

HIGH COURT OF AUSTRALIA

KIEFEL CJ,
BELL, GAGELER, NETTLE AND EDELMAN JJ

SAS TRUSTEE CORPORATION

APPELLANT

AND

PETER MILES

RESPONDENT

SAS Trustee Corporation v Miles
[2018] HCA 55
14 November 2018
S260/2017

ORDER

1. *Appeal allowed.*
2. *Set aside orders 1 and 2 of the order of the Court of Appeal of the Supreme Court of New South Wales made on 4 May 2017 and in their place order that the appeal to that Court be dismissed.*
3. *The appellant pay the respondent's costs of this appeal.*

On appeal from the Supreme Court of New South Wales

Representation

N J Williams SC with T M Ower and S Palaniappan for the appellant
(instructed by SAS Trustee Corporation)

D F Jackson QC with J M Morris SC and M J Weightman for the
respondent (instructed by Cardillo Gray Partners)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

SAS Trustee Corporation v Miles

Superannuation and pensions – Police pension – Disabled member of police force – Entitlement to additional allowance – Where respondent certified by appellant as incapable of personally exercising functions of police officer due to specified infirmities determined by Commissioner of Police to have been caused by being hurt on duty – Where respondent received annual superannuation allowance as disabled member of police force – Where s 10(1A)(b)(ii) of *Police Regulation (Superannuation) Act 1906* (NSW) provided that annual superannuation allowance might increase by additional amount commensurate with member's incapacity for work outside police force – Where respondent sought additional amount by reason of supervening infirmity increasing respondent's incapacity for work outside police force – Where supervening infirmity increasing respondent's incapacity for work outside police force not subject of certification by appellant or determination by Commissioner of Police – Whether respondent entitled to additional amount of annual superannuation allowance.

Statutes – Interpretation – Principles – Context – Cognate terms – Choice between textually available constructions – Where cognate terms "incapable", "incapacity" and "totally incapacitated" appearing in Act – Where alternative textual constructions as to whether infirmity increasing incapacity for work outside police force required to be caused by being hurt on duty – Whether cognate terms to be construed as bearing same meaning.

Words and phrases – "additional amount", "annual superannuation allowance", "certified", "commensurate", "disabled member of the police force", "hurt on duty", "incapable of personally exercising the functions of a police officer", "incapacity for work outside the police force", "infirmity of body or mind", "member of the police force", "specified infirmity", "supervening infirmity or incapacity".

Police Regulation (Superannuation) Act 1906 (NSW), ss 1, 1A, 3, 4, 5, 5A, 7, 8, 10, 10B, 14, 21.

Superannuation Administration Act 1996 (NSW), s 57.

1 KIEFEL CJ, BELL AND NETTLE JJ. This is an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales (Payne JA and Sackville A-JA, Schmidt J dissenting)¹ allowing an appeal from a judgment of Judge Neilson of the District Court of New South Wales². The issue is the meaning of the expression "incapacity for work outside the police force" in s 10(1A)(b)(ii) of the *Police Regulation (Superannuation) Act 1906* (NSW) ("the Act"). In effect, the expression presents a constructional choice between two possibilities. Either it means incapacity for work outside the police force from a specified infirmity of body or mind determined to have been caused by being hurt on duty when a member of the police force – which is the meaning determined by Judge Neilson and Schmidt J – or it means incapacity for work outside the police force howsoever caused – which is the meaning ascribed to it by the majority of the Court of Appeal. As will be explained, context and purpose favour the former and it appears consistent with relevant extrinsic materials.

Relevant statutory provisions

2 Section 3 of the Act establishes the Police Superannuation Fund ("the Fund"), which, subject to the Act, is under the control of the SAS Trustee Corporation ("STC"). It applies in respect of persons who became members of the police force before 1 April 1988³. The Fund is comprised of deductions of six per cent made from members' salaries under s 5, other deductions and payments under ss 5A and 20A, amounts appropriated from the Consolidated Revenue Fund under s 4 and other fees and moneys received by STC pursuant to the Act. The Act provides for defined benefits and s 4 requires that if at any time the amount of the Fund is insufficient to meet the superannuation allowances and other amounts payable under the Act, the amount of the deficiency is a charge against the Consolidated Revenue Fund.

Section 7

3 Section 7 of the Act provides for the "annual superannuation allowance" payable to a member of the police force who has served 20 years or more of equivalent full-time service and who retires on or after reaching 60 years of age, or before reaching that age if rendered incapable of exercising the functions of a

1 *Miles v SAS Trustee Corporation* [2017] NSWCA 86.

2 *Miles v SAS Trustee Corporation* (2016) 22 DCLR (NSW) 223; [2016] NSWDC 56.

3 *Police Regulation (Superannuation) Act 1906* (NSW), s 1A.

Kiefel CJ
Bell J
Nettle J

2.

police officer from an infirmity of body or mind caused otherwise than by being hurt on duty. The amount is a percentage of attributed salary proportionate to the member's number of years of service as a police officer (up to a maximum of 72.75 per cent for 30 or more years of full-time service):

"7 Superannuation allowance except where member hurt on duty

- (1) The annual superannuation allowance for a member of the police force who has served 20 years or more of equivalent full-time service and retires on or after attaining the age of 60 years or, being under that age, is discharged after being certified under section 8(1) to be incapable, from infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14(1) of the *Police Act 1990*, is an amount calculated in accordance with the following formula:

$$P = Y \times ESR$$

where:

P represents the amount of the annual superannuation allowance payable.

Y represents a percentage of the member's attributed salary of office at the date of the member's retirement or discharge equal to the sum of:

- (a) the percentage specified in the Second Column of the Table to this subsection opposite the total number of years of both full-time and part-time service specified in the First Column of that Table that has been completed by the member, and
- (b) in the case of a person who has completed less than 30 years of equivalent full-time service, one-twelfth of 2.425 per cent for each month of full-time or part-time service that has been completed by the member after the last completed year of service referred to in paragraph (a),

ESR represents the equivalent service ratio of the member as at the date of the member's retirement or discharge.

3.

| First Column | Second Column |
|--|--------------------------|
| Completed years of both full-time and part-time service of member | Amount per centum |
| 20 | 48.500 |
| 21 | 50.925 |
| 22 | 53.350 |
| 23 | 55.775 |
| 24 | 58.200 |
| 25 | 60.625 |
| 26 | 63.050 |
| 27 | 65.475 |
| 28 | 67.900 |
| 29 | 70.325 |
| 30 or more | 72.750 |

(2) An annual superannuation allowance under subsection (1) shall not be payable to a member of the police force to whom an annual superannuation allowance is payable under section 10.

