

## **SAS TRUSTEE CORPORATION v MILES (S260/2017)**

Court appealed from: New South Wales Court of Appeal  
[2017] NSWCA 86

Date of judgment: 4 May 2017

Special leave granted: 20 October 2017

In September 2003 Mr Peter Miles was medically discharged from the NSW Police Force, due to infirmities in his spine (both lumbar and cervical), his left shoulder and his right knee. At that time, a delegate of the Commissioner of Police certified that those infirmities made Mr Miles incapable of performing police duties and that they were caused by Mr Miles having been “hurt on duty”.

The delegate’s certification entitled Mr Miles to an annual superannuation allowance equal to 72.75% of his “attributed salary of office” (“salary”) under s 10(1A)(a) of the *Police Regulation (Superannuation) Act 1906* (NSW) (“the Act”). Between 2004 and 2011 Mr Miles made several applications to the appellant (“STC”), and one to the District Court, for an addition to his salary percentage under s 10(1A)(b) of the Act such that he would be entitled to an allowance at the maximum rate of 85% of salary. Experiencing mixed success, Mr Miles was left with an annual allowance of 82.55% of salary (payable from September 2003), pursuant to a District Court order made in 2006. From 2008 onwards, the increase sought by Mr Miles was on the basis that he suffered from post-traumatic stress disorder (“PTSD”) in addition to the infirmities certified in 2003.

After another application to STC was refused in 2015, Mr Miles again applied to the District Court. Judge Neilson found that PTSD had increased Mr Miles’ incapacity to work but nevertheless confirmed STC’s decision. His Honour held that, although s 10(1A)(b) of the Act required that any additional allowance be commensurate with incapacity for work outside the police force, only those infirmities of body or mind specified in a certification pursuant to s 10B of the Act could be taken into account.

The Court of Appeal by majority (Payne JA and Sackville AJA; Schmidt J dissenting) allowed an appeal by Mr Miles and remitted the matter to the District Court for redetermination. The majority considered that the structure of s 10(1A) as a whole supported the view that the relevant consideration was incapacity for work outside the police force. Their Honours held that the terms of s 10(1A)(b) of the Act did not imply that an additional entitlement was to be based only on those infirmities which created the entitlement to the minimum allowance under s 10(1A)(a).

Justice Schmidt however found that the additional entitlement under s 10(1A)(b) sought by Mr Miles could be granted only upon a certification by STC under s 10B(2)(c) of incapability of exercising the functions of a police officer due to specified infirmities, coupled with a decision by the Commissioner of Police under s 10B(3) that those infirmities were caused by Mr Miles having been hurt on duty.

The grounds of appeal are:

- The Court of Appeal erred in its construction of s 10(1A)(b) of the Act by failing to construe the provision in its context.
- The Court should have held that, properly construed, the provision did not authorise the payment of additional amounts of superannuation allowance unless the claimant's incapacity for work outside the police force is due to an infirmity determined by the Commissioner under s 10B(3) to have been caused by the claimant having been hurt on duty.