background

Adam is a 40-year-old father of two and a qualified plumber. He left school after completing grade 10 and undertook an apprenticeship for two years, before qualifying and commencing work as a plumber. He then worked as a plumber for a number of years.

In 2009, at the age of 29, Adam sustained serious injuries in a motor vehicle accident on his way home from work. The accident was not his fault. The injuries changed his life and prevented him from working.

In 2015, Adam was awarded compensation for these injuries after a long legal battle. Approximately half of the compensation amount awarded to him covered his legal and medical fees. The rest of his compensation was treated as compensation for lost income (or, lost capacity to earn), and he was therefore precluded from receiving a Centrelink benefit from 2015 until 2025.

In 2011, Adam had separated from his partner and moved to Melbourne to take care of his mother. Adam used the compensation he had received to support himself, his children (through child support payments) and his mother, who was living on the Disability Support Pension (DSP) at the time. Adam paid for his children to travel interstate to spend time with him in Melbourne and he covered most of his mother's medical expenses, as her DSP only covered some of these costs. He paid for modifications to his mother's home that were needed due to her medical condition, including to the bathroom and her bedroom.

Once his mother went into a nursing home, Adam was no longer able to reside at his mother's home and had no other home to go to. He started living in hotels, as he was unable to find long-term accommodation (such as a rental property) due to his inability to work and lack of ongoing income. He had no family support.

In 2018, Adam ran out of money and became homeless. He started relying on couch surfing with friends and crisis accommodation. He has remained homeless since the end of 2018 until now. He was homeless throughout the COVID-19 lockdowns in Melbourne. He relies on food vouchers from the church.

As a result of his injury and the pain he experienced, Adam developed a dependency on prescribed pain medications and also suffers from an illicit substance abuse disorder. Some of the compensation money was spent on this dependency and disorder.

As Adam largely made payments in cash, there was little evidence as to the particulars of his spending. Furthermore, a large amount of his compensation had been fraudulently removed from his bank account.

Adam has no remaining funds and had exhausted his compensation payment at the end of 2018. He has no income, no ability to work, and no assets or support from family. He relies solely on crisis accommodation and support from homeless and community support services, as well as food vouchers from his church to survive.

Nature of client's social security problem

In 2019, Adam applied for JobSeeker Payment (then called Newstart Allowance). Centrelink rejected his application because of his CPP. Adam lodged an appeal to a Centrelink ARO who agreed with Centrelink's original decision and refused to waive his CPP.

In 2020, during the COVID-19 pandemic, Adam lodged a review application to the Social Services and Child Support Division of the AAT, seeking review of the ARO decision. The AAT agreed with Centrelink's decision and in February 2021 refused to waive Adam's CPP.

In considering Adam's case, the ARO and the AAT Tier 1 did not have regard to the totality of Adam's circumstances in assessing whether the discretion to waive his CCP period should be applied. Despite being made aware of Adam's financial hardship, his ongoing homelessness, his health conditions and drug dependency, and his reasons for having spent all of the compensation by the end of 2018, the AAT did not agree that the CCP should be waived.

As a result of his homelessness and drug dependency, Adam was unable to maintain or access a number of financial records, predominately bank statements. He had also struggled to maintain contact with a regular General Practitioner, though this changed with the help of his social worker. Despite finding that Adam was a credible witness, and that his circumstances were 'most unfortunate', the AAT found that his situation did not sufficiently set him apart from other similar cases. The AAT found that the exhaustion of funds, lack of stable accommodation, extreme financial hardship, limited education, capacity for work, continuing ill health and lack of family support weighed in favour of exercising the discretion. However, it also found that 'unwise expenditure' weighed heavily against the discretion being exercised, particularly in light of public policy grounds, and a lack of evidence as to how the funds were actually expended or the particulars of that expenditure.

The AAT failed to adequately consider Adam's continuing reduced capacity to gain and maintain employment and his ongoing health issues, which are exacerbated by his lack of access to health care.

Adam's case was heard at the AAT Tier 1 during the second half of 2020 and the beginning of 2021. Adam had been unable to access medical care for most of 2020 due to lockdown restrictions in Victoria, as he could not attend medical clinics face to face and did not always have access to a phone.

The AAT failed to consider the impact that all of Adam's circumstances had on his capacity to make rational financial decisions when experiencing drug dependency, chronic pain and mental health conditions.

The AAT did not adequately take into account the impacts of the COVID-19 pandemic and associated lockdowns, which restricted Adam's access to vital support services and drastically reduced his ability to rely

on friends for support (including temporary accommodation i.e. couch surfing as well as emergency financial support due to their own loss of income during the pandemic).

Work performed by SSRV

Social Security Rights Victoria (SSRV) represented Adam in his AAT Tier 1 appeal. SSRV are now providing further assistance to Adam, who has lodged an application for further review to the General Division of the AAT.

Case study 5 – ANNABELLE

Background

Annabelle is a 45-year-old woman living with her husband in regional Victoria. In 2000, when Annabelle was 25-years-old, she sustained permanent injuries (physical and psychological) as a result of medical negligence. The injuries prevented and continue to prevent Annabelle from working. Prior to the medical negligence event, Annabelle had run her own business. The medical negligence event was completely outside Annabelle's control. It resulted in a permanent loss of her ability to work and completely changed her life.

Annabelle was awarded lump sum compensation of \$2,000,000 in 2008 following a lengthy compensation legal case. The payout was awarded to cover her medical expenses, renovations to her house to accommodate her disabilities and disability support equipment, and legal fees associated with the compensation case. Part of the payout was also intended to cover her lost income as a result of being unable to work due to the disabilities caused by the medical negligence event.

Centrelink imposed a CPP of 25 years (from 2000 to 2025), requiring Annabelle to manage what was left of the \$2,000,000 payout (after her medical expenses, necessary renovations and legal fees were paid) as her sole means of support for 25 years. The 25 year period was calculated based on the amount awarded for each element of the compensation (i.e. loss of income, medical and legal expenses, etc.), as determined by the settlement agreement between Annabelle and the hospital where the medical negligence event occurred. In reality, Annabelle's medical and legal expenses were far greater than what was accounted for in the settlement, and the amount she had remaining to support herself was far less than the amount Centrelink used when calculating the 25 year CPP.

Annabelle and her husband both have complex and significant mental health conditions, partly caused by the trauma associated with Annabelle's medical negligence event and the ongoing pain and suffering she experiences in her life. Their conditions include Post Traumatic Stress Disorder (PTSD), anxiety, depression.

Annabelle and her husband tried to manage the remainder of the compensation payout through investments in order to ensure it would last them until 2025, at which point Annabelle would be eligible to apply for a Centrelink benefit such as JobSeeker Payment or the DSP. Annabelle's significant ongoing medical expenses, which were not necessarily accounted for as part of the initial compensation payout, as well as some bad investments that were arguably outside Annabelle's control, meant that Annabelle and her husband had used or lost all of the compensation and were in debt by 2020. Annabelle and her husband now have debts totalling over \$200,000. They have sought the assistance of financial counsellors but are currently surviving solely on Annabelle's husband's Carer Payment, which is not enough to cover their basic living expenses or Annabelle's ongoing medical expenses. They are not in a position to make any repayments towards their debts.

Before the 2020 bushfires in Victoria, and the COVID-19 Pandemic, Annabelle could rely on some (limited) financial support from family and friends and would rely on food parcels from their local church. The family and community support available to Annabelle reduced drastically as a result of the 2020 bushfires and the COVID-19 pandemic.

Nature of client's social security problem

Desperate for income support, Annabelle lodged a claim for JobSeeker Payment in March 2020. In May 2020, Centrelink rejected Annabelle's claim due to the CPP, refusing to waive the CPP.

Annabelle lodged an appeal to a Centrelink ARO who agreed with Centrelink's original decision and refused to waive her CPP. She then lodged an application to the AAT, seeking review of the ARO decision. In February 2021, the AAT Tier 1 agreed with Centrelink's decision and refused to waive any of Annabelle's CPP.

One of the reasons the AAT agreed with Centrelink's decision was Annabelle's inability to provide evidence of how the compensation money had been spent. The AAT had requested this information from Annabelle during the second COVID-19 lockdown in Victoria and Annabelle had been unable to obtain in-person assistance from her financial counsellor, or attend a bank, in order to gather some of this information and evidence. Being isolated and struggling with ongoing physical and psychological disabilities all contributed to Annabelle's inability to provide the information the AAT had requested. She needed face-to-face support from community organisations, legal representatives, and face-to-face engagement with institutions such as her banks in order to obtain the information required. This was largely unavailable to her due to the lockdown.

Annabelle felt defeated and eventually told the AAT to make a decision based on the information they had.

The ARO and the AAT did not have regard to the totality of Annabelle's circumstances in assessing whether the discretion to waive her CCP period should be applied. Despite being made aware of Annabelle's ongoing financial hardship, her inability to pay for her medical expenses, her mental health conditions and the reasons why she and her husband had not been able to extend the compensation payout to last 25 years, the AAT did not agree that the CCP should be waived.

The AAT did not adequately take into account the impact of the COVID-19 Pandemic, and associated lockdowns, which restricted Annabelle's access to vital support services and drastically reduced her ability to rely on family or friends for support.

Work performed by SSRV

SSRV provided Annabelle with advice and limited assistance with her AAT Tier 1 appeal. SSRV is now providing Annabelle assistance in relation to her further review application lodged with the General Division of the AAT.

Observations and recommendations from EJA member centre case studies

The above case studies highlight that the usual services and social supports have been less available to people subject to CPPs due to the pandemic, particularly in Victoria (which at the time of writing had experienced the most severe and lengthy lockdown), and that this has had a negative impact on outcomes of applications. Namely:

- there has been limited access to financial counsellors and other support services during due to lockdown closures, and due to increased demand for these services. It is well documented that the incidence of domestic violence, gambling and substance abuse has generally increased during the pandemic;
- people who were previously able to rely on family and friends for support can no longer do so to the same extent, as whole families and communities have been impacted by the economic downturn. These complex issues were generally not considered by Centrelink AROs and the AAT in the cases above, because there was no probing to uncover this information, and self-represented appellants would have had no idea of what issues to raise or how to raise them;
- people appealing CPPs are unlikely to specifically point to the impact of the COVID-19 pandemic on availability of, and access, to community services (such as financial counselling and mental health services). They may have no knowledge that such services exist if no one has referred them, and no knowledge of accessibility of these services in ordinary times. Without probing, a person who has been unable to access these services and who is asked whether they can provide documentation showing expenditure of funds, or evidence of their ongoing mental health condition, is likely to simply say "no". The context of COVID-19 will generally only come into play in decision-making if an advocate raises it or a decision maker contemplates it;

- even where the client specifically mentions the impacts of COVID, AROs are likely to feel constrained by the overly prescriptive policy guidelines (see discussion below). In one WRC case from mid-2020¹³, the ARO acknowledged that the COVID economic downturn had affected the client's prospects of finding work but clearly felt constrained by the policy guidelines, noting that

There have been no policy changes in regards the application of compensation preclusion periods in the wake of this pandemic. This means I am unable to disregard any part of your lump sum compensation payment and the compensation preclusion period remains in place.

- lack of access to services has not only meant that people at risk do not receive support with managing a compensation lump sum, it also means that if the lump sum is expended, they do not have help to gather the compelling evidence needed to support appeals to Centrelink and the AAT. People with cognitive disability, acquired brain injury, intellectual disability, or mental health and/or addiction issues are particularly disadvantaged by lack of access to community supports;
- the winding back of responsible lending laws will heighten the vulnerability of people subject to CPPs who are running out of funds: <https://www.abc.net.au/news/2021-02-01/financial-counsellors-plead-to-keep-responsible-lending-laws/13103658>.

AAT CPP case law review

We reviewed AAT Tier 2 General Division decisions regarding waiver of CPPs for the five years up to May 2021. A selection of matters that provide insight into what constitutes 'special circumstances', 'severe financial hardship' or circumstances giving rise to an 'unreasonable or unjust result' are summarised in the [Appendix](#) to this paper.

The review of General Division cases has not reflected the flourish of CPP matters before the AAT during the COVID-19 pandemic that EJA and its members anticipated.

As AAT Tier 1 decisions are not published, and there is no data available to EJA as to whether this is because Centrelink original decision-makers, Centrelink AROs, and AAT Tier 1 members have been approaching matters more favourably to claimants. However, our case studies above indicate that this is not the case.

AAT Tier 1 decisions are not published but available AAT Tier 2 decisions suggest that applicants in CPP cases, generally self-represented, have not made submissions regarding COVID-19 impacts; and that COVID-related factors have not been taken into account by the AAT. (The AAT cases referred to in the EJA case studies above are current at the time of writing, with some yet to be heard by the General Division.)

What the published cases do show is that even where less than 50% of the LSCP relates to economic loss, for instance where the economic loss claim was minimal, the 50% rule of thumb is generally applied. CPPs therefore tend to run longer than the period the economic loss component actually covers.¹⁴

Below we provide commentary on the DSS guidelines for considering CPP waiver in the light of our review of published AAT cases, and examine the ways in which the 'general principles' set out for each factor can inappropriately restrict application of the discretion. The headings represent the 'factors to consider' when considering whether special circumstances exist, as set out in the Guide to Social Security Law at <https://guides.dss.gov.au/guide-social-security-law/4/13/4/20>.

¹³ Unreported Authorised Review Officer decision of 13 August 2020

¹⁴ See Boyle where the CPP was calculated on more than 50% of the award given findings within the compensation decision; See Mills where no economic loss was paid in the LSCP but a CPP still arose. See Bruinger where the sum the claimant actually received from the LSCP was less than the 50% applied to assess CPP – no special circumstances existed; See Knibb where less than 50% of the LSCP was economic loss – no special circumstances existed; See Krebs where the LSCP did not include future economic loss – no special circumstances existed.



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Ill health

The Guide says that, for ill health to constitute a special circumstance, the ill health must have 'a major bearing on the individual's circumstances' and 'should be more severe than the majority of DSP recipients.' Furthermore, if the ill health is in connection to the injury or injuries giving rise to the CPP, it will generally not be regarded as a special circumstance.

The rationale for comparing the severity of a person's ill health with that of the majority of DSP recipients is difficult to fathom, and not particularly helpful—especially given that the severity of ill health experienced by the majority of DSP recipients is an unknown, and people with disability on DSP do not necessarily have health conditions.

For example, it is well known that a significant proportion of DSP recipients have a psychiatric condition; and it is also well known that rates of mental illness rose substantially during COVID among the general population. There appears to be no case law addressing the emergence or deterioration of mental health conditions as a result of COVID pandemic itself or the resulting lockdowns, or distress regarding the plight of family members in other countries. COVID can hardly be considered something that was anticipated and the pandemic has clearly had significant mental health impacts for many individuals. Despite this, we could not find any mention of COVID-related exacerbation of mental health issues, or impacts on access to mental health services, in the AAT decisions we reviewed.

Emotional state

The Guide says that, where the person's emotional state is related to or resulted from the injury that the person received compensation for, it cannot generally be regarded as a special circumstance. It states that where a person has been the subject of family and domestic violence affecting their emotional state, special circumstances may be granted.

Compensation cases can take years to settle, causing significant stress for claimants also dealing with the health, financial and personal impacts of their injury. Our review of AAT Tier 2 cases shows that if the claimant's emotional state is considered to relate to, or result from, the injury giving rise to the compensation payment,

their emotional distress will not be accepted as a special circumstance. This narrow approach is not suggested in the guidelines.

While the Guide indicates that distress as a result of domestic violence can be taken into account as a special circumstance, AAT appeals have been unsuccessful where there is no evidence of the domestic violence or steps taken to remedy the situation. Provision of evidence can be impossible where the victim has not taken action due to fear of further family and domestic violence; and taking steps to flee the violence may well be contingent on accessing income support. Again, this narrow approach is not suggested in the guidelines.

We note that the Insurance Council of Australia (ICA), which is the representative body for the general insurance industry of Australia, establishes codes of practice that its members are expected to abide by. In relation to family and domestic violence, ICA's Guide to helping customers affected by family violence¹⁵ notes the following:

As customers affected by family violence may be reluctant or unable to disclose their circumstances, the insurer's employees need skills to help them identify signs that may indicate a customer is affected by family violence.

ICA's guide then lists examples of signs of family violence, such as appearing or sounding distressed or scared, being seen or heard to take instructions from their partner, or not wanting their physical address recorded. Unfortunately, the Social Security Guide does not provide such guidance and does not explicitly require Centrelink or the AAT to make enquiries or findings if family violence is suspected but not disclosed. We recommend that a similar approach to the ICA's be adopted for the protection of vulnerable individuals affected by family violence.

Decision making capacity

The Guide asks '[h]ave poor education or limited life skills affected the person's capacity to make a rational decision? Has the person's injury contributed to a loss in capacity to make rational decisions (such as behaviour common to those who have suffered a head injury)?' It then goes on to say '[a] bad decision in any particular circumstance is not necessarily an irrational decision'.

Our AAT case review shows that consideration of cognitive impairment due to brain injury or disease may be regarded as a special circumstance, including where the claimant's compensable injury contributed to a loss in capacity to make rational decisions.

Again, discussion of COVID-related factors such as reduced levels of family support, or lack of access to financial counsellors or disability support services, do not feature in any of the reviewed decisions which took into account impaired decision-making capacity.

¹⁵ Available at https://insurancecouncil.com.au/wp-content/uploads/2020/01/2021_07_REPORT_Family_Violence.pdf

Financial circumstances

The Guide says that financial circumstances need to be severe and worse than the majority of social security recipients, and that the value of all cash and realisable assets should be taken into account by comparing this with the fortnightly rate of pension. The Guide also provides that where a claimant has used their compensation lump sum to purchase a property or reduce their mortgage, 'special circumstances' will not be satisfied. Furthermore, the Guide states that: '[g]enerally, where people choose to wantonly/irresponsibly spend all of their compensation proceeds and do not set aside sufficient funds to meet their living costs during the preclusion period, decision makers should NOT find special circumstances exist unless there are truly compelling reasons to do so.'

Our case review shows that generally a claimant will be required to realise their assets unless there is a compelling reason why this would be unreasonable and it is clear some AAT Members consider that this factor should be applied narrowly. However, in circumstances where the claimant holds only one property—particularly where that property is tailored to suit the claimant's personal circumstances and they ultimately become entitled to DSP shortly after disposing of the property—Members are loathe to make findings against the claimant.

COVID-19 has undoubtedly impacted on the economic landscape and the financial circumstances many claimants find themselves in, yet decisions handed down following the start of the pandemic show no change in how AAT Tier 2 addresses these matters. That said, as discussed above, it does not appear that claimants have made submissions on how COVID has exacerbated their financial difficulties or affected access to community supports.

Family and domestic violence and financial abuse arising from financial deprivation or hardship can also fall within this special circumstance but, as noted above, COVID-related issues affecting access to community support, advice and advocacy are not canvassed in the decisions reviewed.

Addictions

The Guide lists the considerations as follows:

- 'Is there evidence that the behaviour of the person was as the result of an addiction or mental health condition outside their control?'*
- 'Is there an established pattern of compulsive behaviour over a significant period of time?'*
- 'If the case involves gambling, does the person control their gambling spending or do they gamble compulsively to 'strike it lucky' to the exclusion of all other life needs?'*
- 'If the case involves substance abuse, has the person been medically recognised as having a drug or alcohol problem?'*
- 'Has the addiction occurred after the receipt of the compensation lump sum or is there an ongoing history of this abuse?'*
- 'Has any help been sought regarding this addiction?' 'Has the circumstance that caused the hardship also contributed to the problem?'*

'Example: Addiction as direct result of trying to manage their pain.'

Although these considerations are relevant, the posing of these questions without any commentary or case examples is unhelpful and would tend to restrict application of the discretion.

The case review shows that claimants will often satisfy this criterion if they are medically diagnosed with a condition under DSM IV or DSM V but not otherwise. Only medical evidence provided by a clinical psychologist or psychiatrist is considered, however, many claimants will not have the financial means to obtain this evidence—and during COVID-19 many will have been socially isolated, with limited or no access to mental health services.

The decisions reviewed indicate that claimants have not made submissions on how the COVID-19 pandemic has exacerbated addiction issues and certainly no findings have been made by AAT Tier 2 in this respect.

Incorrect or insufficient legal advice

The Guide notes the following for this special circumstance:

- *'Has the person had a telephone or face-to-face interview with Centrelink where the details of their preclusion period and the impacts their compensation payment will have on their income support payments or future entitlements to income support has been explained to them.'*
- *'The delegate should also check whether the person has signed the acknowledgement letter confirming they understand the implications of their compensation preclusion period.'*
- *'Is there documentary evidence that the person has received incorrect or insufficient legal advice?'*
- *'Has the legal advice been sought on any action in regard to this?'*

The Guide further notes that:

'Depending on the individual circumstances of a person's compensation case, the person's claim that they have received incorrect or insufficient advice may be weakened if the person has had an interview with Centrelink where they have acknowledged that they understand that they will be precluded from income support for the duration of the compensation preclusion period.'

Generally, if a remedy is available through the courts, this special circumstance will not apply unless, for instance, the person is not likely to ever be in a financial position to pursue an action, or there is no remedy or action available.

Again, the case law suggests that no submissions or findings have been made in respect of COVID-19 impacts.

Unjust operation of legislative amendment

The Guide indicates that this factor relates to any 'legislative amendment [that] may produce a result, when it interacts with social security legislation, that is unforeseen and inequitable.' The Guide notes that 'perceived unfairness' or 'an unintended consequence' is not a special circumstance in itself. For instance, perceived unfairness arising from the 50% rule will not be successful.