(3) ..."

4 It is to be noted that such a member is not entitled to any "additional amount" for incapacity for employment outside the police force.

5 Section 8 provides that a superannuation allowance must not be granted or paid under s 7 to a member who is discharged under the age of 60 years unless STC, having regard to the medical advice of two members of the Police Medical Board or any one or more medical practitioners nominated by STC, has certified the member to be incapable from infirmity of body or mind (caused otherwise than by being hurt on duty) of exercising the functions of a police officer:

Kiefel CJ
Bell J
Nettle J

4.

"8 Determination of members medically unfit

(1) A superannuation allowance or gratuity must not be granted or paid under section 7 or 14 to a member of the police force who:

(a) is discharged after the commencement of the *Police Regulation (Superannuation and Appeals) Amendment Act 1973*, and

(b) at the time of the member's discharge is under the age of 60 years,

unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14(1) of the *Police Act 1990*.

Note. Section 14(1) of the *Police Act 1990* provides that a police officer has the functions conferred or imposed on a constable by or under any other law (including the common law) of the State.

(2) For the purposes of determining a member's incapacity:

(a) STC is not to have regard to the member's actual rank or position or functions (other than the functions referred to in subsection (1)), and

(b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.

(2A) (Repealed)

(3) In this section:

medical advice means the advice of:

(a) 2 members of the Police Medical Board, or

(b) any one or more medical practitioners nominated by the STC."

Section 10

6 Section 10 relevantly provides for the "annual superannuation allowance" payable to a member of the police force who is discharged after being certified incapable from a specified infirmity of body or mind of exercising the functions of a police officer caused by the member being hurt on duty when a member of the police force, or who has resigned or retired and who had such an infirmity at the time of his or her resignation or retirement:

"10 Superannuation allowance where member hurt on duty

(1) In this section:

attributed salary of office means:

- (a) in relation to a member of the police force who is discharged – the member's attributed salary of office at the date of the member's discharge, or
- (b) in relation to a former member of the police force who resigned or retired – the member's attributed salary of office at the date of the member's resignation or retirement.

disabled member of the police force means:

- (a) a member of the police force who is discharged after being certified, pursuant to section 10B(1), to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14(1) of the *Police Act 1990*, or
- (b) a former member of the police force who resigned or retired and who, according to a certificate given pursuant to section 10B(2) at any time after the member's resignation or retirement, was incapable, from an infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14(1) of the *Police Act 1990* at the time of the member's resignation or retirement,

that infirmity being determined, pursuant to section 10B(3) or on appeal, to have been caused by the member being hurt on duty or the former member having been hurt on duty when he or she was a member of the police force, as the case may be.

retired includes discharged as referred to in section 7 or 14.

Kiefel *CJ*
Bell *J*
Nettle *J*

6.

(1A) Subject to this section, the annual superannuation allowance for a disabled member of the police force is:

- (a) an amount that is equal to 72.75 per cent of the member's attributed salary of office,
- (b) except where paragraph (c) applies, an additional amount that is:
 - (i) not more than 12.25 per cent of the member's attributed salary of office, and
 - (ii) commensurate, in the opinion of STC, with the member's incapacity for work outside the police force, and
- (c) if the disabled member is totally incapacitated for work outside the police force and, in the opinion of STC, the member was hurt on duty because the member was required to be exposed to risks to which members of the general workforce would normally not be required to be exposed in the course of their employment, an additional amount that is:
 - (i) not less than 12.25 per cent and not more than 27.25 per cent of the member's attributed salary of office, and
 - (ii) commensurate, in the opinion of STC, with the risks to which the member was so required to be exposed,

multiplied by the equivalent service ratio of the member as at the date of the member's discharge, resignation or retirement.

(1AA) ...

(1B) An annual superannuation allowance may be granted under this section to a disabled member of the police force whatever the member's length of service.

(1BA) A superannuation allowance referred to in subsection (1A) or an additional amount of a superannuation allowance referred to in subsection (1D) is not payable to a disabled member of the police force unless an application for payment of the allowance or additional amount concerned is made:

7.

- (a) before the member reaches the age of 60 years, or
- (b) not later than 5 years after the member resigns or retires,
whichever is the later.

(1C) ...

(1D) STC may:

- (a) make a determination at any time of an additional amount of a superannuation allowance under this section, and
- (b) vary any such determination at any time,

and may direct that the determination or variation take effect from such date as STC considers appropriate.

(2) ...

(3) ...

(4)-(7) (Repealed)"

7 Relevantly, ss 10(1), 10(1A), 10(1B) and 10B were introduced by the *Police Regulation (Superannuation and Appeals) Amendment Act 1979* (NSW)⁴. Prior to their commencement, members of the police force who were hurt on duty were entitled to a superannuation allowance not exceeding 72.75 per cent of the member's salary of office.

8 As can be seen, s 10(1A)(a) is more generous than s 7 in that it provides in effect that, where a member is caused to resign, retire or be discharged from the police force by being rendered incapable of exercising the functions of a police officer from an infirmity of body or mind caused by the member being hurt on duty when a member of the police force, the superannuation allowance payable to the member is the full 72.75 per cent of attributed salary regardless of years of service. In substance, s 10(1A)(a) equates the superannuation allowance payable to such a member with the superannuation allowance which would have been payable to the member if, but for the infirmity suffered as a result of being hurt

⁴ *Police Regulation (Superannuation and Appeals) Amendment Act 1979* (NSW), Sch 1 (8), (10).

Kiefel CJ
Bell J
Nettle J

8.

on duty, the member had gone on to complete 30 years' full-time service and retired on or after reaching the age of 60.

9 Further, in contrast to s 7 – which does not provide for any "additional amount" for incapacity for employment outside the police force – s 10(1A)(b) provides in substance that, except where s 10(1A)(c) applies, the annual superannuation allowance payable to a member who is caused to resign, retire or be discharged from the police force by being rendered incapable of exercising the functions of a police officer from an infirmity of body or mind caused by the member being hurt on duty when a member of the police force includes an "additional amount" of up to 12.25 per cent of attributed salary commensurate with the member's incapacity for work outside the police force.

10 Section 10(1A)(c) applies where a member is rendered incapable of exercising the functions of a police officer by reason of an infirmity of body or mind caused by being hurt on duty when a member of the police force and is totally incapacitated for work outside the police force. It provides that the annual superannuation allowance payable to the member includes by way of an "additional amount" not less than 12.25 per cent of attributed salary, and, if the member is so hurt on duty because of being exposed to abnormal risks, up to 27.25 per cent of attributed salary commensurate with the risks to which the member was so exposed.

