

## *Carson v Comcare* [2014] AATA 699 (25 September 2014)

### Key Points

- The Tribunal was required to consider whether the operation of section 16 permitted the aggregation of a number of journeys for medical treatment which were each less than the 50km threshold, to make them compensable.
- The Tribunal found that the preferable reading of section 16 was that the threshold was intended to be applied to each individual round trip, in accordance with an ordinary reading of the section.

### Background

Dr Carson was formerly employed as a research scientist with the Defense Science Technology Organisation, a long range weapons institute. He suffered a compensable injury at work which led to severe dermatitis, manifesting itself periodically in rashes. From time to time, Dr Carson was required to attend day clinics for treatment, normally at the Royal Adelaide Hospital. A course of treatment typically took many days, and the treatment on each day usually involved the application of topical ointments and the wrapping of Dr Carson's body in heated towels. At the conclusion of each day's treatment, Dr Carson returned home. Dr Carson drove himself to and from the treatments. No single round trip required for treatment exceeded 50 km.

Dr Carson made an Application for Review of a decision made by Comcare to refuse to compensate him for travel to and from medical appointments in accordance with section 16 of the SRC Act. The key issue in the matter was whether Comcare was correct in refusing to aggregate the kilometres travelled by Dr Carson in his various attendances for treatment. Had they been so aggregated, he would have exceeded the 50km threshold specified under the SRC Act. If each such trip was to have the threshold applied to it, then no single trip exceeded 50km and Dr Carson was not eligible to receive anything from Comcare by way of a travel allowance.

### The Law

Section 16 deals with the payment of medical expenses in respect of compensable injuries. Section 16(1) establishes a liability to pay for the cost of an injured employee's medical treatment, where it is treatment that it was reasonable for the employee to obtain in the circumstances.

Section 16(6)(b) imposes an obligation on Comcare to meet the reasonable expenditure of an employee who makes a necessary journey for the purposes of obtaining the medical treatment referred to in section 16(1). A per-kilometre compensation rate is referred to, which is specified the relevant subordinate legislation.

Section 16(7) relieves Comcare of any liability to pay compensation for travel under section 16(6)(b) unless the length of the journey the employee was required to make under section 16(6)(b) exceeds 50km.

## Conclusion

Dr Carson submitted that the journey exceeded 50km, as the aggregated trips to and from the hospital for a typical course of treatment lasting 8 days easily exceeded to 50km threshold.

Comcare submitted that the 50km threshold must be applied to each daily return trip Dr Carson made. Accordingly, although an 8 day course of treatment at hospital often involved a total of more than 200km of travel, in no single day did Dr Carson's travel to and from the hospital exceed 50km.

The Tribunal found that the preferable reading of section 16 was that the threshold was intended to be applied to each individual round trip. The Tribunal provided a helpful analysis of section 16. Under section 16(1), Comcare is liable to pay only for the cost of medical treatment that was reasonable for the employee to obtain in the circumstances. Under section 16(6)(b), only a necessary journey for the purposes of obtaining compensable medical treatment attracts an allowance for travel. The Tribunal found that the primary decision to be made was whether each separate attendance by an injured employee at a place of treatment was reasonably justified, and it may be that a particular day's attendance is justified while another day's attendance is not. The Tribunal found that each day's treatment in Dr Carson's case was a separate event and that the question under section 16(1) was whether the treatment on that day was reasonable in the circumstances. The Tribunal found that, once it is accepted that each day's treatment has to be separately evaluated for its reasonableness under section 16(1), it follows that section 16(6)(b) has to be applied and re-applied to each day's journey.

The Tribunal flagged that the reading that had been applied may result in apparently arbitrary results, for example a person making a number of 49km journeys will get no compensation, however a person making a 51km journey will get compensation. Notwithstanding this, the Tribunal ultimately decided that a plain and grammatical reading of the section was preferable.

## Lessons Learnt

The SRC Act is beneficial legislation, meaning that it should be read in favour of employees. It is important to remember, however, that this does not allow the Tribunal to interpret the legislation in a way that is contrary to its ordinary meaning. Accordingly, even though the decision in this case appears arbitrary, the Tribunal was required to consider it on its merits and in line with its plain and ordinary grammatical meaning.

For more information on this article, please contact:

Claire Tota  
Solicitor  
Email: [claire.tota@hbalegal.com](mailto:claire.tota@hbalegal.com)  
Direct Line: (08) 9265 6011

Brett Ablong  
Partner  
Email: [brett.ablong@hbalegal.com](mailto:brett.ablong@hbalegal.com)  
Direct Line: (08) 9265 6001

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