This special circumstance is not often raised, either pre or post COVID-19. In circumstances where the compensation lump sum allowed a partial loss of future earning capacity, the person has no real residual earning capacity due to other conditions, and has no real prospects of employment in this Covid-19 environment, claimants should make submissions on this point.

Changed circumstances

The Guide indicates that consideration must be given to whether the claimant's circumstances have 'altered significantly' since the CPP commenced 'due to circumstances wholly or partly outside' of their control. Examples given include: divorce settlement and division of assets, or the claimant being successfully sued, following CPP commencement; natural disasters; sudden ill health or death of the person or a family member; and, collapse or failure of a well-considered investment or business venture.

Despite the inclusion of 'natural disasters' in the examples, COVID-19 has not been one of the matters raised in the cases reviewed.

Other

Here the Guide includes examples that do not fall within the specified special circumstances, but might qualify:

(a) where the LSCP was expended due to fraud by another person, particularly where steps have been taken to recover defrauded funds;

(b) where the claimant has a reduced life expectancy;

excessive legal funds in obtaining the LSCP (although only part of the costs might be deemed excessive).

Again, the case law review shows that COVID-19 has not been raised by claimants or commented on by the AAT.



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Appendix AAT CPP cases

AAT CPP cases, five years up to May 2021, sorted according to 'special circumstances' factors set out in Departmental policy guidelines (<https://guides.dss.gov.au/guide-social-security-law/4/13/4/20>)

Acronyms

AAT	Administrative Appeals Tribunal
AAT1	First Tier Review in the Social Services and Child Support Division of the Administrative Appeals Tribunal
AAT2	Second Tier Review in the General Division of the Administrative Appeals Tribunal
ARO	Authorised Review Officer
CPP	Compensation Preclusion Period
DSP	Disability Support Pension
DSS	Department of Social Services
LSCP	Lump Sum Compensation Payment
MVA	Motor Vehicle Accident
NSA	New Start Allowance
PTSD	Post Traumatic Stress Disorder
TBI	Traumatic Brain Injury
WC	Workers Compensation

Addictions

Case name, citation, date	Background	Outcome
<p>Mahfoud v Secretary, Department of Social Services [2021] AATA 140 5.2.2021 Evans, Member</p>	<p>Mahfoud suffered injury in an accident on 2.2019 and received a LSCP of \$875,000 (\$594,973.60 after various deductions).</p> <p>Mahfoud applied for NSA on 7.2.2020 and, the following day, for DSP.</p> <p>On 25.3.2020 Mahfoud applied for the JobSeeker Payment.</p> <p>All applications were rejected due to the CPP until 4.4.2024. ARO and AAT1 affirmed the decision. Mahfoud appealed to AAT2 in respect of the three applications.</p> <p>Mahfoud contended special circumstances existed, namely: he had exhausted the LSCP and he had no money.</p> <p>Issues were whether a CPP applied and if so, whether special circumstances existed. Mahfoud contended the special circumstances were:</p> <ul style="list-style-type: none"> • no money to eat; • that his parents were going to 'kick him out of the house'. • he suffered physical and psychological injuries in the accident. <p>It was noted that shortly after receiving the LSCP, Mahfoud travelled to Lebanon (business class flights were upgraded to first class) for dental work and he moved out of his family home into rental accommodation.</p> <p>Bank statements showed an opening balance of \$576,244.7 on 29.3.2019 and \$580.05 by 31.6.2019.</p> <p>Mahfoud conceded he 'was a bit of an over-spender' although AAT2 noted that this does not appear to be the main cause of concern. Mahfoud was introduced to a trading platform by a friend (CFD) losing \$270,634.66.</p> <p><u>Medical evidence was relied on, which supported (amongst other things) a diagnosis of gambling addiction.</u></p>	<p>AAT2 found that CPP applied from 19.11.2015 - 27.3.2024.</p> <p>Given Mahfoud was trading in CFDs the day before applying for NSA, AAT2 was not minded to shorten the CPP on the basis of previous case law which provided that to do so, as a consequence of reckless spending, would invite others to do the same.</p>

Case name, citation, date	Background	Outcome
<p>Secretary, Department of Social Services v McKenzie [2019] AATA 3271 4.09.2019 Britten-Jones DP</p>	<p>McKenzie suffered a workplace injury on 10.9.2012 and received weekly benefits until 12.2013 when cleared to return to work. His position however was no longer available and he received NSA sporadically throughout 2014-2016 inclusive.</p> <p>On 22.5.2018, GIO made a LSCP of \$129,034.08 representing lost earnings between 2.3.2015 and 26.12.2016.</p> <p>On 29.5.2018 a compensation recovery notice was provided to GIO, raising charge of \$43,789.04, which included \$22,895.96 of NSA paid to McKenzie's partner. ARO affirmed the decision but AAT1 directed DSS to refund \$21,894.50.</p> <p>DSS sought AAT2 review.</p> <p>McKenzie alleged there were special circumstances in relation to the CPP including: inability to pursue litigation in the workers' compensation claim due to lack of funds; his bankruptcy; gambling.</p>	<p>No special circumstances were found to exist, namely:</p> <ul style="list-style-type: none"> • his ill health was not of a more severe nature than many DSP recipients; • symptoms of anxiety and depression were not included as in injury for which LSCP was made and there was no diagnostic evidence before the AAT; • McKenzie's financial troubles were already present before Centrelink made the recovery; • there was no evidence before AAT to suggest McKenzie suffered a gambling addiction and it was noted AAT is loath to consider gambling a special circumstance where it is a lifestyle choice rather than an underlying pathological condition. <p>NB McKenzie was represented.</p>

Case name, citation, date	Background	Outcome
<p>Burgess v Secretary, Department of Social Services [2019] AATA 2429 07.08.2019 Alexander, Senior Member</p>	<p>In 6.2010, Burgess suffered severe injuries to lower limbs including crush injury to the right leg requiring below knee amputation. He received regular compensation payments totalling \$99,737.16 until 6.1.2012 and then LSCP in 03.2012 and 12.2013 totalling \$1,038,149.90.</p> <p>Sometime following injury, he qualified for DSP. DSP was cancelled on 6.1.2014 due to the LSCP and CPP from 7.1.2012-10.12.2021. He was required to repay \$31,910.93.</p> <p>On 16.4.2018, Burgess lodged a carer payment application in respect of his elderly father but it was rejected as he was 'not caring for the caree'. ARO and AAT1 affirmed this and noted the CPP applied. DSS submitted CPP was miscalculated and should apply until 31.12.2022.</p> <p>Burgess alleged special circumstances. Burgess conceded that over a five year period he had gambled over \$500,000. The club he regularly attended never questioned him and encouraged it.</p> <p>Burgess was required to sell his home (owned outright) and moved to rental accommodation. At the time of the hearing, he was living in his converted campervan parked in his son's backyard. Burgess said he was being supported by his son but this support was limited and could not continue until the end of the CPP.</p> <p>Burgess was aware of CPP but had no plan as to how he would cope during the period.</p> <p>Burgess relied on a recent report from a clinical psychologist, which was obtained after the relevant period. No treatment was obtained during the relevant period.</p> <p>DSS contended it was a lifestyle choice and that the clinical psychologist report should not be considered as it did not relate to the relevant period.</p>	<p>The evidence supported a clinical diagnosis for pathological gambling (DSM-IV) or gambling disorder (DSM-V), which was supported by the retrospective diagnosis, financial documents, evidence that the club had encouraged Burgess gambling, and the need to rely on his son.</p> <p>Centrelink's errors in quantifying the CPP was not to be corrected, as it would be 'unfair' to do so.</p> <p>CPP further reduced to approximately 12 months from the date of the hearing, namely 30.6.2020 (being a reduction of almost 1.5 years).</p> <p>'80. The particular factors which I consider to be relevant with respect to my decision include Mr Burgess' untreated gambling disorder, his age, his current severe financial hardship with no apparent prospects of relief, his willingness to continue psychological treatment and the fact that he has completed almost 8 of the 10 years of the preclusion period that was originally calculated.'</p> <p>NB Burgess self-represented.</p>
<p>Dimitrov v Secretary, Department of Social Services [2017] AATA 1384 28.8.2017 McGrowdie Member</p>	<p>Dimitrov received a LSCP of \$375,000 with a CPP applying until 23.7.2019.</p> <p>At the time of the LSCP, Dimitrov had debts of about \$100,000. Dimitrov also noted he had to support his daughter's wedding and marriage as well as house payments for his ex-wife and mother due to Macedonian custom.</p> <p>He had been struggling with an overall general depressive and anxiety condition with drinking, gambling and suicidal thoughts.</p> <p>The applicant was under the care of Dr Gordon Hyde, a psychiatrist who had recently provided a report dated 22 June 2017, in which he indicated that the applicant remained depressed and anxious with features of PTSD.</p>	<p>Special circumstances were established and \$168,500 was considered to have not been made as part of the LSCP.</p> <p>Included also in the consideration is the applicant's psychological condition which manifested itself in terms of drinking, gambling, nicotine addiction and suicidal thoughts.</p>

Incorrect or insufficient legal advice

Case name, citation, date	Background	Outcome
<p>Hardiman v Secretary, Department of Social Services [2020] AATA 1794 17.6.2020 Cremean, Senior Member</p>	<p>Hardiman was in a 2014 MVA and received LSCP of \$600,000 including \$26,000 costs.</p> <p>Hardiman applied for NSA on 7.2.2019, which was granted on 9.3.2019 with effect date of 25.1.2019. On 10.5.2019, it was determined that Hardiman's application should not have been accepted and payments were cancelled. Hardiman was advised of this and, further, that the NSA debt was waived.</p> <p>Hardiman sought review by ARO and AAT1, unsuccessfully, and AAT2 appeal was pursued. Hardiman alleged special circumstances existed.</p> <p>As a result of the MVA, Hardiman was hospitalised and had back surgery. Lymphoma was then discovered and a section of his bowel was removed. Hardiman now had a large hernia (described as large and unsightly) and still suffered from severe back pain. He could no longer work.</p> <p>Hardiman said he was careful about how he paid his LSCP and all that remained from it was the house he purchased for \$360,000, which he submitted was a good price and was not bought for investment. Hardiman indicated he was not prepared to sell the house. Hardiman submitted he was unable to afford food (resulting in considerable weight loss) and he had limited support. He was not prepared to take in a boarder (as he did not wish for people to walk on his carpet with shoes on).</p> <p>Hardiman alleged that his compensation moneys were \$574,000 and not \$600,000—with \$26,000 being incurred in legal costs. Hardiman alleged he did not know of a CPP and, in this regard, DSS appeared to accept that there was not a great deal in the correspondence or paperwork to alert Hardiman of a CPP.</p> <p>Hardiman made very little of the fact that his lawyers in the compensation matter did not advise him of the CPP, except to say he was not advised by them of it. Hardiman advised AAT2 that he did not know about the CPP but, even if he had, he would not have been able to do anything differently.</p> <p>Hardiman also commented throughout the course of the proceedings of an intention of possibly committing a crime in order to return to prison and receive three meals per day.</p>	<p>CPP was reduced to 10.9.2019 as special circumstances existed, namely Hardiman:</p> <ul style="list-style-type: none"> was in a position of extreme financial hardship beyond normally encountered in similar cases; without funds and without ability to access funds (limited to one meal of Weetbix per day and had lost a lot of weight); had not made reckless financial decisions; was not aware of the CPP and still was not reckless in spending the money; was suffering ill-health and peculiar if not irrational thinking (with reference to the house carpets and possibility of committing a crime); was not advised by his lawyers of the CPP. <p>AAT2 commented at [47] that</p> <p><i>'There is something odd in saying someone should have sold assets so that they could meet one of the criteria for special circumstances, which, when they have done so, they will not need to meet because they will then have the funds. Or to say that they should now do so, so that the Secretary does not have to exercise a discretion under the Act. I note that the Act does not say that the Secretary's discretion under s 1184K may only be exercised if satisfied an applicant has divested themselves of or liquidated assets. One reason for this could be that an applicant who has liquidated assets may not need the discretion to be exercised in their favour then after all.'</i></p> <p>NB Hardiman was self-represented and was described as 'very forthcoming – blunt, even – on some very personal matters'.</p>

Case name, citation, date	Background	Outcome
<p>HGMZ and Secretary, Department of Social Services [2020] AATA 978 27.4.2020 Evans, Member</p>	<p>HGMZ was in receipt of DSP when involved in an accident in 2013. HGMZ received \$135,000 LSCP in 2017 for the injuries sustained in the 2013 accident. CPP was calculated as 16.5.2013-10.9.2014 and a charge of \$31,142.86 was raised. HGMZ sought ARO and AAT1 review, which was unsuccessful, following which an AAT2 appeal was lodged. HGMZ alleged that CPP should not apply as there was no evidence that it included economic loss and further that CPP had been calculated incorrectly. These allegations were withdrawn during the hearing. HGMZ alleged special circumstances existed, namely that she received poor legal advice during her accident compensation claim and consequently she could not afford her medical expenses. Further, she was in another accident in 10.2017 which increased her medical expenses, including \$80,000 for surgery. HGMZ alleged she supported her daughter who was studying. She had to buy a second vehicle, and she was required to pay the majority of funeral expenses arising following the recent passing of one of her children. HGMZ said he was careful about how LSCP had been spent.</p>	<p>AAT2 rejected the submissions made by HGMZ and no special circumstances applied. It was noted that:</p> <ul style="list-style-type: none"> • HGMZ legal representative was involved in the claim arising from 2013 accident for 4 years and provided a discount on legal fees (which totalled \$61,000 including counsel fees); • settlement documents for the 2013 accident clearly indicated it included compensation for lost earnings; • there was no evidence that HGMZ had spent anywhere near what was alleged in treatment expenses in respect of the 2013 accident; • evidence provided in respect of the 2017 accident was from a legal perspective rather than treatment costs

Case name, citation, date	Background	Outcome
<p>Secretary, Department of Social Services v Mills [2019] AATA 753 April 2019 Burke, Member</p>	<p>Mills received NSA from 12.9.2012-21.2.2013 and DSP from 25.3.2015-19.4.2017. Mills slipped down stairs at a shopping centre on 20.2.2013 and sustained injuries. She lodged a claim and received weekly benefits from 6.3.2013-17.2.2015.</p> <p>On 11.9.2013, Mills advised DSS that she was receiving WC payments. On 16.9.2013, DSS advised Mills that some or all of the benefits paid to her or her partner would need to be paid back and that there might be a CPP.</p> <p>On 7.7.2016, Mills received LSCP in respect of her WC claim (\$920,000 with no entitlement to costs and no economic loss). On 20.4.2017, DSS advised Mills the CPP was 15.2.2015-30.5.2023 and that a charge of \$35,902.16 was raised.</p> <p>AAT1 found special circumstances in order to reduce the CPP, although commented strongly that Mills' poor decisions were not in itself a special circumstance.</p> <p>On 24.11.2017, Mills lodged an NSA application. On 28.11.2017 DSS rejected the application on the basis of the CPP.</p> <p>DSS sought AAT2 review of the decision that special circumstance applied as there was insufficient evidence to support its findings of fact. Specifically, there was insufficient evidence regarding how and why large amounts of money were expended by the Respondent.... [2]</p> <p>Mills argued incorrect and insufficient legal advice had been received from their lawyers; they had been charged excessive amounts for legal services received. DSS contended there was no evidence to support this claim and, further, if Mills believed they had received poor legal representation they had other avenues through which they could pursue this claim.</p>	<p>AAT2 found no special circumstances existed and AAT1's decision was set aside.</p> <p>In short, AAT2 found that that Mills had:</p> <ul style="list-style-type: none"> not substantiated her claims regarding how she had expended her LSCP including money taken from her brother (who was an ice addict), the failed business venture, loan repayments etc and it could not be ascertained what money was still available; not substantiated her claims regarding her mental health and its impact on decision making process, despite accommodating Mills with extensions to do so; largely spent the money on what most would consider as 'highly unreasonable in all the circumstances' including an 'extravagant holiday'; <u>not satisfied AAT2 regarding her claims about her lawyers misleading her in respect of the LSCP.</u>

Case name, citation, date	Background	Outcome
<p>Marshall v Secretary, Department of Social Services [2019] AATA 670 4 April 2019 Public Senior Member</p>	<p>Marshall applied for NSA on 3.4.2018. Claim was rejected due to CPP following receipt of LSCP in 05.2017.</p> <p>The CPP was initially said to be from 11.5.2017 to 16.12.2020, which the ARO reduced to 13.5.2020. AAT1 determined CPP should be further reduced to 11.3.2020. Not satisfied, Marshall appealed to AAT2.</p> <p>Special circumstances alleged included: financial circumstances, medical conditions, need to establish a new home, court cases for divorce following an acrimonious end to his marriage. Furthermore, he had sold most of his personal possessions, was seeking employment - although limited due to his injuries and lack of a car and did not want to move from his hometown as he was an only child and was concerned for his mother.</p> <p>Marshall stated the discount should be more given his legal fees were more than determined by ARO and AAT11. Further, Marshall had recently being advised of a potential liability for child support at \$400 per month.</p> <p>In his oral evidence Marshall stated that his calculation of his legal fees was in the order of "\$25,000 - \$30,000". The Tribunal has independently added up the totals in the invoices from Marshall's solicitors, which amounted to \$24,981.</p> <p>Marshall said that he did not receive any advice that there was a CPP triggered by the LSCP (although there was clear evidence before AAT2 that DSS wrote to both the Marshall and his solicitors explaining these arrangements).</p>	<p>Special circumstances were found to exist, although not in relation to incorrect or insufficient legal advice.</p> <p>AAT2 agreed that 'special circumstances' existed, a finding which DSS did not dispute.</p> <p>AAT2 could not take into account the child support payment as there was no substantiating evidence.</p> <p>AAT2 agreed with DSS' criticism of Marshall's spending, even in the absence of an understanding of the CPP, given the balance of his LSCP was spent within about seven months.</p> <p>Despite the criticism, due to increased legal costs associated with the divorce, the CPP was reduced to 19.2.2020.</p> <p>In regards to Marshall's allegation that he was not advised of the CPP, AAT2 held that it does not, in itself, vitiate his responsibility to be prudent in the management of his finances, rather than seeking to rely upon payments from the taxpayer within a very short period of time after receiving the LSCP.</p>

Case name, citation, date	Background	Outcome
<p>Holland v Secretary, Department of Social Services [2019] AATA 339 6 March 2019 Edwardes Member</p>	<p>Holland was involved in a MVA on 15.11.2016. Holland was previously in receipt of DSP from 6.8.2001. On 30.11.2016 Holland signed a consent judgment in the MVA claim in the sum of \$175,000 plus costs of \$25,248.60. DSS was not informed of the LSCP until 9.1.2017. On 18.1.2017 a notice was sent to Holland and his solicitors advising of a charge of \$43,359.98 and CPP of 15.11.2013-12.11.2015. AAT1 affirmed the ARO decision that the CPP was from 13.11.2013-9.11.2015. Holland appealed to AAT2. Issues were whether a CPP applied, whether the DSP compensation charge should be attributed and whether special circumstances arose. Holland's submission was that the debt had arisen due to the conduct of his lawyers and DSS' failure to inform him about CPP and/or deduct the compensation charge before providing him with a final settlement amount. AAT2 noted it was not clear what advice Holland did or did not receive from his lawyers. Nevertheless, the failure of a solicitor to advise a person about the existence of a CPP is not considered persuasive or determinative. It was noted that the Department was not made aware of the compensation claim or settlement until 9 January 2017. The Department immediately wrote to the insurer and raised a charge against Holland.</p>	<p>AAT2 found that a CPP did apply, which began on 15.11.2013. AAT2 found that there was no evidence demonstrating the nature of the injuries sustained in the MVA or any additional medical conditions suffered as a result of that accident. AAT2 found Holland's evidence unconvincing regarding his prior government housing and subsequent home purchase with LSCP, and that he will not outlive the debt owed to DSS. AAT2 agreed with DSS that it was Holland's choice to purchase the property when he already knew about the debt. AAT2 found Holland's circumstances not to be out of the ordinary for 'most people in the community on social security payments.' AAT2 also held that there is no fault by DSS, as it was not notified of the LSCP until 9 January 2017 and immediately took steps to recover the charge. As Holland appeared to have spent the entirety of the LSCP within weeks of receiving it and before advising DSS in accordance with his notification obligations, special circumstances could not be found.</p>