11 Section 10B provides that an annual superannuation allowance must not be granted under s 10 to a member of the police force who is discharged or resigns or retires unless STC has certified the member incapable from a specified infirmity of body or mind of personally exercising the functions of a police officer, and, in the case of a member who resigns or retires, unless the member notifies the Commissioner of Police before resignation or retirement and within six months of receiving the injury which has caused the infirmity of that injury. It further requires the Commissioner of Police to make a determination of whether the certified infirmity was caused by the member being hurt on duty when a member of the police force:

"10B Medical examination of disabled member and determination of whether hurt on duty

- (1) An annual superannuation allowance or gratuity must not be granted under section 10 to a member of the police force who is discharged unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14(1) of the *Police Act 1990*.

9.

- (2) An annual superannuation allowance or gratuity must not be granted under section 10 to a former member of the police force who resigned or retired unless:
- (a) the former member notified the Commissioner of Police before the member's resignation or retirement and within 6 months of receiving the injury which has caused the member's infirmity of body or mind, of that injury, and
 - (b) if the regulations so require, the notification was in the prescribed form, and
 - (c) STC (having regard to medical advice on the condition and fitness for employment of the member) has certified that the former member was incapable, from that infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14(1) of the *Police Act 1990* at the time of the member's resignation or retirement.
- (2A) For the purposes of determining a member's or former member's incapacity under this section:
- (a) STC is not to have regard to the member's or former member's actual rank or position or any functions (other than the functions referred to in subsection (2)(c)) of the member or former member at the time to which the certification relates, and
 - (b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.
- (2B), (2BA) (Repealed)
- (2C) In this section:
- medical advice*** means the advice of:
- (a) 2 members of the Police Medical Board, or
 - (b) any one or more medical practitioners nominated by the STC.
- (3) Where a member or former member of the police force is duly certified under subsection (1) or (2), the Commissioner of Police shall:

Kiefel CJ
Bell J
Nettle J

10.

- (a) decide whether or not the infirmity to which the certificate relates was caused by the member being hurt on duty or the former member having been hurt on duty when he or she was a member of the police force, as the case may be, and the date or dates on which the member or former member was hurt on duty, and
- (b) give the member or former member written notification of the decision."

Facts

12 On 28 August 2003, Mr Miles, the respondent in these proceedings, was certified pursuant to s 10B(1) of the Act as being incapable, from four specified infirmities of an orthopaedic nature, of discharging the duties of his office as a police officer. The specified infirmities were: (a) cervical spine, symptomatic degenerative changes; (b) lumbar spine, symptomatic degenerative changes; (c) left shoulder, recurrent dislocation; and (d) right knee, symptomatic chondromalacia. On 4 September 2003, a delegate of the Commissioner of Police certified, pursuant to s 10B(3)(a) of the Act, that those infirmities were caused by Mr Miles being hurt on duty and he was medically discharged from the police force on 5 September 2003. In accordance with s 10(1A)(a) of the Act, Mr Miles was entitled to, and received, a superannuation allowance equal to 72.75 per cent of his attributed salary of office.

13 In the course of the ensuing years, Mr Miles made several applications to increase his annual superannuation allowance. In 2004, Mr Miles applied pursuant to s 10(1A)(b) of the Act to increase his annual superannuation allowance to 85 per cent of his attributed salary. The allowance was ultimately determined to be 82.55 per cent by the District Court of New South Wales, following an appeal by Mr Miles from the determination made by STC, the appellant in these proceedings.

14 In 2008 Mr Miles applied to STC to amend the original certificate issued by the Commissioner of Police to include an additional infirmity of post-traumatic stress disorder ("PTSD"). STC rejected that application on 29 October 2008.

15 Mr Miles made a further application in 2009 to amend his s 10B(1) certificate to include PTSD, contending that at the time the original certificate was issued he was unaware that he had a psychiatric condition. STC also rejected that application and Mr Miles unsuccessfully appealed STC's decision to

the Industrial Court of New South Wales⁵ and then to the Full Bench of the Industrial Court⁶.

16 On 12 November 2013, Mr Miles made a further application pursuant to s 10(1A)(b) of the Act for an increase in his superannuation allowance to 85 per cent. On 29 January 2015, STC rejected that application. Mr Miles commenced an application in the District Court of New South Wales as a person aggrieved by STC's decision⁷. On 11 April 2016, Judge Neilson confirmed⁸ STC's decision on the basis that, notwithstanding that the PTSD had increased Mr Miles' incapacity for work outside the police force, on the proper construction of s 10(1A)(b)(ii) Mr Miles' PTSD could not be taken into account as it was a supervening incapacity and not one arising from the four specified infirmities certified by STC.

Constructional choice

17 As was observed at the outset, s 10(1A)(b)(ii) permits of a constructional choice. On one view of its terms, it provides for an "additional amount" of annual superannuation allowance for a "disabled member of the police force" who is incapacitated for work outside the police force regardless of the cause of the member's incapacity for work outside the police force. The alternative view is that it provides for an "additional amount" of annual superannuation allowance for a "disabled member of the police force" who is incapacitated for work outside the police force only if the incapacity for work outside the police force results from a specified infirmity of body or mind determined, in accordance with s 10B, to have been caused by the member having been hurt on duty when a member of the police force.

18 The appellant contended for the latter construction, arguing that the incapacity referred to in s 10(1A)(b)(ii) is, like the incapacity referred to in s 10B, an incapacity arising from a certified infirmity caused by being hurt on duty. It was acknowledged that ss 10(1A)(b) and 10(1D) recognise that incapacity from a "hurt on duty" infirmity may increase in extent, but the appellant submitted that those provisions do not permit new and unrelated infirmities to be taken into account in s 10(1A)(b)(ii).

5 *Miles v SAS Trustee Corporation* [2010] NSWIRComm 69.

6 *Miles v SAS Trustee Corporation* (2011) 206 IR 164.

7 See *Police Regulation (Superannuation) Act 1906* (NSW), s 21(1).

8 *Miles v SAS Trustee Corporation* (2016) 22 DCLR (NSW) 223.

Kiefel CJ
Bell J
Nettle J

12.

19 The respondent contended that s 10(1A) is merely a quantification provision. It followed, in the respondent's submission, that, once a member has satisfied the steps in s 10B and thereby met the definition of a "disabled member of the police force", the incapacity referred to in s 10(1A)(b)(ii) (and, too, the total incapacity referred to in s 10(1A)(c)) may arise at any time and from any source. So much is apparent, it was said, in the deliberate change of language between, on the one hand, the reference to "incapacity for work outside the police force" in s 10(1A)(b)(ii) and, on the other hand, the reference to "incapable ... of personally exercising the functions of a police officer" in the s 10(1) definition of "disabled member of the police force" and in ss 10B(1) and 10B(2)(c). According to the respondent, that context rebuts any same-word presumption⁹ of the meaning of incapacity in s 10(1A) compared with ss 10(1) and 10B.

The proper construction of s 10(1A)(b)(ii)

20 The starting point for ascertainment of the meaning of a statutory provision is, of course, the text of the provision considered in light of its context and purpose¹⁰. Where the text read in context permits of more than one potential meaning, the choice between those meanings may ultimately turn on an evaluation of the relative coherence of each with the scheme of the statute and its identified objects or policies¹¹. The majority of the Court of Appeal held that there was no reason to restrict s 10(1A)(b)(ii) to incapacity for work outside the police force caused by the member having been hurt on duty when a member of the police force. But, with respect, there are in fact a number of textual and contextual indications in ss 7, 10(1A)(b)(ii), 10(1A)(c) and 10B that the operation of s 10(1A)(b)(ii) is so limited.

9 See *McGraw-Hinds (Aust) Pty Ltd v Smith* (1979) 144 CLR 633 at 643 per Gibbs J; [1979] HCA 19; *Murphy v Farmer* (1988) 165 CLR 19 at 27 per Deane, Dawson and Gaudron JJ; [1988] HCA 31.

10 *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408 per Brennan CJ, Dawson, Toohey and Gummow JJ; [1997] HCA 2; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381 [69] per McHugh, Gummow, Kirby and Hayne JJ; [1998] HCA 28; *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503 at 519 [39]; [2012] HCA 55; *SZTAL v Minister for Immigration and Border Protection* (2017) 91 ALJR 936 at 940-941 [14] per Kiefel CJ, Nettle and Gordon JJ; 347 ALR 405 at 410; [2017] HCA 34.

11 *Taylor v Owners – Strata Plan No 11564* (2014) 253 CLR 531 at 557 [66] per Gageler and Keane JJ; [2014] HCA 9; *SZTAL* (2017) 91 ALJR 936 at 944 [38] per Gageler J; 347 ALR 405 at 415.

21 Beginning with s 7, although a member of the police force who is rendered incapable of exercising the functions of a police officer from an infirmity of body or mind caused otherwise than by being hurt on duty is entitled to a superannuation allowance proportionate to the member's number of years of service, such a member is not entitled to any "additional amount" in respect of the member's incapacity for work outside the police force. That suggests, or at least is consistent with, a legislative intent that there should be no annual superannuation allowance paid in respect of incapacity for work outside the police force not caused by being hurt on duty. Admittedly, as the majority of the Court of Appeal reasoned¹², s 7 is not in itself inconsistent with a legislative intent that a member who is rendered incapable of discharging the functions of a police officer by reason of an infirmity of body or mind caused by being hurt on duty should be paid an additional amount in respect of any incapacity for work outside the police force caused by something else. But it is significant that there are no explicit or implicit indications in s 7 that such a result was intended.

22 Going next to s 10(1A)(b)(ii), as has been seen, "disabled member of the police force" is defined in s 10(1) as a member who has been certified *incapable* of personally exercising the functions of a police officer from a specified infirmity caused by being hurt on duty. In the absence of contrary legislative indication, the natural and ordinary linguistic implication of the use in s 10(1A)(b) of the cognate expression "*incapacity* for work outside the police force"¹³ is that it imports the same idea of incapacity: *scil* incapacity from a specified infirmity caused by the member being hurt on duty. Certainly, as the respondent submitted, the definition of "disabled member of the police force" refers to incapacity in respect of police work while the expression in s 10(1A)(b)(ii) is descriptive of incapacity in respect of work outside it. But given the use of cognate expressions within the one section, it is reasonable to suppose that, if a different meaning of incapacity had been intended in the latter context, it would have been specified. Taken with the matters mentioned in what follows, that points towards the construction of s 10(1A)(b)(ii) urged by the appellant.

23 Turning next to s 10(1A)(c), the statutory exclusion of s 10(1A)(b) where s 10(1A)(c) applies, and vice versa, conveys that "incapacitated" in the expression "totally incapacitated for work outside the police force" in s 10(1A)(c)

12 *Miles v SAS Trustee Corporation* [2017] NSWCA 86 at [74] per Sackville A-JA (Payne JA agreeing at [1]).

13 Emphasis added.

Kiefel CJ
Bell J
Nettle J

14.

has the same meaning as "incapacity" in the expression "incapacity for work outside the police force" in s 10(1A)(b)(ii).

24 Contrary to the respondent's submissions, it is also apparent that "incapacitated for work outside the police force" in s 10(1A)(c) must mean incapacitated for work outside the police force from the specified infirmity of body or mind which rendered the member incapable of exercising the functions of a police officer and which was caused by being hurt on duty. That is implicit in the requirement in s 10(1A)(c)(ii) that the additional amount of between 12.25 and 27.25 per cent of attributed salary payable under s 10(1A)(c)(i) in respect of the disabled member's incapacity for work outside the police force be commensurate with the abnormality of the risks to which the member was exposed. As the chapeau to s 10(1A)(c) makes clear, the risks are those that cause the member to be hurt on duty. The provision thereby draws a clear link between the additional amount payable and the event of the member being hurt on duty.

25 Moreover, despite the respondent's suggestion that the provision should perhaps be seen as the result of political compromise of which the aims are inscrutable, it is inherently unlikely that the legislative purpose of s 10(1A)(c) is to provide for additional amounts by reference to risks that played no role in rendering the member incapable of work outside the police force. The idea of a legislative intent to provide for an additional amount of up to 15 per cent of attributed salary for risks to which a member was exposed but which did not contribute to the member's incapacity for work outside the police force not only is arbitrary but significantly ill-accords with the absence of any "additional amount" benefits from the benefits for which s 7 provides where a member is hurt outside the course of duty. By contrast, the likelihood of a legislative intent to provide for an additional amount of up to 15 per cent of attributed salary for risks so grave as to result in an injury when on duty which renders a member both incapable of discharging the functions of a police officer and totally incapacitated for work outside the police force appears compelling.