Case name, citation, date	Background	Outcome
<p>Bolewski v Secretary, Department of Social Services [2016] AATA 959 29.11.2016</p>	<p>Bolewski argued that the CPP should be reduced due to special circumstances, namely: poor legal advice given Centrelink recovery was not advised; legal costs which had already been considered by the Legal Services Commission and was found mostly consistent with the costs agreement; ill health, which was worsening; financial hardship.</p>	<p>Bolewski's 'defective' legal advice was a special circumstance as she was not informed of the amount Centrelink would recover until after settlement was reached. It was unlikely Bolewski could bring a complaint against the former lawyer with any reasonable prospect of recovery.</p> <p>[75] The cost of the failure of Ms Bolewski's lawyer lies against her, and she has but few resources to deal with it – she has poor physical and mental health, no financial reserves and very little education. She is struggling to make ends meet and cannot work. She fears that she will be unable to meet the cost of future medical treatment. In these circumstances, I think that it is appropriate to exercise discretion to treat part of her compensation amount as not having been made.</p> <p>The remaining arguments were not accepted, as:</p> <ul style="list-style-type: none"> • Legal Services Commissioner had investigated legal costs; • even though her health condition was worsening, it was said that: 'It is reasonable to expect that the compensation settlement amount Ms Bolewski agreed to accept made some provision for future medical expenses. These circumstances, alone, are not special...' • 'Ms Bolewski's ailments and their effects do not amount to special circumstances that set her case apart from others – many are those in similar circumstances of advancing age, worsening impairments and increasing incapacity for work. • Despite having limited resources and ongoing debt, these were considered to be unexceptional.
<p>Trajcevski v Secretary, Department of Social Services [2016] AATA 593 11.8.2016</p>	<p>Trajcevski alleged special circumstances arose, namely that he received poor legal advice and was overcharged by his solicitor.</p>	<p>AAT2 affirmed the decision.</p> <p>Financial hardship arguments failed as Trajcevski chose to spend \$20,000 on his wedding and his daughter's christening. His other expenditure was found to be normal for a father of two.</p>

Case name, citation, date	Background	Outcome
<p>Fairthorne v Secretary, Department of Social Services [2016] AATA 34 29.1.2016 Pertton, Member</p>	<p>Fairthorne suffered a serious workplace-caused disease from 20.10.2006, which continued to cause difficulties. Weekly payments were received from the onset of illness and LSCP was received on 24.2.2009 in the sum of \$50,500; and a further LSCP of \$375,000 on or around 5.6.2013, which included economic loss.</p> <p>Fairthorne had signed an authority to settle proceedings on 13.5.2013 acknowledging he would be subject of CPP until about the end of 2014. Centrelink advised by letter to Fairthorne and his solicitors of 30.5.2013 that the CPP was 18.5.2013-22.12.2017.</p> <p>Fairthorne applied for DSP on 15.6.2013 which was rejected due to the CPP.</p> <p>ARO and AAT1 affirmed the decision and Fairthorne appealed to AAT2 citing 'special circumstances', which included: significant medical issues; his brother suffering a terminal illness at the time he settled his LSCP claim; the incorrect advice regarding CPP received from his lawyers; he had expended the majority of the LSCP which included purchase of a farm; and his home was in need of urgent repairs.</p>	<p>AAT2 found special circumstances were established and reduced the relevant LSCP, in order to determine CPP, by \$20,000, due to the repairs needed to Fairthorne's home, which was in serious and potentially dangerous disrepair.</p> <p>[45] ... the Tribunal does not believe anything would be gained by the community if he were forced to sell the house which may well be for much less than he paid given its current condition and location. The Tribunal accepts that repairs are needed urgently and believes \$20,000 to be a sensible figure to use given there are ancillary repairs to plaster, guttering etc that are required.</p> <p><u>The incorrect advice from the lawyer was not considered to be a special circumstance given Centrelink advised of the correct CPP within weeks of the LSCP [47].</u></p>
<p>Zhang v Secretary, Department of Social Services [2015] AATA 668</p>	<p>DSP was declined due to CPP until 2026, arising from LSCP in excess of \$700,000. Zhang sought a waiver of the CPP citing special circumstances of legal costs associated with obtaining the LSCP. The following circumstances were submitted:</p> <ul style="list-style-type: none"> • LSCP was received by way of judgment and not settlement and he therefore did not agree to a compensation sum. • Proceedings were long and complex through no fault of Zhang. Two defendants each denied liability and the case ran for nine days with all parties instructing senior and junior barristers, respectively. • Zhang likely was not properly advised in relation to legal costs due; • Zhang's solicitor was also stripped of his licence due to overcharging clients (although Zhang was not a party to those proceedings); • the breakdown of his relationship which caused Zhang to pay his ex-wife \$60,000 to remove her name from the property; • the decision to sponsor a new wife to come from China; • the repayment of debts; • investment in a business that failed; • purchase of cars. 	<p>AAT2 found special circumstances were established and reduced to relevant LSCP to determine CPP by \$200,000 (due to legal costs incurred).</p> <p><u>AAT2 accepted Zhang's submissions regarding the LSCP proceedings being long and complex and that he was probably not properly advised. AAT2 considered the Zhang's poor English skills to be a relevant factor.</u></p> <p>The remaining issues were not considered to be special circumstances (namely the relationships, payment to ex-wife, repayment of debts, investment and cars).</p>

Case name, citation, date	Background	Outcome
<p>Lawson v Secretary, Department of Social Services [2018] AATA 2140 16.5.2018 Stefaniak, Member</p>	<p>Lawson sustained a workplace injury on 6.9.11 for which he received a LSCP of \$450,000. The CPP was calculated to be until 10.11.2020.</p>	<p>Special circumstances established; CPP reduced to 12.2.2019. Whilst Lawson had spent the LSCP irresponsibly, he had worsening vascular health and was living out of his car.</p> <p>In regard to incorrect or insufficient legal advice, AAT2 was of the view that the \$90,000 initially quoted to him prior to settlement over a period of close to four years was quite a reasonable fee. The extra \$55,000.00 charged by the solicitor to effect a settlement seemed excessive and Lawson would be well advised to go and talk to a legal service such as NSW Law Society to see if he can find a lawyer to take that case on.</p> <p>AAT2 found that it was difficult on the evidence to really see whether the advice Lawson received was good, bad or indifferent. If there has been bad legal advice (and in this case perhaps an overcharge of fees), Lawson would be in a very different situation than he is now.</p>

Unjust operation of legislative amendment

Case name, citation, date	Background	Outcome
<p>Keys v Secretary, Department of Social Services [2017] AATA 2099 2.11.2017</p>	<p>Keys had suffered a workplace injury, including brain and spinal injuries. LSCP was \$333,400.70 with CPP of 16.9.2015-8.11.2016.</p> <p>Keys submitted that the "50% rule" (in subsection 17(3)a) of the Act) results in unfairness, that the length of the CPP was "excessive" and that he "still disagrees with the start date (of the CPP)."</p> <p>Keys relocated to Thailand to marry and had two children there.</p> <p>Keys then returned to Australia.</p> <p>Keys and spouse divorced 1.7.2012.</p> <p>On 23.2.2016 Keys was advised mortgages on properties were in default.</p> <p>Noted there was a decision to split assets with former partner once LSCP received.</p> <p>Family Court orders 20.5.2016 required Keys to pay wife \$136,408 by 12.8.2016 and if not made wife would become trustee.</p>	<p>The only special circumstances were related to Keys' injuries, which were said to be more severe than other DSP recipients.</p> <p>AAT2 found that the CPP was correctly determined. The LSCP did not take into account any deduction for legal fees however it is well established that legal costs are included in the definition of compensation and there is no legislative basis to exclude legal costs from a lump sum payment for the purposes of subsection 17(3) of the Act.</p>

Changed circumstances

Case name, citation, date	Background	Outcome
<p>Stavroudakis v Secretary, Department of Social Services [2020] AATA 5229 24.12.2020 Cremean, Senior Member</p>	<p>Stavroudakis was injured in a 2012 MVA, sustaining serious injuries including crushed pelvis, spinal fractures and broken ribs requiring hospitalisation for about two months. She received a LSCP of \$600,000 and she then bought her home for about \$385,000.</p> <p>Stavroudakis applied for the carer payment and carer allowance on 5.7.2019 but it was rejected due to a CPP until 3.4.2022. ARO and AAT1 affirmed the decision and Stavroudakis appealed to AAT2.</p> <p>Stavroudakis had been in a violent marriage since 2004 but that the husband no longer lived with her due to intervention orders. She lived with her two children.</p> <p>Stavroudakis continued to care for her children with her injuries and with little financial assistance from her spouse. It was noted the spouse starting using the drug ice after her accident and had stopped work.</p> <p>Stavroudakis' daughter was diagnosed with cancer in the knee in 6.2019 and underwent extensive surgery and chemotherapy.</p> <p>Stavroudakis returned to work in 6.2020 but was on leave without pay due to care needs of her daughter.</p> <p>Stavroudakis suffered various conditions including PTSD.</p> <p>It was noted that it would be difficult to sell her home (which was secure with cameras and dogs) and, if she did sell it, it would be difficult to stay with her parents.</p> <p>Stavroudakis conceded being informed of the CPP.</p>	<p>CPP reduced by about 1.5 years to 6.11.2020 (last day of hearing). Stavroudakis was accepted as a credible and truthful person 'who has suffered far too many misfortunes'. AAT2 was not prepared to find Stavroudakis had spent her LSCP recklessly.</p> <p>Significant financial hardship found, with expenses greatly outweighing funds, leaving aside the issue of sale of her home and reliance on food handouts from Salvation Army to feed her family (Stavroudakis often going without).</p> <p>AAT2 found no reason she could not keep the dogs or should not have protection, given all that has happened'.</p> <p>Cremean referred to his decision in Hardiman and the Guide's and his views on what consideration ought to be given to the value of all cash and realisable assets. The purchase of the home to be a wise one.</p> <p>'92 To my mind, it would be an appalling result if I should decide that the Applicant should have sold her house so that the Respondent can avoid meeting an obligation under the Act should special circumstances otherwise arise. An obligation under the Act, if otherwise one arises, should not be circumvented in this way.'</p> <p>If sold, AAT2 commented that it would likely be difficult to find a rental property to meet her needs.</p> <p>Stavroudakis' health was not a special circumstance, but her daughter's health was as an economic kind resulting in Stavroudakis being unable to work.</p> <p>Lastly, at [118] it was noted Stavourakis was in an 'especially vulnerable position' as she could not work and was unable to undertake training due to the demands on her. This is in itself was said to be a special circumstance.</p> <p>NB Stavroudakis was self-represented.</p>

Case name, citation, date	Background	Outcome
<p>DLKP v Secretary, Department of Social Services [2020] AATA 3682 18.9.2020 Parker, Member</p>	<p>DLKP received a LSCP of \$336,088 on 1.9.2017, arising from a workplace accident. CPP was calculated to be 16.9.2017-1.1.2021. DLKP applied for NSA on 24.8.2018, which was rejected due to the CPP. The decision was affirmed by ARO and AAT1 and AAT2 appeal was pursued. The evidence included that DLKP deposited the LSCP in 1.2018 and withdrew the funds in cash as soon as he was able to do so, which he kept stored in a plastic box in the walk-in-robe of his former house. At the time, DLKP was (and remained) greatly impacted by the demise of his long term relationship. Evidence of DLKP's treating clinical psychologist indicated the demise had caused an exacerbation of a pre-existing medical condition of severe depression and anxiety. DLKP had not been able to see his child following the breakup. <u>DLKP attempted to take his own life in mid-2018 and was subsequently hospitalised in a psychiatric facility, during which time his house was burgled, which was corroborated by police records and also indicated a spate of burglaries nearby to DLKP's home. This resulted in an extension to his hospitalisation, also corroborated by the medical records.</u> Property settlement with his ex-partner meant no remaining interest in the family home, corroborated by Court documents. DLKP reported personal debt at about \$100,000, which included corroborated debt to family law solicitors of almost \$50,000 and the remaining on credit cards. DLKP was now living with his mother and he was receiving food donations through his community/church. DSS conceded special circumstances existed and that the CPP should end 15.4.2020.</p>	<p><u>Special circumstances established.</u> AAT2 found, on the balance of probabilities, that:</p> <ul style="list-style-type: none"> DLKP had kept \$315,000 in cash from the LSCP stored in this home at the time of the burglary; those funds in their entirety were stolen during the burglary (with other items); DLKP is financially destitute and relies on the charity of others to survive; DLKP has serious psychological and physical medical conditions which impaired his ability to function and to make rational decisions, even when guided by others; and DLKP's prospects of employment were not positive so ability to improve his financial position through paid employment was remote. <p>AAT2 commented that DLKP was 25% responsible for the unfortunate situation he was in. Accordingly, AAT2 found it appropriate to treat 75% of the LSCP of \$315,000 as not having been made (namely the CPP was to be calculated on remaining 25%). The matter was remitted to the DSS for recalculation on that basis.</p>

Case name, citation, date	Background	Outcome
<p>Hamilton v Secretary, Department of Social Services [2020] AATA 1918 26.6.2020 Davies, Senior Member</p>	<p>Hamilton was injured in a MVA on 24.5.2007 receiving WC payments from 25.6.2007-1.3.2010 and NSA from 9.11.2010. She settled her LSCP claim on 9.7.2012 for \$1,400,000 plus rehabilitation and legal costs. WC insurer recovered \$343,976.99.</p> <p>On 28.8.2012 Hamilton was advised: CPP 2.3.2010-21.4.2025; \$26,499.58 charge; NSA cancelled from 27.8.2012. Hamilton reapplied for NSA on 4.12.2017, rejected on 5.12.2017 due to CPP. Centrelink was advised on 3.1.2018 she received \$700,000 in the hand. ARO and AAT1 affirmed the decision and AAT2 pursued.</p> <p>Hamilton's full time work at \$72,000 was terminated and she was only able to find casual work earning \$600 per fortnight. Her parents were not assisting with her expenses and she was paying board to her mother, with whom she lived.</p> <p>Hamilton's ex-partner took the proceeds from the sale of her house (\$470,000) and there were threats of physical abuse if she resisted. She did not go to police out of fear. Complete bank statements were not provided. Hamilton noted providing family money up to \$75,000 in total.</p>	<p>AAT2 found that that special circumstances applied on the basis of severe financial hardship, namely: only casual work could be found due to injuries; personal loans were in arrears; early superannuation redemption of \$10,000 to pay the personal loans.</p> <p>AAT2 did not consider the money provided to her mother and sisters to be extravagant expenses.</p> <p>AAT2 found Hamilton had been subjected to an abusive domestic relationship including financial abuse, with the ex-partner taking a large sum of money resulting in financial deprivation and hardship.</p> <p>CPP was reduced so that it ended on 21.5.2020, a period of about five years.</p>

Case name, citation, date	Background	Outcome
<p>Taulaga v Social Department of Social Services [2019] AATA 5408 14.11.2019 Grigg, Member</p>	<p>From 18.9.2015 to 12.10.2015, Taulaga was in receipt of NSA, following which he was placed on DSP due to a longstanding serious lung condition, bronchiectasis. He also received the Pensioner Education Supplement from 6.2.2017.</p> <p>On 10.8.2014, Taulaga's daughter died in hospital and proceedings were commenced against the hospital for negligence. DSS was advised on 11.10.2017 that the claim was settled by consent for \$325,000 (pathological grief reaction and gambling addiction). Taulaga received approximately \$250,000 after reductions. The executor advised she too received \$250,000 in compensation and that they felt pressured to accept the settlement.</p> <p>In the medical negligence claim, Taulaga claimed \$730 per week gross for economic loss from the date of his daughter's death until receiving DSP, totalling about \$38,000.</p> <p>DSS advised Taulaga that the CPP was from 10.8.2014 to 14.10.2017 and a charge of \$50,724.75 was raised.</p> <p>Taulaga's lawyers wrote to DSS on 20.10.2017 advising that the CPP was not reflective of the claim for economic loss and requested review of the decision. ARO and AAT1 affirmed the decision.</p> <p>Taulaga's estate contended the LSCP should be treated as not having been made as: it was not reflective of economic loss component; Taulaga suffered significant ill health; and the executor (spouse) was concerned about her ability to support the family following Taulaga's death.</p> <p>Other special circumstances raised included: the children attending private schools; recent diagnosis of ADHD for Taulaga's son, requiring medication and treatment, including speech therapy which was not covered by Medicare; and Taulaga's spouse now the only receiver of benefits which was only just covering the family costs.</p> <p>NB Taulaga passed away prior to the hearing of the application and his executor/sole beneficiary was made a party to the proceedings.</p>	<p>AAT2 found CPP was correctly calculated.</p> <p>AAT2 was not provided details of how the balance of Taulaga's settlement was spent or how the spouse was suffering financial hardship. Private school is considered a discretionary expense.</p> <p>The death of Taulaga's daughter was however a special circumstance as [t]he loss of a child at a very young age can hardly be said to be a common occurrence, particularly when the child's life was potentially lost as a result of a Hospital's alleged negligence.'</p> <p>Financial hardship was not established particularly given authority provides 'it would be "inequitable for the applicant to claim financial hardship when he owns such a valuable asset and does nothing to realise on it".'</p> <p>'86. However, straightened (sic) financial circumstances are not a prerequisite to a finding that special circumstances exist.</p> <p>87. What is more unusual however is that, as a result of her husband's death [arising from medical conditions related to the DSP], she is now the sole provider for two very young children. To suggest that a single mother in this situation should sell her home and further unsettle her family who have been throw two of the most traumatic events a family can face, would be a harsh outcome and an inappropriate one. The Tribunal finds that it is not reasonable to expect Mrs Taulaga to sell her home to provide for her family's financial needs at this time.'</p> <p>Reliance was made on Moran and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2008] AATA 951 which found the daughter's death to be 'sufficiently out of the ordinary to justify the application of the discretion allowed under s 1184K(1)'. CPP was reduced to nil.</p>

Case name, citation, date	Background	Outcome
<p>Marshall v Secretary, Department of Social Services [2019] AATA 670 4 April 2019 Puplick, Senior Member</p>	<p>Marshall applied for NSA on 3.4.2018 which was rejected due to CPP following receipt of LSCP in 05.2017.</p> <p>The CPP was initially said to be from 11.5.2017 to 16.12.2020, which the ARO reduced to 13.5.2020. AAT1 determined CPP should be further reduced to 11.3.2020. Not satisfied, Marshall appealed to AAT2.</p> <p>Special circumstances alleged included: financial circumstances, medical conditions, need to establish a new home, court cases for divorce following an acrimonious end to his marriage. Furthermore, he had sold most of his personal possession, was seeking employment although limited due to his injuries and lack of a car, and did not want to move from his hometown as he was an only child concerned for his mother.</p> <p><u>Marshall alleged that he has expended considerable sums of money on legal fees related to the divorce and related proceedings.</u> Marshall stated the discount should be more given his legal fees were more than determined by ARO and AAT1i. Further, Marshall had recently been advised of a potential liability for child support at \$400 per month.</p>	<p><u>AAT2 agreed that 'special circumstances' existed, a finding which DSS did not dispute.</u></p> <p><u>AAT2 could not take into account the child support payment as there was no substantiating evidence.</u></p> <p><u>AAT2 agreed with DSS' criticism of Marshall's spending, even in the absence of an understanding of the CPP, given the balance of his LSCP was spent within about seven months.</u></p> <p><u>Despite the criticism, due to the increased legal costs associated with the divorce, the CPP was reduced to 19.2.2020.</u></p>

Case name, citation, date	Background	Outcome
<p>Boyle v Secretary, Department of Social Services [2019] AATA 604 29 March 2019 Puplick, Senior Member</p>	<p>Boyle was involved in a MVA on 15.5.2006 and from 16.6.2006-27.8.2010 she received weekly payments prior to the LSCP on 13.10.2010 for \$1,348,426.97 plus costs of \$82,749.40.</p> <p>DSS advised Boyle that the CPP was 28.8.2010-17.10.2031.</p> <p>On 5.5.2017 Boyle lodged a claim for parenting payment single. DSS rejected the application on 8.5.2017 due to the CPP and ARO and AAT1 affirmed the decision.</p> <p>AAT2 review was sought.</p> <p>NB the CPP was calculated on more than 50% of the award given the findings on past loss of earnings and future loss of earnings as detailed in the assessment made by the CARS Assessor of the (then) NSW Motor Accidents Authority.</p> <p><u>Special circumstances were alleged as follows: financial hardship - no money left from LSCP and she was financially destitute: after deductions Boyle was left with only \$854,000 of the LSCP (although her statutory declaration indicated she was left with \$990,000).</u></p> <p>Boyle provided an explanation as to where the money had been spent including a relationship in Thailand where she supported her partner's business and lifestyle (by way of a fraud against her); her daughter born in 2015 suffers rare medical condition and requires full time care.</p> <p><u>AAT2 noted that there was 'simply no way for the Tribunal to know how realistic any of these claims might be.'</u></p>	<p>The CPP calculated by DSS was correct and AAT2 found <u>no special circumstances</u> to exist, noting:</p> <ul style="list-style-type: none"> • At [57] that there was no evidence to support the allegation of alleged thefts by her former partner or any steps taken to recover the money (ie police intervention or enquiries with her bank). • <u>'People do make poor personal choices. However, they cannot offload the cost of those choices onto the public purse. They are personally made and have to be personally borne. It is not up to a government agency to determine whether a marriage partner is suitable, caveat emptor.'</u> [111] • <u>The evidence supported that Boyle's daughter required expensive treatment not subsidised by PBS and that her daughter required transport by motor vehicle as public transport was not a viable option. There was however no evidence to make a determination on the likely costs.</u> [67-68]. • 'Above all in this, there is the position of a vulnerable and sick child. She stands to be the victim of the Applicant's poor decision-making. No child deserves such a sentence.' [117] • Financial hardship was noted in that Boyle 'would be faced with having to find money to afford rent or that she and her daughter would, in effect, become homeless'[72]. • AAT2 said there was 'no reason to doubt the Applicant's statement that she suffers from Post-Traumatic Stress Disorder (PTSD) and high levels of both depression and anxiety.' • Boyle was unable to access housing or accommodation or rent assistance due to the CPP. <p>NB Boyle was self-represented.</p>