26 Given that "incapacity" in the expression "incapacity for work outside the police force" in s 10(1A)(b)(ii) appears to have the same meaning as "incapacitated" in the expression "totally incapacitated for work outside the police force" in s 10(1A)(c), s 10(1A)(c) thus provides strong support for the conclusion that "incapacity" in s 10(1A)(b)(ii) means, as it does in the cognate term in s 10(1A)(c), incapacitated for work outside the police force from the specified infirmity of body or mind which rendered the member incapable of exercising the functions of a police officer and which was caused by being hurt on duty.

27

The likelihood of that being so is in turn further fortified by the fact that, perforce of s 10B(2), no annual superannuation allowance is payable under s 10 to a member who resigns or retires by reason of being rendered incapable of exercising the functions of a police officer from a specified infirmity caused by being hurt on duty, unless the member notifies the Commissioner of Police of the injury before resigning or retiring and within six months of receiving the injury which caused that specified infirmity. The purpose of the notification is to allow the Commissioner of Police to investigate the injury for the purpose of making a "hurt on duty" determination under s 10B(3). If s 10 contemplated the payment of an additional amount for incapacity for work outside the police force arising from an infirmity other than the specified infirmity of body or mind caused by being hurt on duty, it is to be expected that the Act would have provided for similar temporal limits for notification of that other infirmity. Otherwise, s 10 would have the unlikely consequence that, although the Act sets strict time limits for the notification of the injury claimed to have rendered a member who resigns or retires incapable of exercising the functions of a police officer, and conditions the payment of annual superannuation allowances on compliance, a member could delay for an indefinite period of time before notifying the Commissioner of Police or STC of an injury not caused by being hurt on duty that is claimed to render the member who resigns or retires incapable of work outside the police force.

28

The majority of the Court of Appeal observed¹⁴, and the respondent emphasised, that s 10(1BA) permits a disabled member to make an application for payment of the annual superannuation allowance or additional amount before the member reaches the age of 60 years or up to five years after the member resigns or retires, whichever is later, and s 10(1D) empowers STC to make and vary a determination of an additional amount "at any time". But contrary to the reasoning of the majority of the Court of Appeal, and the respondent's submissions, that does not imply that a member may notify STC at any time up to the age of 60 years or five years after resigning or retiring of an infirmity caused otherwise than by being hurt on duty that is claimed to render the member incapable of work outside the police force. Those sub-sections do not undercut the notification requirements in s 10B(2). Rather, it appears from the way in which s 10(1BA) groups the application time limits for superannuation allowance with the application time limits for additional amounts, and seemingly treats them as one, that the only class of injury contemplated by s 10(1BA) is injury sustained in the course of duty which results in an infirmity rendering the member incapable of exercising the functions of a police officer. Hence, as it

¹⁴ *Miles v SAS Trustee Corporation* [2017] NSWCA 86 at [4] per Payne JA, [67] per Sackville A-JA.

Kiefel CJ
Bell J
Nettle J

16.

appears, s 10(1D) is limited to dealing with the possibility of that specified infirmity so developing over time as either to cause or to exacerbate the member's incapacity for work outside the police force.

29 Taking those considerations together conveys that the preferable view of s 10(1A)(b)(ii) is that, like s 10(1A)(c), it contemplates only one kind of incapacity for work outside the police force, being incapacity the result of the specified infirmity of body or mind determined to have been caused by the member being hurt on duty when a member of the police force.

Lembcke v SAS Trustee Corporation

30 In *Lembcke v SAS Trustee Corporation*¹⁵, the Court of Appeal of the Supreme Court of New South Wales rejected an argument that the "additional amount" payable under s 10(1A)(b)(ii) was subject to an implicit limitation that a disabled member receiving a superannuation allowance under s 10(1A) as well as earnings outside of the police force should not be better off than he or she would have been on his or her pre-disablement salary. The argument was in effect that s 10(1A) should be conceived of as having a hybrid character comprised of a purely superannuate automatic entitlement to 72.75 per cent and a further compensatory element for incapacity for work outside the police force of up to 12.25 per cent¹⁶. Santow JA held¹⁷ that, regardless of its proper characterisation, s 10(1A) required no more than a consideration of what additional amount, in the opinion of STC, is commensurate, in the sense of proportionate, with the member's incapacity for work *outside* the police force. Meagher JA observed¹⁸ in a similar vein that the "section requires ... one question, and one question only, what is the applicant's incapacity for work outside the police force?" Ipp JA held¹⁹ that s 10(1A) was plainly not compensatory and therefore the idea of an implied limitation fell away.

15 (2003) 56 NSWLR 736.

16 *Lembcke* (2003) 56 NSWLR 736 at 746 [29] per Santow JA. See also at 739 [11]-[13].

17 *Lembcke* (2003) 56 NSWLR 736 at 750 [48] (Meagher JA and Ipp JA agreeing at 737 [1], 751 [54]).

18 *Lembcke* (2003) 56 NSWLR 736 at 738 [4].

19 *Lembcke* (2003) 56 NSWLR 736 at 751-752 [56]-[57] (Meagher JA agreeing at 737 [1]).

31 In this case, Sackville A-JA invoked *Lembcke* as support for the idea that the construction of s 10(1A) for which the respondent contended should not be rejected simply because it produces what might be thought to be anomalous results²⁰. Likewise, in submissions before this Court, the respondent invoked *Lembcke* in support of his submission that the construction of s 10(1A) for which he contended is consistent with the superannuate nature of a fund into which members pay contributions to ensure that if they are "hurt on duty" and in consequence lose their careers in the police force, they are thereafter provided for with superannuation benefits at a level commensurate with their ability to work outside the police force.

32 Apart from making clear, however, that s 10(1A) is to be construed in accordance with its terms rather than according to preconceptions about underlying policy, *Lembcke* really takes the matter no further. Plainly enough, s 10(1A) provides for benefits commensurate with the extent to which a member is incapacitated for work outside the police force. But the question remains whether, upon its proper construction, s 10(1A) confines those benefits to incapacity for work outside the police force the result of an infirmity caused by injury sustained in the course of duty. And for the reasons given, it should be concluded that it does.

Legislative history and extrinsic materials

33 Finally, although it is not a strong point, that construction of s 10(1A) appears consistent with the legislative history of the Act and the extrinsic materials. As has been discussed, ss 10(1), 10(1A) and 10B of the Act were introduced by amendment in 1979 to replace provisions which allowed for a maximum pension of 72.75 per cent of salary in office. The purpose of the amendment was stated in the Second Reading Speech in the lower house thus²¹:

"The main changes will be to bring benefits to Police in line with those under the Workers' Compensation Act which has been used to determine the level of lump sum benefits for the loss of a limb, the loss of an eye, etc, and also in the event of death.