Case name, citation, date	Background	Outcome
<p>Carden v Secretary, Department of Social Services [2018] AATA 1499 31.5.2018 Edwardes, Member</p>	<p>Carden was involved in a MVA on 11.6.2011 and received a LSCP of \$353,658.78. CPP was assessed as 11.6.2011-19.12.2014.</p> <p>Special circumstances alleged including: money was required for health care of wife; wife suffered a cerebral haemorrhage in 2012 which resulted in a coma for five months and rehabilitation of six months; wife suffered a number of disabilities including memory failure; Carden suffered medical problems including injury to his arm, diabetes and heart disease.</p> <p>Carden was in receipt of a carer payment and his wife was receiving DSP. Further, Carden had received rental assistance until he purchased a home with the LSCP.</p>	<p>No special circumstances were established.</p> <p>No evidence to support that Carden's circumstances were significantly different to those receiving carers' payment and DSP.</p> <p>AAT2 was of the opinion that Carden could have continued receiving rental assistance and using the LSCP for medical purposes or could have provided less money towards the purchase of the property. AAT2 considered these were his decisions and did not find his condition to be exceptional, unusual or uncommon.</p>
<p>Vollebregt v Security, Department of Social Services [2018] AATA 11 12.1.2018 Morris, Member</p>	<p>Vollebregt was a hotel manager and suffered a number of workplace injuries resulting in LSCP of \$725,000. CPP was 19.10.2011-21.4.2020.</p> <p>Special circumstances included: his 27 year domestic relationship ended in 2010 and it was agreed that on receipt of the LSCP to divide the assets; he remarried in 2011 and had two children (he paid a significant dowry to the parents of the bride in Thailand); he forfeited property (household contents, vehicles) in verbal agreement with his former partner and he provided an interest free loan of \$200,000 to her; he provided a breakdown as to how the LSCP was spent; relocation costs to Australia from Thailand with his family.</p>	<p>Special circumstances established.</p> <p>\$110,000 was removed from the CPP calculation on the basis of the unexpected reneging by his former partner on the private loan (loss of \$95,000) and in the special travel costs associated with travel relating to a sick and dying parent in Europe where some of those special costs have a direct connection with Vollebregt's compensable injury (\$15,000.00).</p> <p>Remitted to DSS for recalculation.</p>
<p>Keys v Secretary, Department of Social Services [2017] AATA 2099 2.11.2017</p>	<p>Keys had suffered a workplace injury, including brain and spinal injuries. LSCP was \$333,400.70 with CPP of 16.9.2015-8.11.2016. Keys relocated to Thailand to marry and had two children there. Keys then returned to Australia and divorced his spouse 1.7.2012. On 23.2.2016 Keys was advised mortgages on properties were in default. Noted there was a decision to split assets with former partner once LSCP received.</p> <p>Family Court orders 20.5.2016 required Keys to pay wife \$136,408 by 12.8.2016 and if not made wife would become trustee.</p> <p>DSS accepted that Mr Keys' circumstances had changed since the commencement of the CPP (although not significantly) and that he was experiencing strained financial circumstances, but contended that Keys used the majority of the LSCP to pay legal costs of Family Court proceedings, even where, at the beginning of the CPP, two properties were subject to significant mortgages and to the outcome of Family Court proceedings and, further, his financial position was similar to other people applying for benefits and is not out of the ordinary.</p>	<p>No special circumstances.</p> <p>There is no evidence that compared to other persons in receipt of the DSP and are subject to a preclusion period, that Mr Keys' circumstances are exceptional, unusual or uncommon.</p>

Case name, citation, date	Background	Outcome
<p>Souied v Secretary, Department of Social Services [2017] AATA 332 16.3.2017 Morris, Member</p>	<p>Souied received LSCP of \$293,988 arising from a workplace accident on 20.3.2008. CPP was applied from 19.3.2014-25.4.2017. It was alleged that part of the LSCP was stolen.</p>	<p>No special circumstances were found and the decision was affirmed. There was no evidence that a sizeable amount of the LSCP was stolen, rather Souied was found to be naive.</p>
<p>Fairthorne v Secretary, Department of Social Services [2016] AATA 34 29.1.2016 Perton, Member</p>	<p>Fairthorne suffered a serious workplace-caused disease from 20.10.2006, which continued to cause difficulties. Weekly payments were received from the onset of illness and LSCP was received on 24.2.2009 in the sum of \$50,500 and a further LSCP of \$375,000 on or around 5.6.2013, which included economic loss. Fairthorne had signed an authority to settle proceedings on 13.5.2013 acknowledging he would be subject of CPP until about the end of 2014. Centrelink advised by letter to Fairthorne and his solicitors of 30.5.2013 that the CPP was 18.5.2013-22.12.2017. Fairthorne applied for DSP on 15.6.2013 which was rejected due to the CPP. ARO and AAT1 affirmed the decision and Fairthorne appealed to AAT2 citing 'special circumstances', which included:</p> <ul style="list-style-type: none"> • Significant medical issues; • His brother suffering a terminal illness at the time he settled his LSCP claim; • The incorrect advice regarding CPP received from his lawyers; • He had spent the majority of the LSCP which included a purchase of a farm; • His home was in need of urgent repairs. 	<p>AAT2 found special circumstances were established and reduced the relevant LSCP, in order to determine CPP, by \$20,000, due the repairs needed to Fairthorne's home, which was in serious and potentially dangerous disrepair. [45] ... the Tribunal does not believe anything would be gained by the community if he were forced to sell the house which may well be for much less than he paid given its current condition and location. The Tribunal accepts that repairs are needed urgently and believes \$20,000 to be a sensible figure to use given there are ancillary repairs to plaster, guttering etc that are required. The Tribunal finds that the situation in which Mr Fairthorne finds himself in relation to his damaged home and his need to make it liveable constitutes special circumstances. The incorrect advice from the lawyer was not considered to be a special circumstance given Centrelink advised of the correct CPP within weeks of the LSCP [47].</p>

Case name, citation, date	Background	Outcome
<p>Zhang v Secretary, Department of Social Services [2015] AATA 668</p>	<p>DSP was declined due to CCP until 2026, arising from a LSCP in excess of \$700,000.</p> <p>Zhang sought a waiver of the CPP citing special circumstances of legal costs associated with obtaining the LSCP. The following circumstances were submitted:</p> <ul style="list-style-type: none"> • LSCP was received by way of judgment and not settlement, the applicant therefore did not agree to a compensation sum. • Proceedings were long and complex through no fault of Zhang. Two defendants each denied liability and the case ran for nine days with all parties instructing senior and junior barristers, respectively. • Zhang likely was not properly advised in relation to legal costs due; • Zhang's solicitor was also stripped of his licence due to overcharging clients (although Zhang was not a party to these proceedings); • <u>the breakdown of his relationship which caused the applicant to pay his ex-wife \$60,000 to remove her name from the property;</u> • <u>the decision to sponsor a new wife to come from China;</u> • <u>the repayment of debts;</u> • <u>investment in a business that failed;</u> • <u>purchase of cars.</u> 	<p>AAT2 found special circumstances were established and reduced to relevant LSCP to determine CCP by \$200,000 (due to legal costs incurred).</p> <p>AAT2 accepted Zhang's submissions regarding the LSCP proceedings being long and complex and that he was probably not properly advised. AAT2 considered the Zhang's poor English skills to be a relevant factor.</p> <p><u>The remaining issues were not considered to be special circumstances (namely the relationships, payment to ex-wife, repayment of debts, investment and cars).</u></p>
<p>Lawson v Secretary, Department of Social Services [2018] AATA 2140 16.5.2018 Stefaniak, Member</p>	<p>Lawson sustained a workplace injury on 6.9.11 and received a LSCP of \$450,000. The CPP was calculated to 10.11.2020. Lawson contended the following were special circumstances:</p> <ul style="list-style-type: none"> • Strained financial circumstances. He did not get the \$200,000 he said he needed to keep going for about five years before he got his settlement payment and this caused him to borrow \$80,000 from his son and \$15,000 from a friend (although this friend had left Australia). • \$30,000 spent on two trips to visit family in Queensland. • paying for such as a computer for \$7,500 for his youngest son, child support, and various presents for his children. • Ill health including vascular problems with his legs. <p>AAT2 noted that at first glance, it seemed Lawson had spent the majority of his LSCP over a few months.</p>	<p>Special circumstances established: CPP reduced to 12.2.2019.</p> <p>Whilst Lawson had spent the LSCP irresponsibly, he had worsening vascular health and was living out of his car.</p> <p>AAT2 held that, because the injury got worse after the accident, it was unrelated to the accident and was the main inhibiting factor, arguably unforeseen and unexpected.</p> <p>AAT2 noted that it is not so much a sudden ill health but his health has deteriorated – his vascular problems with his legs are something that had deteriorated. Whilst it is not sudden, it is outside his control.</p> <p>AAT2 noted that documentation to support claims must be produced, and Lawson was found to have done this through Dr Tam's evidence.</p>

Case name, citation, date	Background	Outcome
<p>Milovanovic v Secretary, Department of Social Services [2020] AATA 4166 16.10.2020 Groom, Senior Member</p>	<p>Milovanovic was awarded WC and received periodic payments up until 6.2014 when periodic payments were ceased. Milovanovic commenced legal action for recovery of the periodic payments and, after legal dispute lasting over three years, was successful in having the decision overturned. On 26.7.2017 Milovanovic became entitled to LSCP totalling \$139,116.80 in lieu of the unpaid periodic payments for the period 30.6.2014–3.8.2017 (relevant period) and his ongoing periodic payments were also recommenced.</p> <p>Milovanovic appealed the AAT1 decision affirming ARO decision to recover \$52,822.40 for payments to Milovanovic and \$37,264.93 to his spouse (considered concurrently). Charge was found to be correct and the remaining issue was whether special circumstances established.</p> <p><u>Milovanovic contended the decision was unfair and the hardship suffered was usual, uncommon or exceptional, including:</u> his poor health and future health prospects; his changed circumstances due to more recent micro seizures and MS diagnosis, which has shortened life expectancy and increased medical needs; associated difficult financial circumstances; <u>the stress and pressure faced in fighting the insurer for the periodic payments.</u></p>	<p><u>Special circumstances were established.</u></p> <p>AAT2 was not satisfied that Milovanovic's health conditions or financial circumstances satisfied the special circumstances requirement. However, <u>the legal costs associated with pursuing the WC payments gave rise to special circumstances as the entire periodic payment had not been received by Milovanovic (hence dollar for dollar reduction was unjust and unfair).</u></p> <p>AAT2 found that it was appropriate to exercise the discretion to treat the \$29,099 received from the WC insurer as not having been made.</p>

Case name, citation, date	Background	Outcome
<p>Fogg v Secretary, Department of Social Services [2019] AATA 1099 23.05.2019 Grigg, Member</p>	<p>On 13.10.2008, Fogg suffered a workplace injury resulting in deep vein thrombosis, severe complex regional pain syndrome, a Baker's cyst and blood clotting. On 29.5.2015 he was awarded LSCP of \$1,002,734.18 plus costs in the Supreme Court of NSW. On 20.7.2016, DSS was informed and recovery was determined to be nil.</p> <p>On 21.3.2017, Allianz advised DSS that a claim had settled and that all payments had ceased to be paid on 19.8.2016, with no likely LSCP in the future. Payments between 15.10.2008-15.8.2016 were \$274,352.18. On 27.3.2017, DSS wrote to Fogg advising that CPP was from 16.8.2016-13.9.2021.</p> <p>Fogg sought review of the decision on the grounds that: only \$293,937.13 was received out of the total settlement sum: he was significantly disabled and required extensive care and support; had limited mobility and needed crutches and a mobility scooter. Correspondence from Fogg's solicitors was relied on to a similar effect, as well as Fogg living in a mobile home without substantial fixed or appropriate accommodation and Fogg had a therapy dog to help with depression.</p> <p>Further to the above, Fogg's partner was in receipt of benefits and had significant health issues including the need to have oxygen tanks which she was not permitted to have until they resided in a dwelling. They purchased lands and a dwelling but had no remaining funds. They were unable to afford private rentals or housing as Fogg had no income and could not remain in the caravan due to Fogg's mobility issues.</p> <p>Fogg submitted that the LSCP should not be treated as being made because of inability to work and he and his partner had been supporting themselves solely from the carer payments. Further, he received limited sum he received from the awarded damages despite his injuries (about only 26%), financial hardship and medical issues.</p> <p>Of the \$283,000 received, Fogg only accounted for \$185,500 and was unable to advise AAT2 of how the remaining \$97,500 was spent.</p> <p>DSS contented that the CPP ended on 28.12.2021 not 13.9.2021 as previously advised due to DSS failure to include interest payment.</p>	<p>CPP calculated as 16.8.2016-28.12.2021.</p> <p>Legal fees were not a special circumstance, despite Fogg receiving only 26% of the awarded damages after deduction. At [76]:</p> <p>'Unfortunately, it is not uncommon that successful litigants do not end up with the lion's share of the judgment or award made in their favour, particularly given the legal fees that are payable. It is also common for matters to be protracted and for appeals to further delay and add to the expense of the proceeding.'</p> <p>AAT2 said that in itself was not enough and one must consider all of the circumstances.</p> <p>Given Fogg could not account for the sum received from settlement, together with his ownership of potentially realisable assets (vehicle, caravan, kit home, quad bike), AAT2 'cannot find that Mr Fogg is suffering from financial hardship'. It was noted that the expenditure included something that would be considered in the expensive range (car for \$110,000).</p> <p>NB Fogg was represented by counsel.</p>

Case name, citation, date	Background	Outcome
<p>Morgan v Secretary, Department of Social Services [2020] AATA 322 26.02.2020 Mitchell, Member</p>	<p>Morgan's application for DSP and NSA were refused on basis of a CPP. Morgan had suffered a workplace injury on 17.5.2016 and lodged a WC compensation claim, receiving periodic payments during 18.7.2016-16.5.2018. Morgan had informed DSS on 27.6.2018 and DSS wrote back on 6.7.2018 advising that Centrelink payments may need to be repaid and it may stop Morgan receiving payments in the future. This information was also provided to Morgan's solicitors.</p> <p>Morgan lodged an application for DSP on 25.1.2019. The WC claim was settled in 3.2019. CPP was calculated to be from 17.5.2018 to 12.8.2020. There was also a charge to be repaid from the WC settlement.</p> <p>Morgan lodged an application for NSA on 23.10.2019. DSS rejected both the DSP and NSA on 7.11.2019. The ARO and AAT1 affirmed the decision. Morgan sought second tier review.</p> <p>The special circumstances included: Morgan had no money since 09.2019; Morgan was homeless; Morgan bought a block of land (with caravan and shed)(being 70% of his settlement)and he was unable to resell it; Morgan's friends were providing him a couch to sleep on and some food; Morgan referred to information received from Centrelink over the phone to spend 51% of his settlement in order to receive benefits again; Morgan had no capacity for work.</p>	<p>The decision under review was affirmed: CPP was correct and no special circumstances existed.</p> <p>It was not accepted that the Centrelink offer would have advised that 51% of the compensation be spent to become entitled to benefits. Even if that advice had been given, Morgan spent 7/8 of the settlement. Morgan 'had been getting by until September 2019'. It was found that [t]here is nothing out of the ordinary about the Applicant's circumstances' and Morgan 'was aware of and understood the operation of the preclusion period and should have budgeted appropriately...'</p> <p>NB Morgan was self-represented</p>

Case name, citation, date	Background	Outcome
<p>Boyle v Secretary, Department of Social Services [2019] AATA 604 29 March 2019 Puplick, Senior Member</p>	<p>Boyle was involved in a MVA on 15.5.2006 and from 16.6.2006-27.8.2010 she received weekly payments prior to the LSCP on 13.10.2010 for \$1,348,426.97 plus costs of \$82,749.40.</p> <p>DSS advised Boyle the CPP was 28.8.2010-17.10.2031.</p> <p>On 5.5.2017 Boyle lodged a claim for the single parenting payment. DSS rejected the application on 8.5.2017 due to the CPP.</p> <p>The ARO affirmed the decision as did AAT1. AAT2 review was sought.</p> <p>NB the CPP was calculated on more than 50% of the award given the findings on past loss of earnings and future loss of earnings as detailed in the assessment made by the CARS Assessor of the (then) NSW Motor Accidents Authority.</p> <p>Special circumstances were alleged as follows: financial hardship - no money left from LSCP and she was financially destitute; after deductions Boyle was left with only \$854,000 of the LSCP (although her statutory declaration indicated she was left with \$990,000).</p> <p>Boyle provided an explanation as to where the money had been spent including a relationship in Thailand where she supported her partner's business and lifestyle (by way of a fraud against her); her daughter born in 2015 suffers rare medical condition and requires full time care. AAT2 noted that there was 'simply no way for the Tribunal to know how realistic any of these claims might be.'</p>	<p>The CPP calculated by the DSS was correct.</p> <p>AAT2 found no special circumstances to exist, noting:</p> <ul style="list-style-type: none"> • '57. Put simply, there is no substantive evidence before the Tribunal to verify the claims made by the Applicant in relation to the alleged thefts by Mr Noothong, nor is there any evidence that she has taken any steps to recover the alleged stolen money through the instigation of legal proceedings in either Australia or Thailand. <p>There is no evidence of the Applicant's approach to any bank or financial institution in Australia to seek their aid in recovery of money illegally removed from any of her accounts.'</p> <ul style="list-style-type: none"> • <i>'People do make poor personal choices. However, they cannot offload the cost of those choices onto the public purse. They are personally made and have to be personally borne. It is not up to a government agency to determine whether a marriage partner is suitable, caveat emptor.'</i> [111] • The evidence supported that Boyle's daughter required expensive treatment not subsidised by PBS and that her daughter required transport by motor vehicle as public transport was not a viable option. There was however no evidence to make a determination on the likely costs. [67-68]. • <i>'Above all in this, there is the position of a vulnerable and sick child. She stands to be the victim of the Applicant's poor decision-making. No child deserves such a sentence.'</i> [117] • Financial hardship was noted in that Boyle 'would be faced with having to find money to afford rent or that she and her daughter would, in effect, become homeless' [72]. • AAT2 said there was 'no reason to doubt the Applicant's statement that she suffers from Post-Traumatic Stress Disorder (PTSD) and high levels of both depression and anxiety.' • Boyle was unable to access housing or rent assistance due to the CPP. <p>NB Boyle was self-represented.</p>

Case name, citation, date	Background	Outcome
<p>Bamford v Secretary, Department of Social Services [2018] AATA 1402 28.5.2018 Kelly, Member</p>	<p>A LSCP of \$797,985 was received and CPP was assessed to conclude 15.11.223. Bamford alleged her mother was misappropriating funds. Bamford had a mortgage and \$100,000 remained in a fixed deposit for her use. Bamford had significant mental health and addiction issues.</p>	<p>No special circumstances were found. AAT2 noted Bamford's mother was not acting in her own interests, reflected in the fact that the property was not purchased in the mother's name, but in Bamford's name. AAT2 did not accept that Bamford's expenditure was under the undue influence of her mother.</p>
<p>Bruinger v Secretary, Department of Social Services [2017] AATA 1244 10.8.2017 Sosso, Member</p>	<p>Bruinger suffered serious work related injuries (left femur fractures, left fibula fracture, left gluteal degloving injury and scarring) on 24.3.2011 when he was run over by a truck. A LSCP of \$640,000 was received and a CPP applied from 16.10.2013-8.1.2019. Bruinger protested the disparity between his payout figure (\$640,000), the deemed economic loss component (50% rule: \$257,390) and the actual amount he received after most, but not all, repayments and disbursements (\$168,000). In this instance the amount of deemed economic loss was in excess of the amount the Applicant actually received. This of itself does not result in a finding of special circumstances.</p>	<p>CPP was reduced to end on 28.8.2017 as the following special circumstances existed: (a) strained financial circumstances; (b) ill-health; (c) Bruinger has not acted irresponsibly or spent the LSCP in a profligate manner; (d) application of full CPP would result in Bruinger being deprived of independence and the stress from that would have deleterious implications on his health and longevity; (e) to impose the full CPP would be illusory as the evidence disclosed Bruinger would be penniless imminently and a further application would likely be made, by which time Bruinger would be destitute. In short, the imposition of the CPP would be futile and cruel; (f) Bruinger received a net payout considerably less than the deemed economic loss.</p>
<p>Lawson v Secretary, Department of Social Services [2018] AATA 2140 16.5.2018 Stefaniak, Member</p>	<p>Lawson sustained a workplace injury on 6.9.11 for which he received a LSCP of \$450,000. CPP was calculated to be until 10.11.2020. AAT2 noted that excessive legal costs involved in settling of a claim for compensation is a relevant factor in this case. Of the \$56,500.00, AAT2 said approximately \$50,000 was excessive. It was noted that a bill of about \$100,000 would be more reasonable, meaning that approximately \$45,000 would be excessive.</p>	<p>Special circumstances established (however not in relation to excessive legal costs) and CPP reduced to 12.2.2019. Whilst Lawson had spent the LSCP irresponsibly on boats, gifts and other personal expenses, he had worsening vascular health and was living out of his car.</p>

III health

Case name, citation, date	Background	Outcome
<p>Stavroudakis v Secretary, Department of Social Services [2020] AATA 5229 24.12.2020</p>	<p>Stavroudakis applied for the carer payment and carer allowance on 5.7.2019 but it was rejected due to a CPP until 3.4.2022. ARO and AAT1 affirmed the decision and Stavroudakis appealed to AAT2.</p> <p>Stavroudakis had been in a violent marriage since 2004 the husband no longer lived with her due to intervention orders. Stavroudakis lived with her two children.</p> <p>Stavroudakis continued to care for her children despite her injuries and with little financial assistance from her spouse. It was noted the spouse starting using the drug ice after her accident and had stopped work.</p> <p>Stavroudakis' daughter was diagnosed with cancer in the knee in 6.2019 and underwent extensive surgery and chemotherapy. Stavroudakis returned to work in 6.2020 but was on leave without pay due to care needs of her daughter.</p> <p>Stavroudakis suffered various conditions including PTSD.</p> <p>It was noted that it would be difficult to sell her home (which was secure with cameras and dogs) and, if she did sell it, it would be difficult to stay with her parents.</p> <p>Stavroudakis conceded being informed of the CPP.</p>	<p>Stavroudakis was accepted as a credible and truthful person 'who has suffered far too many misfortunes'. AAT2 was not prepared to find Stavroudakis had spent LSCP recklessly.</p> <p>AAT2 found that Stavroudakis was in significant financial hardship, noting her expenses greatly outweighed her funds leaving aside the issue of sale of her home. AAT2 noted Stavroudakis' reliance on food handouts from Salvation Army to feed her family and that she would often go without to ensure her kids were fed.</p> <p>AAT2 found that there was no reason Stavroudakis and her family could not keep their dogs or why they should not have protection, 'given all that has happened'.</p> <p>Cremean referred to his decision in Hardiman and referred to the Guides and his views on what consideration ought to be given to the value of all cash and realisable assets. HE found the purchase of her home to be a wise decision:</p> <p><i>'92 ... it would be an appalling result if I should decide that the Applicant should have sold her house so that the Respondent can avoid meeting an obligation under the Act should special circumstances otherwise arise. An obligation under the Act, if otherwise one arises, should not be circumvented in this way.'</i></p> <p>If sold, AAT2 commented that it would likely be difficult to find a rental property to meet her needs.</p> <p>Whilst the health of Stavroudakis was not considered a special circumstance, the daughter's health was as an economic kind which resulted in Stavroudakis being unable to work.</p> <p>Lastly, at [118] it was found Stavroudakis could not work or undertake training due to the demands on her and 'cannot raise funds on her own and must be dependent upon such assistance... This, on its own, is a special circumstance.'</p> <p>NB Stavroudakis was self-represented.</p>

Case name, citation, date	Background	Outcome
<p>Milovanovic v Secretary, Department of Social Services [2020] AATA 4166 16.10.2020 Groom, Senior Member</p>	<p>Milovanovic was awarded WC and received periodic payments until 6.2014. Milovanovic commenced legal action for recovery of the periodic payments and, after legal dispute lasting over three years, was successful in having the decision overturned. On 26.7.2017 Milovanovic became entitled to LSCP totalling \$139,116.80 in lieu of the unpaid periodic payments in respect of the period from 30.6.2014-3.8.2017 (relevant period) and ongoing periodic payments were recommenced.</p> <p>Milovanovic appealed the AAT1 decision affirming ARO decision to recover \$52,822.40 for payments to Milovanovic and \$37,264.93 to his spouse (considered concurrently).</p> <p>Charge was found to be correct and the remaining issue was whether special circumstances established.</p> <p>Milovanovic contended the decision was unfair and the hardship suffered was usual, uncommon or exceptional, including: his poor health and future health prospects: his changed circumstances due to more recent micro seizures and MS diagnosis, which has shorted life expectancy and increased medical needs; associated difficult financial circumstances; the stress and pressure faced in fighting the insurer for the periodic payments.</p>	<p>Special circumstances were established.</p> <p>AAT2 was not satisfied that Milovanovic's health conditions or financial circumstances satisfied the special circumstances requirement. However, the legal costs associated with pursuing the WC payments gave rise to special circumstances as the entire periodic payment had not been received by Milovanovic (hence dollar for dollar reduction was unjust and unfair).</p> <p>AAT2 found that it was appropriate to exercise the discretion to treat the \$29,099 received from the workers' compensation insurer as not having been made.</p>

Case name, citation, date	Background	Outcome
<p>Monroe v Secretary, Department of Social Services [2020] AAT 355 26.02.2020 Mitchell, Member</p>	<p>Monroe sought review of AAT1 decision to affirm the Respondent's decision on: 14.1.2019 to cancel the DSP on the basis Monroe was subject to a CPP; and, 9.10.2019 rejecting NSA on basis Monroe was subject to a CPP.</p> <p>Monroe has suffered a workplace injury on 14.12.2015 and had made a WC claim and periodic compensation payments were received during 29.2.2016-10.9.2017. DSP was granted with effect from 11.9.2017. On 11.12.2018 the WC claim was settled resulting in DSP being cancelled, with a CPP from 11.9.2019-29.01.2023. Monroe contacted DSS on 22.7.2019. DSS affirmed their decision.</p> <p>Monroe applied for NSA on 22.9.2019, which was rejected due to CPP. On review, DSS affirmed the decision. First tier review at the AAT was unsuccessful.</p> <p>Monroe proceeded to AAT2 on the basis that the CPP calculation was incorrect, due to the form submitted by the WC insurer, and special circumstances applied namely Monroe: exhausted the compensation funds by July/August 2019 and provided a breakdown of how it was spent; did not realise until July 2019 that the money was exhausted; did not understand how the CPP was going to be calculated; attempted a return to work; had physical and psychiatric conditions which had deteriorated following settlement of the WC claim; had been living with a friend since 12.2019 and would otherwise not have anywhere to live; friend also provided food and medication if and when possible; was to relocate from Cairns to the Sunshine Coast to be closer to doctors and someone that could look after the spinal cord stimulator.</p>	<p>Monroe's application for NSA was set aside and remitted to DSS for consideration in accordance with the direction that the CPP concluded on 21 September 2019.</p> <p>Decision to cancel the DSP was affirmed.</p> <p>Whilst the AAT2 found that Monroe's relevant CPP was from 11.9.2017-29.1.2023 as assessed by DSS, special circumstances reduced the period.</p> <p>'95. The Applicant and her medical practitioners have provided evidence that the stress of her financial situation is severe.</p> <p>96. The Tribunal is satisfied that the enforcement of the full preclusion period would result in further severe stress for the Applicant with potentially serious health ramifications which would require public health and support intervention.</p> <p>97. The Applicant contended that the calculation of the preclusion period was unfair and that the incorrect amounts were used. The calculation of a preclusion period is set out in the Act and it is not open for the Applicant to challenge the efficacy of the 50% rule which extends to the deeming provisions. While the fact that the actual amount received by an applicant is less than the deemed economic loss is not a special circumstance on its own, that does not mean the Tribunal can never take into consideration circumstances of the particular case. However, it is noted that, judicial authority leans against finding special circumstances merely on this point.</p> <p>98. In this case the Applicant received less than 20% of the compensation awarded. While this is not enough alone to make a finding of special circumstances, in conjunction with the other factors outlined above it is open to the Tribunal to factor in the minimal nature of the final payout figure in finding that special circumstances exist.'</p> <p>Findings in support of special circumstances are provided at [99]:</p> <ul style="list-style-type: none"> • she was in straitened financial circumstances; • she was in ill-health; • her conduct in relation to the expenditure of her compensation payment was impaired by her mental and physical health; • application of full CPP period will result in a further decline in her health; and • she received a net payout considerably less than the deemed economic loss.

Case name, citation, date	Background	Outcome
<p>Wilkes v Secretary, Department of Social Services [2019] AATA 5288 9.12.2019 East, Member</p>	<p>In 11.2009, Wilkes was diagnosed with peritoneal mesothelioma and was totally incapacitated for work. He received weekly benefits between 06.2010 and 06.2012 and a LSCP on 16.5.2012 of \$1,021,038.70 inclusive of costs for exposure to asbestos.</p> <p>Wilkes made two separate applications for the age pension, both denied on basis of CPP until 28.4.2021. ARO affirmed the decision, as did AAT1.</p> <p>Special circumstances raised included: diagnosis of peritoneal mesothelioma in 2009; admission to hospital with bowel obstruction due to adhesions in 2015 and again in 2018 and 2019; chemotherapy up until 2014 after which he opted for alternative therapies; financial hardship.</p> <p>AAT could not decipher where Wilkes' settlement money was spent.</p>	<p>No special circumstances existed.</p> <p>CPP was determined by AAT2 to be 1.6.2012 to 17.6.2022 however applied the 28.4.2021 as DSS had previously incorrectly advised Wilkes.</p> <p>NB both parties represented.</p>
<p>Soliman v Secretary, Department of Social Services [2019] AATA 4799 19.11.2019 Kirk, Senior Member</p>	<p>Soliman suffered a work related injury to the low back and neck, as well as suffering shock and exacerbation of psychological/psychiatric injuries on 11.5.2002. A WC claim was made and weekly payments were received from 7.9.2004-8.4.2015. Further, a LSCP of \$46,000 was agreed to on 5.2.2009 and \$400,000 on 27.2.2015.</p> <p>DSS advised that the CPP was from 9.4.2015-30.10.2019. On 30.11.2017, before the CPP ended, Soliman made an application for DSP, which was denied on 5.12.2017. ARO and AAT1 affirmed the decision. Soliman sought AAT2 review.</p> <p>Special circumstances alleged included: need for private medical insurance to undertake recommended surgery; care centre fees for autistic children; financial and medical hardship if CPP not shortened.</p> <p>Of the \$400,000 lump sum payment, Soliman received \$225,000 after legal costs. Soliman provided AAT2 with a breakdown of how the majority of the funds were used (including holidays) albeit \$71,000 was unaccounted.</p>	<p>AAT2 found that the CPP was miscalculated and was instead from 9.4.2015 to 23.10.2019.</p> <p>AAT2 found that no special circumstances existed, as:</p> <ul style="list-style-type: none"> • medical expenses were not unexpected or unforeseen and were factored into the LSCP; • there was no evidence to suggest the procedure(s) were urgent or were likely to be successful; • childcare fees calculated to about \$270 per month and, when compared to the total LSCP, were not excessive; • Soliman's spending between 4.2015 and 5.2018 at about \$5,000 per month was 'imprudent, if not reckless, when he was aware that he needed to support himself with the compensation proceeds until October 2019'. <p>Soliman had expended 80% of the \$225,000 compensation in the three years following receipt.</p>

Case name, citation, date	Background	Outcome
<p>Taulaga v Social Department of Social Services [2019] AATA 5408 14.11.2019 Grigg, Member</p>	<p>From 18.9.2015 to 12.10.2015, Taulaga received NSA following which he received DSP due to a longstanding serious lung condition, bronchiectasis. He also received the Pensioner Education Supplement from 6.2.2017.</p> <p>On 10.8.2014, Taulaga's daughter died in hospital and proceedings were commenced against the hospital for negligence. DSS was advised on 11.10.2017 of the LSCP of \$325,000 for pathological grief reaction and gambling addiction. Taulaga received approximately \$250,000 after reductions. The executor advised she too received \$250,000 in compensation and that she felt pressured to accept the settlement.</p> <p>In the medical negligence claim, Taulaga claimed \$730 per week gross for economic loss from his daughter's death until receiving DSP, totalling \$38,000. Taulaga was advised the CPP was 10.8.2014 to 14.10.2017 and a charge of \$50,724.75 was raised.</p> <p>Taulaga's lawyers wrote to DSS on 20.10.2017 advising the CPP was not reflective of the economic loss claim and requested review. ARO and AAT1 affirmed the decision.</p> <p>Taulaga's estate contended the LSCP should be treated as not being made as: it was not reflective of economic loss component; Taulaga suffered significant ill health; the executor was concerned about her ability to support the family after Taulaga's death.</p> <p>Other special circumstances raised included: children attending private schools; recent diagnosis of ADHD for Taulaga's son, requiring medication and treatment, including speech therapy not covered by Medicare; Taulaga's spouse now the only receiver of benefits which was only just covering the family costs.</p> <p>NB Taulaga passed away prior to the hearing of the application and his executor/sole beneficiary was made a party to the proceedings.</p>	<p>AAT2 found CPP correct as 10.8.2014-14.10.2017.</p> <p>AAT2 was not provided details of how Taulaga's LSCP was spent or how the spouse was suffering from financial hardship. Private school was discretionary expense.</p> <p>The conditions arising from the death of Taulaga's daughter were different but were not a special circumstance.</p> <p>The death of Taulaga's daughter was however a special circumstance as [t]he loss of a child at a very young age can hardly be said to be a common occurrence, particularly when the child's life was potentially lost as a result of a Hospital's alleged negligence.'</p> <p>Financial hardship was not established particularly given authority provides 'it would be "inequitable for the applicant to claim financial hardship when he owns such a valuable asset and does nothing to realise on it".</p> <p><i>'86. However, straightened (sic) financial circumstances are not a prerequisite to a finding that special circumstances exist.</i></p> <p><i>87. What is more unusual however is that, as a result of her husband's death [arising from medical conditions related to the DSP], she is now the sole provider for two very young children. To suggest that a single mother in this situation should sell her home and further unsettle her family who have been thrown two of the most traumatic events a family can face, would be a harsh outcome and an inappropriate one. The Tribunal finds that it is not reasonable to expect Mrs Taulaga to sell her home to provide for her family's financial needs at this time.'</i></p> <p>Reliance was made on Moran and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2008] AATA 951 which found the daughter's death to be 'sufficiently out of the ordinary to justify the application of the discretion allowed under s 1184K(1).</p> <p>CPP was reduced to nil.</p>

Case name, citation, date	Background	Outcome
<p>Secretary, Department of Social Services v McKenzie [2019] AATA 3271 4.09.2019 Britten-Jones, DP</p>	<p>McKenzie suffered a workplace injury on 10.9.2012 and received weekly benefits until 12.2013 when cleared to return to work. His position however was no longer available and he received NSA sporadically throughout 2014–2016 inclusive.</p> <p>On 22.5.2018, GIO paid LSCP of \$129,034.08 representing lost earnings between 2.3.2015 and 26.12.2016. On 29.5.2018 a compensation recovery notice was provided to GIO, raising charge of \$43,789.04, which included \$22,895.96 of NSA paid to McKenzie's partner. ARO affirmed the decision but AAT1 directed DSS to refund \$21,894.50. DSS sought AAT2 review.</p> <p>McKenzie alleged there were special circumstances in relation to the CPP including: ill health; inability to pursue litigation in the WC claim due to lack of funds; his bankruptcy; gambling.</p>	<p>No special circumstances were found to exist, namely:</p> <ul style="list-style-type: none"> his ill health was not of a more severe nature than many DSP recipients; symptoms of anxiety and depression were not included in injury for which compensation was paid in the first place and there was no diagnostic evidence before the AAT; McKenzie's financial troubles were already present before Centrelink made the recovery against the compensation; there was no evidence before AAT to suggest McKenzie suffered a gambling addiction and it was noted AAT is loath to consider gambling a special circumstance where it is a lifestyle choice rather than an underlying pathological condition. <p>NB McKenzie was represented.</p>
<p>Carden v Secretary, Department of Social Services [2018] AATA 1499 31.5.2018 Edwardes, Member</p>	<p>Carden was involved in a MVA on 11.6.2011 and received a LSCP of \$353,658.78. CPP was assessed as 11.6.2011–19.12.2014.</p> <p>Special circumstances alleged including: money was required for health care of wife; wife suffered a cerebral haemorrhage in 2012 which resulted in a coma for five months and rehabilitation of six months; wife suffered a number of disabilities including memory failure; Carden suffered medical problems including injury to his arm, diabetes and heart disease.</p> <p>Carden was in receipt of a carer payment and his wife was receiving DSP. Further, Carden had received rental assistance until he purchased a home with the LSCP.</p>	<p>No special circumstances were established.</p> <p>No evidence to support circumstances were significantly different to those receiving carer payment and DSP.</p> <p>AAT2 was of the opinion that the Carden could have continued receiving rental assistance and using the LSCP for medical purposes or could have provided less money towards the purchase of the property. AAT2 considered these were his decisions and therefore did not find the Applicant's condition is exceptional, unusual or uncommon.</p>
<p>Lawson v Secretary, Department of Social Services [2018] AATA 2140 16.5.2018 Stefaniak, Member</p>	<p>Lawson sustained a workplace injury on 6.9.11 for which he received a LSCP of \$450,000. The CPP was calculated to be until 10.11.2020.</p>	<p>Special circumstances established and CPP reduced to 12.2.2019.</p> <p>Whilst Lawson had spent the LSCP irresponsibly on boats, gifts and other personal expenses, he had worsening vascular health and was living out of his car.</p>

Case name, citation, date	Background	Outcome
<p>Findley v Secretary, Department of Social Services [2018] AATA 460 7.2.2018 Tavoularis, Member</p>	<p>Findley on DSP since 5.3.2008. Received LSCP of \$22,918.50 and CPP calculated as 14.4.2015-29.6.2015. Findley suffered a number of medical issues including arthritis and emotional confusion.</p>	<p>Special circumstances not established. Medical issues not cataclysmic enough to warrant a reduction. Noted Findley had money left over each fortnight after personal expenses.</p>
<p>Risteovski v Secretary, Department of Social Services [2017] AATA 127 3.2.2017 Kelly, Member</p>	<p>Risteovski suffered a workplace injury on 13.4.2009 and received a total LSCP of \$181,063.94 over the years 2011, 2014 and 2015. CPP applied 26.9.2015-21.9.2018. Risteovski applied for DSP on 4.4.2016. Risteovski alleged the following special circumstances: high legal costs of approximately \$70,000; the payment he received was all back pay; he had to repay his children, one son and two daughters, because they had given him money, including paying out his mortgage; he had no money; he could not afford to separate; and he had some health issues and could not afford medication.</p>	<p>No special circumstances were found. AAT2 considered Risteovski's evidence was unreliable as the bank records did not align with his evidence, namely that he owed his child \$145,000.</p>

Case name, citation, date	Background	Outcome
<p>Bolewski v Secretary, Department of Social Services [2016] AATA 959 29.11.2016</p>	<p>Bolewski argued that the CPP should be reduced due to special circumstances, namely: poor legal advice given Centrelink recovery was not advised; legal costs which had already been considered by the Legal Services Commission and was found mostly consistent with the costs agreement; ill health, which was worsening; financial hardship.</p>	<p>Bolewski's 'defective' legal advice was a special circumstance as she was not informed of the amount Centrelink would recover until after settlement was reached. It was unlikely Bolewski could bring a complaint against the former lawyer with any reasonable prospect of recovery.</p> <p><i>[75] The cost of the failure of Ms Bolewski's lawyer lies against her, and she has but few resources to deal with it – she has poor physical and mental health, no financial reserves and very little education. She is struggling to make ends meet and cannot work. She fears that she will be unable to meet the cost of future medical treatment. In these circumstances, I think that it is appropriate to exercise discretion to treat part of her compensation amount as not having been made.</i></p> <p>The remaining arguments were not accepted as:</p> <ul style="list-style-type: none"> Legal Services Commissioner investigated legal costs; even though her health condition was worsening, it was said that: 'It is reasonable to expect that the compensation settlement amount Ms Bolewski agreed to accept made some provision for future medical expenses. These circumstances, alone, are not special...' <i>'Ms Bolewski's ailments and their effects do not amount to special circumstances that set her case apart from others – many are those in similar circumstances of advancing age, worsening impairments and increasing incapacity for work'</i> Despite having limited resources and ongoing debt, these were considered to be unexceptional.
<p>Knibbs v Secretary, Department of Social Services [2016] AATA 951 28.11.2016 Morris, Member</p>	<p>Knibbs suffered a workplace injury in 2000 and in 2010 received a LSCP of \$882,800 of which \$375,000 related to economic loss. CPP advised to be 28.8.2010-4.10.2019 and Knibbs signed a letter of acknowledgement noting he understood.</p> <p>On 9.10.2015 Knibbs made a claim for NSA and relied on a letter of his psychologist that he could not work. This was rejected an ARO but advised that the CPP was actually until 7.12.2019 and AAT1 affirmed the decision.</p> <p>Knibbs used the LSCP to purchase multiple properties and other things. Knibbs conceded that at 2015 he had about \$120,000 in savings apart from his house, vehicle and household effects and wasn't sure how the money had been spent. Knibbs was said to be suffering elements of paranoia.</p>	<p>AAT1 decision affirmed.</p> <p>AAT2 found that: (a) they could not disregard the ability to realise valuable assets; and (b) he was given a substantial LSCP and spent a large portion without explanation.</p> <p>Whilst mental health issues were acknowledged, they were not such to satisfy special circumstances.</p>

Case name, citation, date	Background	Outcome
<p>Kalokerinos v Secretary, Department of Social Services [2016] AATA 745 26.9.2016</p>	<p>Kalokerinos alleged special circumstances existed due to financial hardship and ill health, emotional state and reduced life expectancy.</p>	<p>Financial hardship application failed as he had significant assets, including shares, property and over \$1,000,000 in superannuation. Further, at [28] whilst Kalokerinos suffered ill health and stress, those could not be taken into account as they were in connection with the injuries giving rise to the LSCP. There was no medical evidence to show that his ill health was more severe than the majority of DSP recipients.</p>
<p>Davis v Secretary, Department of Social Services [2016] AATA 82 18.2.2016</p>	<p>Davis had previously had CPP calculation reduced by \$160,000 and later tried to apply for DSP, which was refused and further attempt to have CPP reduced. The basis of the application was that he was in ill health and financial hardship. Davis conceded his health was better than many DSP recipients and, in relation to financial hardship, many large withdrawals of money were unexplained.</p>	<p>AAT2 affirmed the decision. [28] <i>In contrast to the factual circumstances facing the Tribunal in Taylor, here Mr Davis has spent a much greater amount of money (albeit over a longer period) but offers little in explanation for that expenditure. Like the Tribunal in Taylor, I feel some reluctance to exercise the compassionate discretion contained in s 1184K in that context. Mr Davis owns no home, drives a car worth \$10,000 and has about \$6,500 in the bank, despite receiving over half a million dollars less than eight years ago. It is hard to escape the supposition that the money may have been spent less than wisely, and as such diminishes the justification for his call on the public purse to support him now.</i></p>
<p>Reid v Secretary, Department of Social Services [2016] AATA 62 8.2.2016</p>	<p>Reid appealed to AAT2 alleging special circumstances of: ill health, financial hardship</p>	<p>No special circumstances found. It was not established that her ill health was distinct from conditions for which she received the compensation. The financial hardship claim was as she owned a property with \$300,000 equity. She used her compensation to pay down her liability. Financial hardship was therefore not out of the ordinary.</p>