Pensions on discharge due to injury may be increased from 72.75 per cent of salary to 85 per cent provided such increase does not

20 *Miles v SAS Trustee Corporation* [2017] NSWCA 86 at [55]-[56].

21 New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 October 1979 at 1844.

Kiefel CJ
Bell J
Nettle J

18.

exceed the amount that would have been paid as a weekly allowance had the Workers' Compensation Act applied.

The Police Superannuation Board is to be increased to include the Registrar of the Workers' [C]ompensation Commission and this will be the body to determine the amount of pension to be paid and will take into consideration the nature of the wound or injury and the ability of the officer to earn on the open labour market, and any other relevant factors. The 85 per cent of salary will be paid where the injured officer is totally incapacitated for all work as distinct from Police duties. Cabinet also decided that in special circumstances more than 85 per cent, but never exceeding 100 per cent, of salary could be paid *if in the opinion of the Commissioner the injury which resulted in total incapacity was received in circumstances which exposed the officer to exceptional risks.*" (emphasis added)

34 It was further stated that²²:

"The bill would provide a statutory minimum superannuation allowance of 72.75 per cent of salary. A member of the police force *whose disability also causes incapacity for work outside the police force* would be paid an amount in addition to the disablement allowance. The additional amount would not exceed 12.25 per cent of the salary of office and be commensurate with the extent of incapacity. In such cases the maximum annual allowance would therefore be 85 per cent of salary. However, *in cases of total incapacity associated with exposure to exceptional risk*, the additional amount would be no less than 12.25 per cent and no more than 27.25 per cent – the maximum allowance being therefore 100 per cent of salary. *The result would be that hurt-on-duty pensions could reflect the degree of incapacity suffered and also any exceptional risk undertaken.*" (emphasis added)

35 It is to be observed that the latter emphasised observations were directed to s 10(1A)(c) rather than s 10(1A)(b), but the fact that s 10(1A)(c) was intended to have the effect there stated is consistent with s 10(1A)(b) operating as the appellant contended.

²² New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 October 1979 at 1845.

36 In the Court of Appeal, Sackville A-JA pointed to²³ the following part of the Second Reading Speech as supporting the contrary conclusion²⁴:

"Careful consideration has been given to the time from which the new hurt-on-duty benefits should operate. The conclusion reached is that the only way of ensuring equity in this matter is to provide that the new benefits apply only in respect of injuries received after the commencement of the hurt-on-duty provisions of the bill. However, the benefits would apply to a member of the police force who is hurt on duty after the commencement of these provisions but who does not suffer infirmity until he has left the police force."

37 With respect, however, that statement is apt to refer to a situation where the infirmity is caused from being hurt on duty but does not manifest until a later point. It does not suggest that s 10(1A)(b)(ii) should be construed otherwise than as the appellant contended.

Medical examinations

38 Finally, counsel for the respondent drew attention to the fact that, although s 10B makes explicit provision for STC to have regard to medical advice before certifying a member incapable from a specified infirmity caused by being hurt on duty of exercising the functions of a police officer, the Act makes no explicit provision for STC to have regard to medical advice when determining whether a member is incapacitated or totally incapacitated for work outside the police force. In counsel's submission, that difference is unsurprising and not inconsistent with the construction of s 10(1A)(b) for which he contended. Once a member is certified incapable of exercising the functions of a police officer, the member is granted an annual superannuation allowance and, if the member thereafter applies for a variation of the allowance, STC would have power as part of its power to do "all things that are necessary or convenient to be done for, or in connection with, the exercise of STC's functions"²⁵ to insist upon medical examination as a condition of its consideration of the application for variation, and to engage medical advisors as appropriate.

23 *Miles v SAS Trustee Corporation* [2017] NSWCA 86 at [92].

24 New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 October 1979 at 1846.

25 *Superannuation Administration Act 1996* (NSW), s 57.

Kiefel CJ
Bell J
Nettle J

20.

39 So much may be accepted. But none of that does anything to lessen the force of the considerations already identified that point in favour of the conclusion that the only incapacity with which s 10(1A)(b)(ii) is concerned is incapacity from a specified infirmity of body or mind caused by a member being hurt on duty when a member of the police force. Granted, once a member has been certified under s 10B as incapable of exercising the functions of a police officer, an annual superannuation allowance becomes payable and any application thereafter for a variation of amount will entail a separate consideration. But it remains that what is to be considered is the effect on the member of the infirmity which rendered the member incapable of exercising the functions of a police officer.

Conclusion and orders

40 In the result, it should be held that, upon the proper construction of s 10(1A)(b) of the Act, the expression "member's incapacity for work outside the police force" means the member's incapacity from a specified infirmity of body or mind determined pursuant to s 10B or on appeal to have been caused by the member being hurt on duty when he or she was a member of the police force. The appeal should be allowed. Orders 1 and 2 of the Court of Appeal of the Supreme Court of New South Wales made on 4 May 2017 should be set aside and in their place it should be ordered that the appeal to the Court of Appeal be dismissed. The appellant is to pay the respondent's costs of the appeal to this Court.

41 GAGELER J. Statutory construction is the process by which meaning is attributed to statutory text²⁶. In a doubtful case, it involves constructional choice²⁷. The statutory text must be considered from the outset in context²⁸ and attribution of meaning to the text in context must be guided so far as possible by statutory purpose²⁹ on the understanding that a legislature ordinarily intends to pursue its purposes by coherent means³⁰.

42 Counsel for Mr Miles emphasised the naivety of thinking that s 10(1A)(b)(ii) of the *Police Regulation (Superannuation) Act 1906* (NSW) ("the Act") is other than the product of industrial compromise. However, neither he nor counsel for the SAS Trustee Corporation ("STC") suggested that the industrial character of the sub-paragraph warrants departure from any of those principles of statutory construction.

43 Construction of s 10(1A)(b)(ii) is informed by the context of that sub-paragraph within the second of two mutually exclusive streams of superannuation allowance for which the Act provides. Within that context, it is further informed by the extent to which textually available alternative constructions of the sub-paragraph contribute to the achievement by coherent means of the evident purpose for which that second stream of superannuation allowance is provided.