Case name, citation, date	Background	Outcome
<p>Krebs v Secretary, Department of Social Services [2015] 14.12.2015</p>	<p>Krebs suffered a workplace injury to her right shoulder on 26.6.2003 and became eligible for the age pension in 2011 and started receiving it about a year later. CPP was 7.3.2012-16.04.2013 and a charge of \$16,711.77 issued against her LSCP. Krebs appealed to AAT2 and alleged the following special circumstances: financial strain; Krebs required care which was provided by her husband; she was unable to work do housework (and was paying a housekeeper); assets totalled \$393,000 including the jointly owned home; Krebs LSCP included past economic loss only.</p>	<p>No special circumstances were established. Financial position was strained and health issues were acknowledged but not exceptional. The perceived unfairness of the CPP (Krebs only receiving damages for the past economic loss and CPP applying after retirement age) is not a special circumstance.</p>
<p>Macartney v Secretary, Department of Social Services [2015] AATA 957 11.12.2015</p>	<p>DSP application was rejected due to CPP. Macartney appealed and sought that the CPP be waived given her health condition had not improved since the injury was sustained and she was unable to work.</p>	<p>No special circumstances were established. Insufficient evidence provided to establish deterioration since the accident or inability to work part-time. Financial evidence was also not credible and AAT2 could not be satisfied as to how the LSCP had been spent within two years.</p>

Emotional state

Case name, citation, date	Background	Outcome
<p>DLKP v Secretary, Department of Social Services [2020] AATA 3682 18.9.2020 Parker, Member</p>	<p>DLKP received a LSCP of \$336,088 on 1.9.2017, arising from a workplace accident. CPP was calculated to be 16.9.2017-1.1.2021.</p> <p>DLKP applied for NSA on 24.8.2018, which was rejected due to the CPP. The decision was affirmed by ARO and AAT1 and AAT2 appeal was pursued.</p> <p>The evidence included that DLKP deposited the LSCP in 1.2018 and withdrew the funds in cash as soon as he was able to do so, which he kept stored in a plastic box in the walk-in-robe of his former house. At the time, DLKP was (and remained) greatly impacted by the demise of his long term relationship. Evidence of DLKP's treating clinical psychologist indicated the demise had caused an exacerbation of a pre-existing medical condition of severe depression and anxiety. DLKP had not been able to see his child following the breakup.</p> <p>DLKP attempted to take his own life in mid-2018 and was subsequently hospitalised in a psychiatric facility, during which time his house was burgled, which was corroborated by police records and also indicated a spate of burglaries nearby to DLKP's home. This resulted in an extension to his hospitalisation, also corroborated by the medical records.</p> <p>Property settlement with his ex-partner meant no remaining interest in the family home, corroborated by Court documents.</p> <p>DLKP reported personal debt at about \$100,000, which included corroborated debt to family law solicitors of almost \$50,000 and the remaining on credit cards.</p> <p>DLKP was now living with his mother and he was receiving food donations through his community/church.</p> <p>DSS conceded special circumstances existed and that the CPP should end 15.4.2020.</p>	<p>Special circumstances established.</p> <p>AAT2 found, on the balance of probabilities, that:</p> <ul style="list-style-type: none"> DLKP had kept \$315,000 in cash from the LSCP stored in this home at the time of the burglary; those funds in their entirety were stolen during the burglary (with other items); DLKP is financially destitute and relies on the charity of others to survive; DLKP has serious psychological and physical medical conditions which impaired his ability to function and to make rational decisions, even when guided by others; and DLKP's prospects of employment were not positive so ability to improve his financial position through paid employment was remote. <p>AAT2 commented that DLKP was 25% responsible for the unfortunate situation he was in. Accordingly, AAT2 found it appropriate to treat 75% of the LSCP of \$315,000 as not having been made (namely the CPP was to be calculated on remaining 25%). The matter was remitted to the DSS for recalculation on that basis.</p>
<p>Vollebregt v Security, Department of Social Services [2018] AATA 11 12.1.2018 Morris, Member</p>	<p>Vollebregt was a hotel manager and suffered a number of workplace injuries resulting in LSCP of \$725,000. CPP was 19.10.2011-21.4.2020.</p> <p>Special circumstances included: his 27 year domestic relationship ended in 2010 and it was agreed that on receipt of the LSCP to divide the assets; he remarried in 2011 and had two children (he paid a significant dowry to the parents of the bride in Thailand); he forfeited property (household contents, vehicles) in verbal agreement with his former partner and he provided an interest free loan of \$200,000 to her; he provided a breakdown as to how the LSCP was spent; relocation costs to Australia from Thailand with his family.</p>	<p>Special circumstances established and remitted to DSS for recalculation but not due to emotional state.</p> <p>\$110,000 was removed from the CPP calculation on the basis of the unexpected renegeing by his former partner on the private loan (loss of \$95,000) and in the special travel costs associated with travel relating to a sick and dying parent in Europe where some of those special costs have a direct connection with Vollebregt's compensable injury (\$15,000.00).</p>

Case name, citation, date	Background	Outcome
<p>Dimitrov v Secretary, Department of Social Services [2017] AATA 1384 28.8.2017 McGrowdie, Member</p>	<p>Dimitrov received a LSCP of \$375,000 with a CPP applying until 23.7.2019.</p> <p>At the time of the LSCP, Dimitrov had debts of about \$100,000. Dimitrov also noted he had to support his daughter's wedding and marriage as well as house payments for his ex-wife and mother due to Macedonian custom.</p> <p>He had been struggling with an overall general depressive and anxiety condition with drinking, gambling and suicidal thoughts.</p> <p>The applicant was under the care of Dr Gordon Hyde, a psychiatrist who had recently provided a report dated 22 June 2017, in which he indicates that the applicant remained depressed and anxious with features of PTSD.</p>	<p>Special circumstances were established and \$168,500 was considered to have not been made as part of the LSCP.</p> <p>Included also in the consideration is the applicant's psychological condition which manifested itself in terms of drinking, gambling, nicotine addiction and suicidal thoughts.</p>
<p>Kalokerinos v Secretary, Department of Social Services [2016] AATA 745 26.9.2016</p>	<p>Kolokerinos alleged special circumstances existed due to financial hardship and ill health, emotional state and reduced life expectancy.</p>	<p>The financial hardship application failed as he had significant assets, including shares, property and over \$1,000,000 in superannuation. Further, at [28]</p> <p>While I accept that Mr Kalokerinos suffers from ill health and stress associated with his injuries, the Guide states that an 'injury that a person received compensation for cannot generally be regarded as a special circumstance'. [9] I also have no medical evidence before me to show that Mr Kalokerinos' ill health is more severe than the majority of disability support pension recipients or that his life expectancy is reduced.</p>

Decision making capacity

Case name, citation, date	Background	Outcome
<p>Keskin v Secretary, Department of Social Services [2020] AATA 2101 6.7.2020 Evans, Member</p>	<p>Keskin was injured in a MVA in 12.2004 and received a LSCP in 06.2008 in the sum of \$1,200,000 clear of costs and disbursements.</p> <p>Keskin applied for NSA on 3.1.2018 but was rejected due CPP of 11.12.2004-28.5.2027. ARO and AAT1 affirmed the decision. AAT2 appeal was pursued.</p> <p>Keskin did not have supporting documentary evidence to show how LSCP was spent and it was estimated that \$432,500 was unaccounted.</p> <p>Keskin was separated under the same roof, together with his children.</p> <p>Records showed Keskin had travelled overseas 14 times since receiving his LSCP and in 2013 and 2014 he allegedly conceived two children in the Philippines (providing some money to them via EFT). There was no supporting documentation in relation to this.</p> <p>Keskin alleged he had repaid his father a loan of \$250,000.</p> <p>Keskin provided a breakdown as to how the LSCP had been spent although conflicting evidence in AAT1 and AAT2 proceedings had been given.</p> <p>Keskin relied on medical evidence in support of a traumatic brain injury affecting his decision-making skills.</p>	<p>No special circumstances established where Keskin could not account for the entire settlement sum.</p> <p>AAT2 said:</p> <p>56. <i>In this case I am unable to conclude that Mr Keskin is currently in straitened financial circumstances. I accept that Mr Keskin appears to be a poor record keeper but the money for which he has not accounted is substantial. By his own evidence, his father has offered to assist him, and is brother is doing the same. There is every indication that Mr Keskin's father and brother seek to support him where they can.</i></p> <p>...</p> <p>63. <i>Mr Keskin contends that he has spent all of his compensation payment and is now in straitened financial circumstances. In circumstances where a considerable portion of the compensation is unaccounted for it is not possible to conclude that Mr Keskin is in straitened financial circumstances... particularly so when the unreported sums are so substantial and Mr Keskin's application was made nearly a decade before the preclusion period is due to end.</i></p> <p>Lastly, AAT2 considered that Keskin had a large realisable asset in his house, although it was subject of an ongoing legal dispute.</p> <p>NB had Keskin been able to account for all the LSCP, the decision may have been different.</p>

Case name, citation, date	Background	Outcome
<p>Secretary, Department of Social Services v Mills [2019] AATA 75323 April 2019 Burke, Member</p>	<p>Mills received NSA from 12.9.2012-21.2.2013. Mills slipped down starts at a shopping Centre on 20.2.2013 and allegedly sustained injuries for which she lodged a claim. Mills was in receipt of weekly benefits from 6.3.2013-17.2.2015. On 11.9.2013, Mills advised DSS that she was receiving workers' compensation payments. On 16.9.2013, DSS advised Mills that some or all of the benefits paid to her or her partner would need to be paid back and that there might be a CPP. Mills received DSP from 25.3.2015-19.4.2017. On 7.7.2016, Mills received LSCP in respect of her claim in the sum of \$920,000 (with no entitlement to costs and no economic loss). On 20.4.2017, DSS advised Mills of the CPP of 15.2.2015-30.5.2023 and that a charge of \$35,902.16 was raised. AAT1 had found special circumstances in order to reduce the CPP, although commented strongly that Mills' poor decision were not in itself a special circumstance. Rather, the dire situation that Mills found herself, together with her family, was what made that application successful. On 24.11.2017, Mills lodged an NSA application. On 28.11.2017 DSS rejected the application on the basis of the CPP. Mills lodged a compensation recovery statement of financial circumstances on 6.12.2017. DSS sought AAT2 review of the decision that special circumstance applied <i>as there was insufficient evidence to support its findings of fact. Specifically, there was insufficient evidence regarding how and why large amounts of money were expended by the Respondent....</i> [2]</p> <p>The issue for AA2 was whether the whole or part of Mills' LSCP could be treating as not having been made on the basis that there were special circumstances in her case.</p>	<p>AAT2 found no special circumstances existed and AAT1's decision was set aside. In short, AAT2 found that that Mills had:</p> <ul style="list-style-type: none"> not substantiated her claims regarding how she had expended her LSCP including money taken from her brother (who was an ice addict), the failed business venture, loan repayments etc and it could not be ascertained what money was still available; not substantiated her claims regarding her mental health and its impact on decision making process, despite accommodating Mills with extensions to do so; largely spent the money on what most would consider as 'highly unreasonable in all the circumstances' including an 'extravagant holiday'; not satisfied AAT2 regarding her claims about her lawyers misleading her in respect of the LSCP.

Case name, citation, date	Background	Outcome
<p>Zhang v Secretary, Department of Social Services [2015] AATA 668</p>	<p>DSP declined due to CCP until 2026, arising from a LSCP in excess of \$700,000. Zhang sought a waiver of the CPP citing special circumstances of legal costs associated with obtaining the LSCP. The following circumstances were submitted:</p> <ul style="list-style-type: none"> • LSCP was received by way of judgment and not settlement, the applicant therefore did not agree to a compensation sum. • Proceedings were long and complex through no fault of Zhang. Two defendants each denied liability and the case ran for nine days with all parties instructing senior and junior barristers, respectively. • Zhang likely was not properly advised in relation to legal costs due; • Zhang's solicitor was also stripped of his licence due to overcharging clients (although Zhang was not a party to these proceedings); • the breakdown of his relationship which caused the applicant to pay his ex-wife \$60,000 to remove her name from the property; • the decision to sponsor a new wife to come from China; • the repayment of debts; • investment in a business that failed; • purchase of cars. 	<p>AAT2 found special circumstances were established and reduced to relevant LSCP to determine CCP by \$200,000 (due to legal costs incurred).</p> <p>AAT2 accepted Zhang's submissions regarding the LSCP proceedings being long and complex and that he was probably not properly advised. AAT2 considered the Zhang's poor English skills to be a relevant factor.</p> <p>The remaining issues were not considered to be special circumstances (namely the relationships, payment to ex-wife, repayment of debts, investment and cars).</p>

Case name, citation, date	Background	Outcome
<p>Chaker v Secretary, Department of Social Services [2020] AATA 3128 25.8.2020 Puplick, Senior Member</p>	<p>Chaker had received LSCP totalling \$484,300. Chaker applied for NSA on 30.11.2018, which was rejected due to CPP of 19.1.2018-13.10.2022. ARO and AAT affirmed the decision. Chaker submitted special circumstances applied, including:</p> <ul style="list-style-type: none"> • no remaining money from the LSCP and he was 'financially destitute'; • the above resulted from a series of financial decisions, including home renovations and paying off a substantial part of the mortgage; • the home modifications were required due to Chaker's disabilities (although some expenses were said to be outside the disability needs such as fencing and painting); • Chaker suffered a number of physical and mental health issues. 	<p>No special circumstances established although found CPP had been calculated incorrectly, namely that the LSCP for which CPP was to be calculated on was to be reduced by \$95,100 (being \$14,600 for renovations on Chaker's home due to disability and \$80,500 being the amount Chaker did not receive from the LSCP). It was remitted to DSS for recalculation.</p> <p>AAT2 noted that a number of the home renovations (\$146,000) were not specifically need on account of disability. Those discretionary renovations totalled at least \$55,000).</p> <p>AAT2 noted that there was insufficient evidence and it was not obvious as to how the physical and mental health issues manifested themselves as disabilities which needed to be managed in daily living.</p> <p>AAT2 noted that Chaker discharged part of his mortgage (\$224,000 paid) after receiving notice of the CPP and there was evidence to suggest that Centrelink had advised over the phone that Chaker would need to take into account when spending the LSCP that it was to last him until the end of the CPP.</p>

Case name, citation, date	Background	Outcome
<p>Monroe v Secretary, Department of Social Services [2020] AAT 355 26.02.2020 Mitchell, Member</p>	<p>Monroe sought review of AAT1 decision to affirm the Respondent's decision on: 14.1.2019 to cancel the DSP on the basis Monroe was subject to a CPP; and, 9.10.2019 rejecting NSA on basis Monroe was subject to a CPP.</p> <p>Monroe has suffered a workplace injury on 14.12.2015 and had made a WC claim and periodic compensation payments were received during 29.2.2016-10.9.2017. DSP was granted with effect from 11.9.2017. On 11.12.2018 the WC claim was settled resulting in DSP being cancelled, with a CPP from 11.9.2019-29.01.2023.</p> <p>Monroe's application for NSA on 22.9.2019 was rejected due to CPP. On review, Centrelink affirmed the decision. AAT1 also was unsuccessful.</p> <p>AAT2 review was pursued on the basis that the CPP calculation was incorrect, due to the form submitted by the WC insurer and that the special circumstances included:</p> <ul style="list-style-type: none"> • Monroe exhausted the compensation funds by July/August 2019 and provided a breakdown of how it was spent; • Monroe did not realise until July 2019 that the money was exhausted; • Monroe did not understand how the CPP was going to be calculated; • Monroe attempted a return to work; • <u>Monroe's physical and psychiatric conditions had deteriorated following settlement of her workers' compensation claim;</u> • Monroe had been living with a friend since 12.2019 and would otherwise not have anywhere to live; • Monroe's friend also provided food and medication if and when possible; • Monroe was to relocate from Cairns to the Sunshine Coast to be closer to doctors and the person that could look after the spinal cord stimulator. 	<p>The AAT1 NSA decision was set aside and remitted to the DSS for consideration in accordance with the direction that the CPP concluded on 21 September 2019.</p> <p>The DSP decision was affirmed.</p> <p>Findings in support of special circumstances are at [99]:</p> <ul style="list-style-type: none"> • the Applicant is in straitened financial circumstances; • the Applicant is in ill-health; • the Applicant's conduct in relation to the expenditure of her compensation payment was impaired by her mental and physical health; • application of the full preclusion period will result in a further decline in the Applicant's health; and • the Applicant received a net payout considerably less than the deemed economic loss.

Financial circumstances

Case name, citation, date	Background	Outcome
<p>Mahfoud v Secretary, Department of Social Security [2021] AATA 140 5.2.2021 Evans, Member</p>	<p>Mahfoud suffered injury in an accident on 2.2019 and received a LSCP of \$875,000 (\$594,973.60 after various deductions). Mahfoud applied for NSA on 7.2.2020 and for DSP the next day. On 25.3.2020 Mahfoud applied for the JobSeeker Payment. All applications were rejected due to the CPP until 4.4.2024. ARO and AAT1 affirmed the decision. Mahfoud appealed to AAT2 in respect of the three applications. Mahfoud contended special circumstances existed, namely: he had exhausted the LSCP and he had no money. Issues were whether a CPP applied and, if so, whether special circumstances existed. Mahfoud contended the special circumstances were: he had no money to eat; his parents were going to 'kick him out of the house'; he suffered physical and psychological injuries in the accident. It was noted that shortly after receiving the LSCP, Mahfoud travelled to Lebanon (business class flights were upgraded to first class) for dental work and he moved out of his family home into rental accommodation. Bank statements showed an opening balance of \$576,244.7 on 29.3.2019 and \$580.05 by 31.6.2019. Mahfoud conceded he 'was a bit of an over-spender' although AAT2 noted that this does not appear to be the main cause of concern. Mahfoud was introduced to a trading platform by a friend (CFD) losing \$270,634.66. Medical evidence was relied on, which supported (amongst other things) a diagnosis of gambling addiction.</p>	<p>AAT2 found that CPP applied from 19.11.2015-27.3.2024. Given Mahfoud was trading in CFDs the day before applying for NSA, AAT2 was not minded to shorten the CPP on the basis of previous case law which provided that to do so, as a consequence of reckless spending, would invite others to do the same.</p>

Case name, citation, date	Background	Outcome
<p>DLKP v Secretary, Department of Social Services [2020] AATA 3682 18.9.2020</p>	<p>DLKP received a LSCP of \$336,088 on 1.9.2017, arising from a workplace accident. CPP was calculated to be 16.9.2017-1.1.2021.</p> <p>DLKP applied for NSA on 24.8.2018, which was rejected due to the CPP. ARO and AAT1 affirmed the decision and AAT2 appeal was pursued.</p> <p>The evidence included that DLKP deposited the LSCP in 1.2018 and withdrew the funds in cash as soon as he was able to do so, which he kept stored in a plastic box in the walk-in-robe of his former house. At the time, DLKP was (and remained) greatly impacted by the demise of his long term relationship. Evidence of DLKPs treating clinical psychologist indicated the demise had caused an exacerbation of a pre-existing medical condition of severe depression and anxiety. DLKP had not been able to see his child following the breakup.</p> <p>DLKP attempted to take his own life in mid-2018 and was subsequently hospitalised in a psychiatric facility, during which time his house was burgled - as corroborated by police records, and also indicated by a spate of burglaries nearby to DLKP's home. This resulted in an extension to his hospitalisation, also corroborated by the medical records.</p> <p>Property settlement with his ex-partner meant no remaining interest in the family home, corroborated by Court documents.</p> <p>DLKP reported personal debt at about \$100,000, which included corroborated debt to family law solicitors of almost \$50,000 and the remaining on credit cards.</p> <p>DLKP was now living with his mother and he was receiving food donations through his community/church.</p> <p>DSS conceded special circumstances existed and that the CPP should end 15.4.2020.</p>	<p>Special circumstances established.</p> <p>AAT2 finds, on the balance of probabilities, that:</p> <ul style="list-style-type: none"> • the applicant had kept \$315,000 in cash from the lump sum stored in this home at the time of the burglary; • those funds (i.e., \$315,000) in their entirety were stolen during the burglary (among other items); • the applicant is financially destitute and relies on the charity of others to survive; • the applicant has serious psychological and physical medical conditions which impair his ability to function and to make rational decisions, even when guided by others; and • the applicant's prospects for employment are not positive due to his conditions, so his ability to improve his financial position through paid employment is remote. <p>AAT2 commented that DLKP was at least partially responsible for the unfortunate situation he was in at 25%. Accordingly, AAT2 found it appropriate to treat 75% of the LSCP of \$315,000 as not having been made (namely the CPP was to be calculated on remaining 25%). The matter was remitted to the DSS for recalculation on that basis.</p>

Case name, citation, date	Background	Outcome
<p>Zuzul v Secretary, Department of Social Services [2020] AATA 3681 18.9.2020 Alexander, Senior Member</p>	<p>Zuzul was injured at work on 4.3.2017. Centrelink was advised of LSCP in 3.2017 in the sum of \$37,537.50 and on 12.3.2018 of \$270,000. CPP was calculated and advised to be from 28.3.2017-30.3.2021.</p> <p>Zuzul travelled to Croatia with her spouse from 12.2018-10.2019 and on return applied for carer allowance, which was accepted. Zuzul then applied for the carer payment. Centrelink rejected that application on 22.10.2019 due to the CPP.</p> <p>ARO and AAT1 affirmed the decision and AAT2 review was pursued.</p> <p>The special circumstance alleged were that Zuzul and her spouse were suffering financial hardship and Zuzul was her spouse's full time carer.</p> <p>Insufficient evidence was provided as to why the spouse required a full-time carer. It was noted the spouse was receiving the full benefits of a single age pension in addition to Zuzul's carer allowance.</p> <p>It was noted that Zuzul owned a relatively new vehicle.</p>	<p>No special circumstances established.</p> <p>AAT2 noted the available evidence suggested that Zuzul had intended to spend most of the LSCP on the purchase of the house in Taree and, when the purchase did not proceed, Zuzul spend the money generously with no apparent consideration of her future needs during the three-year CPP. Further, it was unclear why Zuzul's spouse required a full-time carer</p>
<p>Chaker v Secretary, Department of Social Services [2020] AATA 3128 25.8.2020 Puplick, Senior Member</p>	<p>Chaker had received LSCP totalling \$484,300. Chaker applied for NSA on 30.11.2018, which was rejected due to CPP of 19.1.2018-13.10.2022. ARO and AAT affirmed the decision. Chaker submitted special circumstances applied, including:</p> <ul style="list-style-type: none"> • no remaining money from the LSCP and he was financially destitute; • the above resulted from a series of financial decisions, including home renovations and paying off a substantial part of the mortgage; • the home modifications were required due to Chaker's disabilities (although some expenses were said to be outside the disability needs such as fencing and painting); • Chaker suffered a number of physical and mental health issues. 	<p>No special circumstances established although found CPP had been calculated incorrectly, namely that the amount of the LSCP for calculation of the CPP was to be reduced by \$95,100 (being \$14,600 for renovations on Chaker's home due to disability and \$80,500 being the amount Chaker did not receive from the LSCP). It was remitted to DSS for recalculation.</p> <p>AAT2 noted that a number of the home renovations (\$146,000) were not specifically needed on account of disability. Those discretionary renovations totalled at least \$55,000).</p> <p>AAT2 noted that there was insufficient evidence as to how the physical and mental health issues manifested themselves as disabilities which needed to be managed in daily living.</p> <p>AAT2 noted that Chaker discharged part of his mortgage (\$224,000 paid) after receiving notice of the CPP and that there was evidence to suggest that Centrelink had advised over the phone that Chaker would need to take into account when spending the LSCP that it was to last him until the end of the CPP.</p>

Case name, citation, date	Background	Outcome
<p>Hamilton v Secretary, Department of Social Services [2020] AATA 1918 26.6.2020 Davies, Senior Member</p>	<p>Hamilton was injured in a motor vehicle accident on 24.5.2007 and received WC payments between 25.6.2007-1.3.2010. Hamilton also received NSA from 9.11.2010. Hamilton settled her LSCP claim on 9.7.2012 in the sum of \$1,400,000 plus rehabilitation and legal costs. The WC insurer recovered \$343,976.99 from the settlement sum.</p> <p>CPP was calculated to be 2.3.2010-21.4.2025 with a charge of \$26,499.58. Hamilton was advised of this decision on 28.8.2012 together with notice that NSA was cancelled from 27.8.2012.</p> <p>Hamilton advised Centrelink on 3.1.2018 that she received \$700,000 in the hand'. Hamilton reapplied for NSA on 4.12.2017. It was rejected on 5.12.2017 on the basis of the CPP.</p> <p>Hamilton sought ARO and AAT reviews, both affirming the original decision. AAT2 appeal was pursued.</p> <p>Hamilton had been working full time at \$72,000 but was terminated and was only able to find casual work earning \$600 per fortnight. Her parents were not assisting with her expenses and she was paying board to her mother, whom she lived with.</p> <p>Hamilton's ex-partner took all of the proceeds from the sale of her house, totalling \$470,000 and there were threats of physical abuse if she resisted. Hamilton did not go to police for fear of what the ex-partner would do to her. Complete bank statements were not provided.</p> <p>Hamilton noted providing family money up to \$75,000 in total.</p>	<p>AAT2 found that special circumstances applied on the basis of severe financial hardship, namely: only casual work could be found due to injuries; and personal loans were in arrears; Hamilton had taken advance of the early superannuation redemption scheme to redeem \$10,000 to pay the personal loans.</p> <p>AAT2 did not consider the money provided to her mother and sisters to be extravagant expenses.</p> <p>AAT2 found Hamilton had been subjected to an abusive domestic relationship including financial abuse, with the ex-partner taking a large sum of money resulting in financial deprivation and hardship. The ex-partner had taken all the proceeds from the sale of Hamilton's home in 12.2015.</p> <p>The CPP was reduced so that it ended on 21.5.2020, a period of about five years.</p>

Case name, citation, date	Background	Outcome
<p>Hardiman v Secretary, Department of Social Services [2020] AATA 1794 17.6.2020 Cremean, Senior Member</p>	<p>Hardiman was in a 2014 MVA and received LSCP of \$600,000 including \$26,000 costs. Hardiman applied for NSA on 7.2.2019, which was granted on 9.3.2019 with effect date of 25.1.2019. On 10.5.2019, it was determined that Hardiman's application should not have been accepted and payments were cancelled. Hardiman was advised of this and, further, that the NSA debt was waived.</p> <p>Hardiman sought review by ARO and AAT1, unsuccessfully, and AAT2 appeal was pursued. Hardiman alleged special circumstances existed.</p> <p>As a result of the MVA, Hardiman was hospitalised and had back surgery. Lymphoma was then discovered and a section of his bowel was removed. Hardiman now had a large hernia (described as large and unsightly) and still suffered from severe back pain. He could no longer work.</p> <p>Hardiman said he was careful about how he paid his LSCP and all that remained from it was the house he purchased for \$360,000, which he submitted was a good price and was not bought for investment. Hardiman indicated he was not prepared to sell the house. Hardiman submitted he was unable to afford food (resulting in considerable weight loss) and he had limited support. He was not prepared to take in a boarder (as he did not wish for people to walk on his carpet with shoes on).</p> <p>Hardiman alleged that his compensation moneys were \$574,000 and not \$600,000— with \$26,000 being incurred in legal costs. Hardiman alleged he did not know of a CPP and, in this regard, DSS appeared to accept that there was not a great deal in the correspondence or paperwork to alert Hardiman of CPP.</p> <p>Hardiman made very little of the fact that his lawyers in the compensation matter did not advise him of the CPP, except to say he was not advised by them of it. Hardiman advised AAT2 that he did not know about the CPP but, even if he had, he would not have been able to do anything differently.</p> <p>Hardiman also commented throughout the course of the proceedings of an intention of possibly committing a crime in order to return to prison and receive three meals per day.</p>	<p>CPP was reduced to 10.9.2019 as special circumstances existed, namely Hardiman:</p> <ul style="list-style-type: none"> • was in a position of extreme financial hardship beyond normally encountered in similar cases; without funds and without ability to access funds (limited to one meal of Weetbix per day and had lost a lot of weight); • had not made reckless financial decisions; • was not aware of the CPP and still was not reckless in spending the money; • was suffering ill-health and peculiar if not irrational thinking (with reference to the house carpets and possibility of committing a crime); • was not advised by his lawyers of the CPP. <p>AAT2 commented at [47] that</p> <p><i>'There is something odd in saying someone should have sold assets so that they could meet one of the criteria for special circumstances, which, when they have done so, they will not need to meet because they will then have the funds. Or to say that they should now do so, so that the Secretary does not have to exercise a discretion under the Act. I note that the Act does not say that the Secretary's discretion under s 1184K may only be exercised if satisfied an applicant has divested themselves of or liquidated assets. One reason for this could be that an applicant who has liquidated assets may not need the discretion to be exercised in their favour then after all.'</i></p> <p>NB Hardiman was self-represented and was described as 'very forthcoming – blunt, even – on some very personal matters'.</p>

Case name, citation, date	Background	Outcome
<p>Monroe v Secretary, Department of Social Services [2020] AAT 355 26.02.2020 Mitchell, Member</p>	<p>Monroe sought review of the AAT1 decision to affirm decision of: 14.1.2019 to cancel the DSP on the basis Monroe was subject to a CPP; and, 9.10.2019 rejecting NSA on basis Monroe was subject to a CPP.</p> <p>Monroe suffered a workplace injury on 14.12.2015 and made a WC claim. Periodic compensation payments were received during 29.2.2016-10.9.2017. DSP was granted with effect from 11.9.2017. On 11.12.2018 the WC claim was settled resulting in DSP being cancelled, with CPP from 11.9.2019-29.01.2023.</p> <p>Monroe contacted DSS on 22.7.2019. DSS affirmed their decision. Monroe applied for NSA on 22.9.2019, which was rejected due to CPP. On review, DSS affirmed the decision. AAT1 also affirmed the decision.</p> <p>Monroe sought second tier review at the AAT on the basis that the CPP calculation was incorrect, due to the form submitted by the workers' compensation insurer, and that further special circumstances applied as a result. The special circumstances included:</p> <ul style="list-style-type: none"> • Monroe exhausted the compensation funds by July/August 2019 and provided a breakdown of how it was spent; • Monroe did not realise until July 2019 that the money was exhausted; • Monroe did not understand how the CPP was going to be calculated; • Monroe attempted a return to work; • Monroe's physical and psychiatric conditions had deteriorated following settlement of her workers' compensation claim; • Monroe had been living with a friend since 12.2019 and would otherwise not have anywhere to live; • Monroe's friend also provided food and medication if and when possible; • Monroe was to relocate from Cairns to the Sunshine Coast to be closer to doctors and the person that could look after the spinal cord stimulator. 	<p>Findings in supports of special circumstances are provided at [99]:</p> <ul style="list-style-type: none"> • the Applicant is in strained financial circumstances; • the Applicant is in ill-health; • the Applicant's conduct in relation to the expenditure of her compensation payment was impaired by her mental and physical health; • application of the full preclusion period will result in a further decline in the Applicant's health; and • the Applicant received a net payout considerably less than the deemed economic loss.

Case name, citation, date	Background	Outcome
<p>Taulaga v Social Department of Social Services [2019] AATA 5408 14.11.2019 Grigg, Member</p>	<p>From 18.9.2015 to 12.10.2015, Taulaga was in receipt of NSA, following which he was placed on DSP due to longstanding serious lung condition, bronchiectasis. He also received the Pensioner Education Supplement from 6.2.2017.</p> <p>On 10.8.2014, Taulaga's daughter died in hospital and proceedings were commenced against the hospital for negligence. DSS was advised on 11.10.2017 that a LSCP was agreed in the sum \$325,000 for pathological grief reaction and gambling addiction. Taulaga received approximately \$250,000 after reductions. The executor advised she too received \$250,000 felt pressured to accept the settlement.</p> <p>In the medical negligence claim, Taulaga claimed \$730 per week gross for economic loss from his daughter's death until receiving DSP, which totalled about \$38,000. DSS advised Taulaga that the CPP was from 10.8.2014 to 14.10.2017 and a charge of \$50,724.75 was raised.</p> <p>Taulaga's lawyers wrote to DSS on 20.10.2017 advising that the CPP was not reflective of the economic loss claim and requested review. ARO and AAT1 affirmed the decision.</p> <p>Taulaga's estate contended the LSCP should be treated as not having been made as: it was not reflective of economic loss component; Taulaga suffered significant ill health; and the executor (spouse) was concerned about her ability to support the family following Taulaga's death.</p> <p>Other special circumstances raised included: the children attending private schools; recent diagnosis of ADHD for Taulaga's son, requiring medication and treatment, including speech therapy which was not covered by Medicare; and Taulaga's spouse now the only receiver of benefits which was only just covering the family costs.</p> <p>NB Taulaga passed away prior to the hearing of the application and his executor/sole beneficiary was made a party to the proceedings.</p>	<p>AAT2 found the CPP to be correctly calculated as 10.8.2014-14.10.2017.</p> <p>AAT2 was not provided with details of how the balance of Taulaga's settlement was spent or how the spouse was suffering from financial hardship. Private schools is considered a discretionary expense.</p> <p>Whilst the conditions arising from the death of Taulaga's daughter were different, they could not be considered a special circumstance. The death of Taulaga's daughter was however a special circumstance as [t]he loss of a child at a very young age can hardly be said to be a common occurrence, particularly when the child's life was potentially lost as a result of a Hospital's alleged negligence.'</p> <p>Financial hardship was not established particularly given authority provides 'it would be "inequitable for the applicant to claim financial hardship when he owns such a valuable asset and does nothing to realise on it".'</p> <p>'86. However, straightened (sic) financial circumstances are not a prerequisite to a finding that special circumstances exist.</p> <p>87. What is more unusual however is that, as a result of her husband's death [arising from medical conditions related to the DSP], she is now the sole provider for two very young children. To suggest that a single mother in this situation should sell her home and further unsettle her family who have been throw two of the most traumatic events a family can face, would be a harsh outcome and an inappropriate one. The Tribunal finds that it is not reasonable to expect Mrs Taulaga to sell her home to provide for her family's financial needs at this time.'</p> <p>Reliance was made on Moran and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2008] AATA 951 which found the daughter's death to be 'sufficiently out of the ordinary to justify the application of the discretion allowed under s 1184K(1)'. CPP was reduced to nil.</p>

Case name, citation, date	Background	Outcome
<p>Drury v Secretary, Department of Social Services [2019] AATA 5246 7.11.2019 (written decision 5.12.2019) Fairall, Senior Member</p>	<p>Drury was 71 years of age, not physically well, and was responsible for caring for his partner (not residentially qualified to receive benefits) and his 99 year old neighbour for whom he received carer payment.</p> <p>Drury had worked for than thirty years in heavy industries such as refineries and power stations. He was diagnosed with asbestos pleural disease on 4.9.2003.</p> <p>Drury received periodic compensation payments after he retired on 28.10.2008. He was also granted DSP due to prostate cancer and cervical spondylosis and asbestos pleural disease effective 13.11.2008. DSP was reduced dollar for dollar to account for the benefits received from the workers' compensation insurer.</p> <p>Drury again raised the 'perceived injustice' regarding the dollar for dollar reduction for review. The ARO affirmed the decision, made almost ten years prior and AAT1 affirmed the ARO's decision. The issues were whether the dollar for dollar reduction was correct and, further, whether any special circumstance apply.</p> <p>Drury alleged that the decision placed him in extreme financial hardship.</p> <p>Drury was noted to be a reformed gambler and he had previously been bankrupted as a result.</p>	<p>AAT2 affirmed the decision.</p> <p>In relation to the dollar by dollar reduction, the decision states at [27] that:</p> <p><i>'The applicant was clearly not in receipt of DSP when he suffered the injury in respect of which the dust payments were made. When he commenced receiving DSP, it was therefore liable to be adjusted to offset his dust payments so as to avoid double compensation, consistent with the policy of the social security law. Under these circumstances, his 'daily rate of compensation affected payment is reduced by the amount of the person's daily rate of periodic compensation.'</i></p> <p>The financial material did 'not support a finding that his position is worse than the majority of social security recipients'. It was noted that Drury's position would improve when his partner became residentially qualified for benefits, which was expected in the near future. Further, it was said that <i>'[i]t would not be unkind to suggest that his past habits and addictions have contributed to his present lack of savings.'</i></p> <p>Health conditions, including coeliac disease and tumours, which were not chronic were not so serious that he was unable to get about or stop his service as a carer.</p>

Case name, citation, date	Background	Outcome
<p>Burgess v Secretary, Department of Social Services [2019] AATA 2429 07.08.2019 Alexander, Senior Member</p>	<p>In 6.2010, Burgess suffered severe injuries to lower limbs which included crush injury to the right leg requiring below knee amputation. He received regular compensation payments totalling \$99,737.16 until 6.1.2012 and then LSCP in 03.2012 and 12.2013 totalling \$1,038,149.90.</p> <p>Sometime following the injuries, he qualified for DSP. DSP was cancelled on 6.1.2014 due to the LSCP. He was also advised of a CPP from 7.1.2012–10.12.2021 and he was required to repay \$31,910.93.</p> <p>On 16.4.2018, Burgess lodged a carer payment application in respect of his elderly father but it was rejected as he was 'not caring for the caree'. This was affirmed by the ARO and AAT1, also noting the CPP applied.</p> <p>DSS submitted that the CPP was miscalculated and should actually apply until 31.12.2022.</p> <p>Burgess alleged special circumstances.</p> <p>Burgess conceded that over a five year period he had gambled over \$500,000. The club he regularly attended never questioned him and encouraged it.</p> <p>Burgess was required to sell his home (owned outright) and moved into rental accommodation. At the time of the hearing, he was living in his converted campervan parked in his son's backyard.</p> <p>Burgess said he was being supported by his son but it was limited and could not continue until the end of the CPP. Burgess conceded he was aware of the CPP but had no plan as to how he would cope during the period.</p> <p>Burgess relied on a recent report from a clinical psychologist, which was obtained after the relevant period. No treatment was obtained during the relevant period.</p> <p>DSS contended it was a lifestyle choice and that the clinical psychologist report should not be considered as it did not relate to the relevant period.</p>	<p>The evidence supported a clinical diagnosis for pathological gambling (DSM-IV) or gambling disorder (DSM-V), which was supported by the retrospective diagnosis, financial documents, evidence that the club had encouraged Burgess gambling, and the need to rely on his son.</p> <p>Centrelink's errors in quantifying the CPP was not to be corrected, as it would be 'unfair' to do so.</p> <p>CPP further reduced to approximately 12 months from the date of the hearing, namely 30.6.2020 (being a reduction of almost 1.5 years).</p> <p><i>'80. The particular factors which I consider to be relevant with respect to my decision include Mr Burgess' untreated gambling disorder, his age, his current severe financial hardship with no apparent prospects of relief, his willingness to continue psychological treatment and the fact that that he has completed almost 8 of the 10 years of the preclusion period that was originally calculated.'</i></p> <p>NB Burgess self-represented.</p>

Case name, citation, date	Background	Outcome
<p>Fogg v Secretary, Department of Social Services [2019] AATA 1099 23.05.2019 Grigg, Member</p>	<p>On 13.10.2008, Fogg suffered a workplace injury resulting in deep vein thrombosis, severe complex regional pain syndrome, a Baker's cyst and blood clotting. On 29.5.2015 he was awarded \$1,002,734.18 plus costs in the Supreme Court of NSW. On 20.7.2016, DSS was informed of the LSCP. Recovery was determined to be nil.</p> <p>On 21.3.2017, Allianz advised DSS that a claim had settled and that all payments had ceased on 19.8.2016, with no likely LSCP in the future. Payments between 15.10.2008-15.8.2016 were \$274,352.18. On 27.3.2017, DSS wrote to Fogg advising that he was subject of a CPP from 16.8.2016-13.9.2021.</p> <p>Fogg sought review of the decision on the grounds that: only \$293,937.13 was received out of the total settlement sum; he was significantly disabled and required extensive care and support; had limited mobility and needed crutches and a mobility scooter. Correspondence from Fogg's solicitors was relied on to a similar effect as well as Fogg living in a mobile home without a substantial fixed or appropriate accommodation and Fogg had a therapy dog to help with depression.</p> <p>Further to the above, Fogg's partner was in receipt of benefits and had significant health issues including the need to have oxygen tanks which she was not permitted to have until they resided in a dwelling. They purchased lands and a dwelling but had no remaining funds. They were unable to afford private rentals or housing as Fogg had no income and could not remain in the caravan due to Fogg's mobility issues.</p> <p>Fogg submitted that the LCP should not be treated as being made because he is unable to work and he and his partner had been supporting themselves solely from the carer payments. Further, it was submitted a special circumstance was the limited sum he received from the awarded damages despite his injuries (about only 26%), financial hardship and medical issues.</p> <p>Of the \$283,000 received, Fogg only accounted for \$185,500 and was unable to advise AAT2 of how the remaining \$97,500 was spent.</p> <p>DSS contented that the CPP ended on 28.12.2021 not 13.9.2021 as previously advised due to DSS failure to include interest payment.</p>	<p>CPP calculated as 16.8.2016-28.12.2021.</p> <p>Legal fees were not a special circumstance, despite Fogg receiving only 26% of the awarded damages after deduction. At [76]:</p> <p><i>'Unfortunately, it is not uncommon that successful litigants do not end up with the lion's share of the judgment or award made in their favour, particularly given the legal fees that are payable. It is also common for matters to be protracted and for appeals to further delay and add to the expense of the proceeding.'</i></p> <p>AAT2 said that in itself was not enough and one must consider all of the circumstances.</p> <p>Given Fogg could not account for the sum received from settlement, together with his ownership of potentially realisable assets (vehicle, caravan, kit home, quad bike), AAT 'cannot find that Mr Fogg is suffering from financial hardship'. It was noted that the expenditure included something that would be considered in the expensive range (car for \$110,000).</p> <p>NB Fogg was represented by counsel.</p>

Case name, citation, date	Background	Outcome
<p>Secretary, Department of Social Services v Mills [2019] AATA 75323</p> <p>April 2019</p> <p>Burke, Member</p>	<p>Mills received NSA from 12.9.2012-21.2.2013.</p> <p>Mills slipped down stairs at a shopping centre on 20.2.2013 and sustained injuries and lodged a claim. Mills received weekly benefits from 6.3.2013-17.2.2015.</p> <p>On 11.9.2013, Mills advised DSS that she was receiving WC payments. On 16.9.2013, DSS advised Mills that some or all of the benefits paid to her or her partner would need to be paid back and that there might be a CPP.</p> <p>Mills received DSP from 25.3.2015-19.4.2017.</p> <p>On 7.7.2016, Mills received LSCP in respect of her claim in the sum of \$920,000 (with no entitlement to costs and no economic loss). On 20.4.2017, DSS advised Mills of the CPP of 15.2.2015-30.5.2023 and that a charge of \$35,902.16 was raised.</p> <p>AAT1 had found special circumstances in order to reduce the CPP, although commented that Mills' poor decision were not in itself a special circumstance. Rather, the dire situation that Mills found herself, together with her family, was what made that application successful.</p> <p>On 24.11.2017, Mills lodged an NSA application. On 28.11.2017 DSS rejected the application on the basis of the CPP.</p> <p>Mills lodged a compensation recovery statement of financial circumstances on 6.12.2017</p> <p>DSS sought AAT2 review of the decision that special circumstance applied 'as there was insufficient evidence to support its findings of fact. Specifically, there was insufficient evidence regarding how and why large amounts of money were expended by the Respondent....' [2]</p> <p>The issue for AA2 was whether the whole or part of Mills' LSCP could be treated as not having been made on the basis that there were special circumstances in her case.</p>	<p>AAT2 found no special circumstances existed and AAT1's decision was set aside.</p> <p>In short, AAT2 found that that Mills had:</p> <ul style="list-style-type: none"> • not substantiated her claims regarding how she had expended her LSCP including money taken from her brother (who was an ice addict), the failed business venture, loan repayments etc and it could not be ascertained what money was still available; • not substantiated her claims regarding her mental health and its impact on decision making process, despite accommodating Mills with extensions to do so; • largely spent the money on what most would consider as 'highly unreasonable in all the circumstances' including an 'extravagant holiday'; • not satisfied AAT2 regarding her claims about her lawyers misleading her in respect of the LSCP.