44 The first stream of superannuation allowance, for which provision is made in s 7(1), applies where a member either retires or is discharged after being certified by STC under s 8(1) to be "incapable, from infirmity of body or mind, of personally exercising the functions of a police officer" referred to in s 14(1) of the *Police Act 1990* (NSW). The annual allowance applicable under s 7(1) is calculated as a percentage of the member's attributed salary at the time of retirement or discharge irrespective of the extent (if any) of the member's incapacity for work outside the police force. The percentage varies solely by

26 *Thiess v Collector of Customs* (2014) 250 CLR 664 at 671 [22]; [2014] HCA 12.

27 *SZTAL v Minister for Immigration and Border Protection* (2017) 91 ALJR 936 at 944 [38]; 347 ALR 405 at 415; [2017] HCA 34.

28 *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408; [1997] HCA 2.

29 *Thiess v Collector of Customs* (2014) 250 CLR 664 at 672 [23]; *SZTAL v Minister for Immigration and Border Protection* (2017) 91 ALJR 936 at 940-941 [14], 944-945 [39]-[41], [43]; 347 ALR 405 at 410, 415, 416.

30 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381-382 [70]-[71]; [1998] HCA 28.

reference to the member's length of service and is capped at 72.75 per cent for a member who has served 30 or more years. The allowance is payable irrespective of the extent (if any) to which the member might have an incapacity for work outside the police force and, in the case of a member discharged after being certified to be incapable of personally exercising the functions of a police officer, continues even though the member might subsequently make a full recovery.

45 The second stream of superannuation allowance, for which provision is made in s 10(1A), applies only where a member or former member falls within the definition of a "disabled member of the police force" in s 10(1). Meeting that definition is the gateway through which a member or former member of the police force must pass in order to become entitled to superannuation allowance within that second stream. The gateway, however, is not unrelated to the path to which it leads. Importantly, the definition explains the purpose for which an entitlement to the second stream of superannuation allowance is bestowed on a member who passes through the gateway. More importantly for present purposes, the definition explains the content of and the relationship between the components of that allowance.

46 For a member or former member to fall within the definition, two preconditions must be met. The first precondition is met, in the case of a member, if the member is discharged after being certified, by STC under s 10B(1), "to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer" referred to in s 14(1) of the *Police Act* or, in the case of a former member, if the former member has been certified by STC under s 10B(2) to be "incapable, from an infirmity of body or mind, of personally exercising the functions of a police officer" referred to in s 14(1) of the *Police Act*.

47 The second precondition, applicable equally to a member or former member, is that the same infirmity that has been the subject of certification by STC under s 10B(1) or s 10B(2), as the case may be, has been determined by the Commissioner of Police under s 10B(3), or by the District Court on appeal under s 21(4), to have been caused by the member or former member having been "hurt on duty" when a member of the police force. The expression "hurt on duty" is defined in s 1(2) of the Act to mean injured in circumstances which, if the member were a worker, would entitle the member to compensation under the *Workers Compensation Act 1987* (NSW). A worker is entitled to compensation under that Act if the worker has received a personal injury arising out of or in the course of employment³¹.

31 *Workers Compensation Act 1987* (NSW), s 9 when read with s 4 (definition of "injury").

48 The second stream of superannuation allowance is accordingly only available to a member or former member who has an infirmity of body or mind which has been determined by the Commissioner of Police under s 10B(3), or by the District Court on appeal under s 21(4), to have arisen out of or in the course of his or her employment as a police officer.

49 Within the second stream of superannuation allowance, s 10(1A)(a) operates to provide a disabled member of the police force with an entitlement to a base level annual allowance of 72.75 per cent of the member's attributed salary at the time of retirement or discharge – equivalent to the highest level of allowance available under the first stream. The entitlement of a disabled member to that base level annual allowance exists irrespective of the extent (if any) to which the disabled member might be incapacitated for work outside the police force and continues even though the disabled member might make a full recovery after discharge or retirement.

50 To that base level annual allowance an additional amount is then to be added under s 10(1A)(b) or (c) if and to the extent that the disabled member of the police force is incapacitated for work outside the police force.

51 For a disabled member or former member who is "totally incapacitated for work outside the police force" and who, "in the opinion of STC, ... was hurt on duty because the member was required to be exposed to risks to which members of the general workforce would normally not be required to be exposed in the course of their employment", s 10(1A)(c)(i) provides for an additional amount which can take the annual allowance to a level between 85 per cent and 100 per cent of the member's attributed salary at the time of retirement or discharge. The precise additional amount is required by s 10(1A)(c)(ii) to be "commensurate, in the opinion of STC, with the risks to which the member was so required to be exposed".

52 For a disabled member or former member to whom s 10(1A)(c) does not apply, s 10(1A)(b)(i) provides for an additional amount which can take the annual allowance to a level up to 85 per cent of the member's attributed salary at the time of retirement or discharge. The precise additional amount is required by s 10(1A)(b)(ii) to be "commensurate, in the opinion of STC, with the member's incapacity for work outside the police force". Section 10(1D) makes provision for STC to determine at any time an additional amount under s 10(1A)(b) or (c) and to vary at any time any such determination.

53 This elaborate structure has a coherent operation if, but only if: (1) the incapacity for work outside the police force which is captured by each of s 10(1A)(b)(ii) and s 10(1A)(c) is the same incapacity; and (2) the incapacity is an incapacity attributable to the same specified infirmity of body or mind that has been determined by the Commissioner of Police under s 10B(3), or by the

District Court on appeal under s 21(4), to have been caused by the member being hurt on duty.

54 When the incapacity for work outside the police force which is captured by each of s 10(1A)(b)(ii) and s 10(1A)(c) is so construed, the structure of the additional amount provided for by s 10(1A)(b) and (c) is internally coherent. The focus throughout is on the specified infirmity of body or mind that has been determined by the Commissioner of Police under s 10B(3), or by the District Court on appeal under s 21(4), to have been caused by the disabled member being hurt on duty. The inquiry throughout is as to the extent to which, in the opinion of STC, that specified infirmity has rendered the disabled member incapacitated for work outside the police force.

55 The additional amount which can take the annual allowance to a level up to 85 per cent of the disabled member's attributed salary becomes available by reference to STC's opinion under s 10(1A)(b) as to the extent to which the specified infirmity has resulted in the disabled member being incapacitated for work outside the police force – 85 per cent being commensurate with STC forming the opinion that the specified infirmity has resulted in the disabled member being totally incapacitated for work outside the police force. The greater additional amount which can take the annual allowance to a level between 85 per cent and 100 per cent of the disabled member's attributed salary becomes available under s 10(1A)(c) where STC forms the opinion that a disabled member who is totally incapacitated for work outside the police force suffered the specified infirmity by reason of being required to be exposed to risks to which members of the general workforce would normally not be required to be exposed in the course of their employment.