Case name, citation, date	Background	Outcome
<p>Marshall v Secretary, Department of Social Services [2019] AATA 670 4 April 2019 Puplick, Senior Member</p>	<p>Marshall applied for NSA on 3.4.2018 which was rejected due to CPP following receipt of LSCP in 05.2017. CPP was initially said to be from 11.5.2017 to 16.12.2020, which the ARO reduced to 13.5.2020. AAT1 determined CPP should be further reduced to 11.3.2020. Not satisfied, Marshall appealed to AAT2.</p> <p>Special circumstances alleged included: financial circumstances, medical conditions, need to establish a new home, court cases for divorce following an acrimonious end to his marriage. Furthermore, he had sold most of his personal possession, was seeking employment although limited due to his injuries and lack of a car and did not want to move from his hometown as an only child as he was concerned for his mother.</p> <p>Marshall stated the discount should be more given his legal fees were more than determined by ARO and AAT1.</p> <p>Further, Marshall had recently being advised of a potential liability for child support at \$400 per month.</p>	<p>AAT2 agreed that 'special circumstances' existed, a finding which DSS did not dispute.</p> <p>AAT2 could not take into account the child support payment as there was no substantiating evidence.</p> <p>AAT2 agreed with DSS' criticism of Marshall's spending, evidence in the absence of an understanding of the CPP, given the balance of his LSCP was spent within about seven months.</p> <p>Despite the criticism, due to the increased legal costs associated with the divorce, the CPP was reduced to 19.2.2020.</p>

Case name, citation, date	Background	Outcome
<p>Boyle v Secretary, Department of Social Services [2019] AATA 604 29 March 2019 Pupilick, Senior Member</p>	<p>Boyle was involved in a MVA on 15.5.2006 and from 16.6.2006-27.8.2010 she received weekly payments prior to the LSCP on 13.10.2010 for \$1,348,426.97 plus costs of \$82,749.40. DSS advised Boyle that the CPP was 28.8.2010-17.10.2031.</p> <p>On 5.5.2017 Boyle lodged a claim for the single parenting payment. DSS rejected the application on 8.5.2017 due to the CPP.</p> <p>The ARO affirmed the decision as did AAT1. AAT2 review was sought.</p> <p>NB the CPP was calculated on more than 50% of the award given the findings on past loss of earnings and future loss of earnings as detailed in the assessment made by the CARS Assessor of the (then) NSW Motor Accidents Authority.</p> <p>Special circumstances were alleged as follows: financial hardship - no money left from LSCP and she was financially destitute; after deductions Boyle was left with only \$854,000 of the LSCP (although her statutory declaration indicated she was left with \$990,000).</p> <p>Boyle provided an explanation as to where the money had been spent including a relationship in Thailand where she supported her partner's business and lifestyle (by way of a fraud against her); her daughter born in 2015 suffers rare medical condition and requires full time care. AAT2 noted that there was 'simply no way for the Tribunal to know how realistic any of these claims might be.'</p>	<p>The CPP calculated by the DSS was correct.</p> <p>AAT2 found no special circumstances to exist, noting:</p> <ul style="list-style-type: none"> • at [57] that there was no substantive evidence in relation to the alleged thefts by the ex-partner nor any steps to recover the amounts; • 'People do make poor personal choices. However, they cannot offload the cost of those choices onto the public purse. They are personally made and have to be personally borne. It is not up to a government agency to determine whether a marriage partner is suitable, caveat emptor.' [111] • the evidence supported that Boyle's daughter required expensive treatment not subsidised by PBS and that her daughter required transport by motor vehicle as public transport was not a viable option however there was no evidence to make a determination on the likely costs [67-68]. • 'Above all in this, there is the position of a vulnerable and sick child. She stands to be the victim of the Applicant's poor decision-making. No child deserves such a sentence.' [117] • Financial hardship was noted in that Boyle 'would be faced with having to find money to afford rent or that she and her daughter would, in effect, become homeless' [72]. • AAT2 said there was 'no reason to doubt the Applicant's statement that she suffers from Post-Traumatic Stress Disorder (PTSD) and high levels of both depression and anxiety.' • Boyle was unable to access housing or accommodation or rent assistance due to the CPP. <p>NB Boyle was self-represented.</p>

Case name, citation, date	Background	Outcome
<p>Erich v Secretary, Department of Social Services [2017] AATA 1733</p>	<p>Erich received a LSCP of \$1,400,000 arising from a workplace injury on 2.9.2008. CPP was determined to be 14.11.2009-11.12.2026 and Erich's age pension was cancelled. Erich had sold two houses and a motor home. Erich claimed he could not sell his remaining motorhome, which was his primary residence, and renting was not an option.</p>	<p>No special circumstances were established.</p> <p>AAT2 found that Erich and his spouse and spent the LSCP as if they were still working, including a cruise costing \$40,000.</p> <p>AAT2 found Erich and his spouse where reckless in the expenditure immediately after receiving the LSCP.</p> <p>AAT2 found that Erich's medical conditions were not unusual or more severe than the average person in receipt of DSP.</p>
<p>Massoud v Secretary, Department of Social Services [2017] AATA 1366 24.8.2017 Sosso, Member</p>	<p>Massoud had been on DSP since 1996.</p> <p>On 8.3.2014, Massoud sustained injuries in a MVA and received a LSCP of \$300,000 which gave rise to a CPP up to 21.4.2017.</p> <p>Massoud had a number of ailments and had been involved in a number of accidents. Massoud was legally blind.</p> <p>Massoud still had ownership of a \$1,000,000 home. His debts were not documented.</p> <p>Massoud was still in receipt of rent payments and payments from his sand sculpting business.</p>	<p>The decision under review was affirmed.</p> <p>The evidence did not support the exercise of the discretion as Massoud:</p> <ul style="list-style-type: none"> • had substantial capital assets, including a home worth at least \$1,000,000, with equity somewhere between \$600,000-\$900,000; • was not in straitened financial circumstances, as he was receiving rental payments and maintaining an interest in his business; • provided no evidence he was unable to access medical treatment or that he was at risk of losing his property; • was considered to be able to function and lead a relatively normal life. <p>Whilst Massoud was legally blind, AAT found that there was no evidence that the circumstances were unusual, exceptional or uncommon and 'the quality of unusualness lies in his relative prosperity and good lifestyle'.</p>
<p>Souied v Secretary, Department of Social Services [2017] AATA 332 16.3.2017 Morris, Member</p>	<p>Souied received LSCP of \$293,988 arising from a workplace accident on 20.3.2008. CPP was applied from 19.3.2014-25.4.2017. It was alleged that part of the LSCP was stolen.</p>	<p>No special circumstances were found and the decision was affirmed. There was no evidence that a sizeable amount of the LSCP was stolen, rather Souied was found to be naive.</p>

Case name, citation, date	Background	Outcome
<p><i>Risteviski v Secretary, Department of Social Services</i> [2017] AATA 127 3.2.2017 Kelly, Member</p>	<p>Risteviski suffered a workplace injury on 13.4.2009 and LSCP of \$181,063.94 was received over the years 2011, 2014 and 2015. CPP applied from 26.9.2015-21.9.2018. Risteviski applied for DSP on 4.4.2016 and alleged the following special circumstances:</p> <ul style="list-style-type: none"> • high legal costs of approximately \$70,000; • the payment he received was all back pay; • he had to repay his children money, including for paying out his mortgage; • he had no money; • he could not afford to separate; and • he had some health issues and could not afford medication. 	<p>No special circumstances were found. AAT2 considered Risteviski's evidence was unreliable as the bank records did not align with his evidence, namely that he owed his child \$145,000.</p>

Case name, citation, date	Background	Outcome
<p>Bolewski v Secretary, Department of Social Services [2016] AATA 959 29.11.2016</p>	<p>Bolewski argued that the CPP should be reduced due to special circumstances, namely: poor legal advice given Centrelink recovery was not advised; legal costs which had already been considered by the Legal Services Commission and was found mostly consistent with the costs agreement; ill health, which was worsening; financial hardship.</p>	<p>Bolewski's 'defective' legal advice was a special circumstance as she was not informed of the amount Centrelink would recover until after settlement was reached. It was unlikely Bolewski could bring a complaint against the former lawyer with any reasonable prospect of recovery.</p> <p><i>[75] The cost of the failure of Ms Bolewski's lawyer lies against her, and she has but few resources to deal with it – she has poor physical and mental health, no financial reserves and very little education. She is struggling to make ends meet and cannot work. She fears that she will be unable to meet the cost of future medical treatment. In these circumstances, I think that it is appropriate to exercise discretion to treat part of her compensation amount as not having been made.'</i></p> <p>The remaining arguments were not accepted as:</p> <ul style="list-style-type: none"> • Legal Services Commissioner had investigated legal costs; • 'even though her health condition was worsening, it was said that: 'It is reasonable to expect that the compensation settlement amount Ms Bolewski agreed to accept made some provision for future medical expenses. These circumstances, alone, are not special...' • 'Ms Bolewski's ailments and their effects do not amount to special circumstances that set her case apart from others – many are those in similar circumstances of advancing age, worsening impairments and increasing incapacity for work.' • Despite having limited resources and ongoing debt, these were considered to be unexceptional.

Case name, citation, date	Background	Outcome
<p>Knibbs v Secretary, Department of Social Services [2016] AATA 951 28.11.2016 Morris, Member</p>	<p>Knibbs suffered a workplace injury in 2000 and in 2010 received a LSCP in the sum of \$882,800 of which \$375,000 related to economic loss.</p> <p>Knibbs was advised that the CPP was 28.8.2010-4.10.2019 and Knibbs signed a letter of acknowledgement noting he understood.</p> <p>On 9.10.2015 Knibbs made a claim for NSA and relied on a letter of his psychologist that he could not work. This was rejected an ARO but advised that the CPP was actually until 7.12.2019 and AAT1 affirmed the decision.</p> <p>With the LSCP, Knibbs (amongst other things) purchased his then wife two properties and an investment property and caravan as well as holidays. Knibbs conceded that as at 2015 he had about \$120,000 in savings apart from his house, vehicle and household effects and wasn't sure how the money had been spent.</p> <p>Knibbs was said to be suffering elements of paranoia.</p>	<p>AAT1 decision affirmed.</p> <p>AAT2 found that: (a) they could not disregard the ability to realise valuable assets; and (b) he was given a substantial LSCP and spent a large portion without explanation.</p> <p>Whilst mental health issues were acknowledged, they were not such to satisfy special circumstances.</p>
<p>McLeod v Secretary, Department of Social Services [2016] AATA 853 28.10.2016</p>	<p>This relates to a decision rejecting McLeod's application for the age pension.</p> <p>The LSCP received, which had given rise to a CPP, was 'solely comprised of arrears of periodic compensation payments. The lump sum payment is not a 'lump sum compensation payment' for the purposes of the Social Security Act.'</p>	<p>Special circumstances were unnecessary to consider.</p> <p>McLeod established that the LSCP related only to arrears of periodic compensation payments. Special circumstances did not need to be considered as no future economic loss was included in the LSCP and therefore no CPP arose.</p>
<p>Elzey v Secretary, Department of Employment [2016] AATA 821 18.10.2016</p>	<p>"At the Tribunal hearing, Ms Elzey said that she had separated from her husband on 1 December 2013 when she moved out of the family home. Her ex-husband subsequently returned to the United States of America (USA) on 6 January 2014 where he is a citizen. As a result of this separation and her ex-husband's departure from Australia, Ms Elzey stated that she was left with 'marital debts' of approximately \$127,171. These debts included a personal loan (approx. \$59,763), a flexi-loan (\$28,000), two credit cards (combined \$15,500) and finance for a car (\$20,908); all of which were in Ms Elzey's name."</p>	<p>Financial hardship application was refused.</p> <p>[47] Based on the evidence before me, I am not satisfied that Ms Elzey is in a position of financial hardship. While she may perceive that her financial situation is severe, her financial circumstances are not worse than the majority of social security recipients and she has access to cash through monthly payments from the USA government, and realisable assets in her business and car.</p>

Case name, citation, date	Background	Outcome
<p>Kalokerinos v Secretary, Department of Social Services [2016] AATA 745 26.9.2016</p>	<p>Kolokerinos alleged special circumstances existed due to financial hardship and ill health, emotional state and reduced life expectancy.</p>	<p>The financial hardship application failed as he had significant assets, including shares, property and over \$1,000,000 in superannuation. Further, at [28]</p> <p><i>While I accept that Mr Kalokerinos suffers from ill health and stress associated with his injuries, the Guide states that an 'injury that a person received compensation for cannot generally be regarded as a special circumstance'. [9] I also have no medical evidence before me to show that Mr Kalokerinos' ill health is more severe than the majority of disability support pension recipients or that his life expectancy is reduced.</i></p>
<p>Ibrahim v Secretary, Department of Social Services [2016] AATA 704 12.9.2016</p>	<p>Ibrahim alleged special circumstances arose, namely financial hardship.</p>	<p>AAT2 affirmed the decision.</p> <p><i>[23] I am not satisfied that there is anything about [his] circumstances that takes them out of the ordinary and makes them "special". While his finances have dwindled over the time of the preclusion period, it is fair to say that he has spent his money on some items that others might consider unnecessary. In any event, he has funds to cover the remainder of the preclusion period and more.</i></p>
<p>Nash v Secretary, Department of Social Services [2016] AATA 345 27.5.2016</p>	<p>Nash alleged financial hardship. He had already received DSP prior to injuries arising in a MVA following which DSP payments were ceased. The economic loss portion of the LSCP was small.</p> <p>Lawyer for Nash made an interesting Disability Discrimination argument, which failed due to s5(2) of the Disability Discrimination Act 1992 (Cth), precluding discrimination claims. AAT2 found them fair policy arguments.</p>	<p>AAT2 affirmed the decision as the CPP was calculated correctly and no financial hardship established.</p>
<p>Reid v Secretary, Department of Social Services [2016] AATA 62 8.2.2016</p>	<p>Reid appealed to AAT2 alleging special circumstances of: ill health, financial hardship.</p>	<p>No special circumstances found.</p> <p>It was not established her ill health was distinct from conditions for which she received the compensation.</p> <p>The financial hardship claim was rejected as she owned a property with \$300,000 equity. She used her compensation to pay down her liability. Financial hardship was therefore not out of the ordinary.</p>

Case name, citation, date	Background	Outcome
<p>Dixon v Secretary, Department of Social Services [2015] AATA 694 10.9.2015</p>	<p>DSP and NSA rejected due to CPP until 4.12.2016. Dixon alleged special circumstances. Dixon had spent \$315,000 of the \$400,000 to purchase a home and claimed he had no money to live on or buy medication. Dixon had spent \$80,000 in holidays.</p>	<p>No special circumstances were established. Dixon had a substantial unencumbered asset and had options available to him.</p>
<p>Tyropanis v Secretary, Department of Social Services [2015] AATA 701 11.9.2015</p>	<p>DSP was rejected due to a CPP following two LSCPs. Tyropanis submitted his financial position was a special circumstance, together with his health and legal costs associated with achieving the LSCP. Further, his sister had psychiatric problems, his mother was 82 and he was receiving carer allowance to look after them. Other special circumstances alleged included paying off a mortgage to be debt free and payment of a \$60,000 debt to a drug dealer.</p>	<p>AAT2 found no special circumstances were established. Further, it was noted that Tyropanis had purchased three cars and spent the rest of the money on living expenses including hotels, motels, takeaways and restaurants, parties and "wine, women and song". In giving that evidence he added "I might as well live it up while I can". This did not assist him.</p>
<p>Hammelswang v Secretary v Department of Social Services [2015] AATA 905 12.11.2015</p>	<p>DSP application was rejected due to a CPP following receipt of a large LSCP. Hammelswang appealed, citing the following special circumstances: significant injury to his back for which he received compensation; effect of his medication on his cognitive abilities; wrong advice from his solicitor in relation to the length of the CPP and Hammelswang not full understanding what he was agreeing to; desire to leave an inheritance for his children.</p>	<p>AAT2 found no special circumstances were established. Hammelswang's injury and pain was not unusual for DSP applicants and, whilst accepted that his financial situation was strained, the circumstances were not unusual. Further, he still had a source of income and was able to access superannuation.</p>
<p>Krebs v Secretary, Department of Social Services [2015] 14.12.2015</p>	<p>Krebs suffered a workplace injury to her right shoulder on 26.6.2003. Krebs became eligible for the age pension in 2011 and started receiving it about a year later. CPP was 7.3.2012-16.04.2013 and a charge of \$16,711.77 was raised against her LSCP. Krebs appealed to AAT2 and alleged the following special circumstances:</p> <ul style="list-style-type: none"> • financial strain; • Krebs required care which was provided by her husband; • Krebs was unable to work and unable to do housework (and was paying a housekeeper); • Assets totalled \$393,000 including the jointly owned home; <p>Krebs LSCP included past economic loss only.</p>	<p>No special circumstances were established. Financial position was strained and health issues were acknowledged but not exceptional. The perceived unfairness of the CPP (the applicant only receiving damages for the past economic loss and being precluded from compensation after reaching pension age pursuant to the Workers Compensation Act), is not a special circumstance.</p>

Case name, citation, date	Background	Outcome
<p>Macartney v Secretary, Department of Social Services [2015] AATA 957 11.12.2015</p>	<p>DSP application was rejected due to CPP. Macartney appealed and sought that the CPP be waived given her health condition had not improved since the injury was sustained and she was unable to work.</p>	<p>No special circumstances established. Insufficient evidence provided to establish deterioration since the accident or that she was unable to work part-time. Financial evidence was also not credible and AAT2 could not be satisfied as to how the LSCP had been invested and why the LSCP was spent within two years.</p>
<p>Keys v Secretary, Department of Social Services [2017] AATA 2099 2.11.2017</p>	<p>Keys had suffered a workplace injury, including brain and spinal injuries. LSCP was \$333,400.70 with CPP of 16.9.2015-8.11.2016. Keys relocated to Thailand to marry and had two children there. Keys then returned to Australia. Keys and spouse divorced 1.7.2012. On 23.2.2016 Keys was advised mortgages on properties were in default. Noted there was a decision to split assets with former partner once LSCP received. Family Court orders 20.5.2016 required Keys to pay wife \$136,408 by 12.8.2016 and if not made wife would become trustee. DSS accepted that Mr Keys circumstances had changed since the commencement of the preclusion period (although not significantly) and that he is experiencing straitened financial circumstances, contends that:</p> <ul style="list-style-type: none"> • Mr Keys used the majority of the LSCP to pay legal costs of Family Court proceedings, even where, at the beginning of the CPP, the two properties were subject to significant mortgages, and were subject to the outcome of Family Court proceedings. • Mr Keys' financial position is similar to other people applying for social security benefits and is not out of the ordinary. 	<p>No special circumstances. There was no evidence that Keys' circumstances are exceptional, unusual or uncommon.</p>



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