56 The alternative construction of s 10(1A)(b)(ii), of which the majority in the Court of Appeal was persuaded, is that the sub-paragraph refers to incapacity for work outside the police force irrespective of the source of that incapacity. Although that construction is textually available, it results in a distortion of the complementary operation of s 10(1A)(b) and (c) in setting an additional amount which the disabled member is entitled to be paid.

57 The relationship between s 10(1A)(b) and (c) appears not to have been the subject of detailed submissions before the Court of Appeal. Taking that relationship into account, the conclusion of Schmidt J must be preferred to that of the majority.

58 The appeal must therefore be allowed. I agree with the orders proposed by Kiefel CJ, Bell and Nettle JJ.

59 EDELMAN J. Section 10(1A) of the *Police Regulation (Superannuation) Act 1906* (NSW), when read with the definitions that precede it³², relevantly provides for

"the annual superannuation allowance for a [member of the police force who is discharged after being certified ... to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer ... that infirmity being determined ... to have been *caused by the member being hurt on duty*]" (emphasis added).

60 The annual superannuation allowance has two components. First, s 10(1A)(a) provides that the allowance contains a base amount of 72.75 per cent of the member's attributed salary of office. Secondly, s 10(1A)(b) provides, subject to an exception that does not apply in this case, for an "additional amount" that is not more than a further 12.25 per cent of the member's attributed salary of office and which is "commensurate, in the opinion of [the SAS Trustee Corporation], with the member's incapacity for work outside the police force". This appeal concerns the preconditions for an award of this additional amount.

61 The essential issue on this appeal is the interpretation of the words of s 10(1A). The appellant submitted that a precondition for the award of the additional amount of the annual superannuation allowance, like the precondition for the base amount, is that the member's incapacity for work arises from the specified infirmity "caused by the member being hurt on duty". The respondent, following the approach of the majority of the Court of Appeal of the Supreme Court of New South Wales, submitted that the additional amount of the annual superannuation allowance includes an amount for incapacity for work outside the police force whether or not that incapacity (i) arises from the specified infirmity or (ii) was caused by the member being hurt on duty.

62 There is a textual difficulty with the respondent's interpretation, although this difficulty was not a matter that was raised before the Court of Appeal. In the Court of Appeal, the parties' focus upon context and purpose led the Court to divide as to the meaning of s 10(1A). However, the textual difficulty for the respondent's interpretation, identified during oral submissions in this Court, can be seen when s 10(1A) is read with the definitions included as set out above. The difficulty is that the annual superannuation allowance, which includes the base amount and the additional amount, is "for" both a person and a purpose. The person must be a member of the police force. The purpose must be to provide for a member having a certified incapacity, arising from a specified infirmity

32 *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* (2005) 221 CLR 568 at 574-575 [12]; [2005] HCA 26; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at 44 [40], 46 [45]; [2009] HCA 41.

preventing the personal exercise of the functions of a police officer, where that infirmity was "caused by the member being hurt on duty".

63 The text of s 10(1A), thus understood, naturally requires that the amount of the annual superannuation allowance be confined to its purpose, which includes the causal requirement that the allowance be awarded for the particular consequence of being hurt on duty. The concept of a member of the police force being "hurt on duty" is defined in s 1(2) as being "injured in such circumstances as would, if the member were a worker within the meaning of the *Workers Compensation Act 1987*, entitle the member to compensation under that Act". Section 9 of the *Workers Compensation Act 1987* (NSW) entitles a worker to compensation for an "injury", which is defined in s 4 as "personal injury arising out of or in the course of employment".

64 The task of statutory construction involves the legal application of the meaning of statutory words, as interpreted, to the facts of a case. In *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd*³³, this Court said that the task of statutory construction must begin and end with the text of the statute. That statement does not mean that the text of a statute must be interpreted only according to the range of semantic meanings of the individual words. It means only that the interpretation of a statute, like any other legal instrument, is an interpretation of its words. Those words are interpreted in their context and in light of their purpose although legal rules can sometimes exclude or restrict the use of some context. In ascertaining the reasonably intended meaning of Parliament context is, literally, those matters to be considered (simultaneously) together with the text. Context can give words an interpretation that is the opposite of their ordinary meaning and grammatical sense³⁴. Context can also permit a construction of words that excludes their application to matters that would have fallen within the application of their literal meaning³⁵. However, as with contractual interpretation, where "the clearer the natural meaning the more difficult it is to justify departing from it"³⁶, so too in statutory interpretation

33 (2012) 250 CLR 503 at 519 [39]; [2012] HCA 55.

34 See, eg, *Associated Newspapers Ltd v Wavish* (1956) 96 CLR 526 at 528; [1956] HCA 69; *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850 at 880; *Director of Public Prosecutions (Nauru) v Fowler* (1984) 154 CLR 627 at 630; [1984] HCA 48; *Burrabungba v Queensland* (2015) 236 FCR 160 at 164 [18].

35 Blackstone, *Commentaries on the Laws of England* (1765), Introduction, §2 at 60; *Ex parte Walsh and Johnson*; *In re Yates* (1925) 37 CLR 36 at 91, 93; [1925] HCA 53.

36 *Arnold v Britton* [2015] AC 1619 at 1628 [18].

27.

"questions of degree arise" and it will be more difficult to displace an interpretation that "has a powerful advantage in ordinary meaning and grammatical sense"³⁷.

65 The reasons of Kiefel CJ, Bell and Nettle JJ demonstrate that the context and purpose of s 10(1A) of the *Police Regulation (Superannuation) Act* supports the interpretation that an additional amount of the annual superannuation allowance under s 10(1A)(b) is only available if the member's incapacity for work outside the police force is from the specified infirmity of body or mind determined to have been "caused by the member being hurt on duty" when he or she was a member of the police force. That context and purpose aligns with, and reinforces, the natural and ordinary meaning of the words of s 10(1A) when read together with its defined terms.

66 The appeal should be allowed. I agree with the orders proposed by Kiefel CJ, Bell and Nettle JJ.

³⁷ *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 321; [1981] HCA 26; *Hepples v Federal Commissioner of Taxation* (1992) 173 CLR 492 at 535-536; [1992] HCA 3; *Telstra Corporation Ltd v Australasian Performing Right Association Ltd* (1997) 191 CLR 140 at 186; [1997] HCA 41.