



## HIGH COURT OF AUSTRALIA

14 November 2018

### SAS TRUSTEE CORPORATION v PETER MILES [2018] HCA 55

Today the High Court of Australia unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales regarding the interpretation of s 10(1A)(b)(ii) of the *Police Regulation (Superannuation) Act 1906* (NSW) ("the Act").

The Act established a Police Superannuation Fund controlled by SAS Trustee Corporation ("STC"). In 2003, Mr Miles was certified by STC as being incapable of discharging the duties of his office as a police officer, as a result of four specified infirmities of an orthopaedic nature. The Commissioner of Police determined that these infirmities were caused by Mr Miles being hurt on duty. Mr Miles satisfied the criteria of a "disabled member of the police force" in s 10(1) of the Act and, in accordance with s 10(1A)(a), he received an annual superannuation allowance equal to 72.75 per cent of his attributed salary of office, which in 2004 was increased to 82.55 per cent.

Section 10(1A)(b)(ii) of the Act provided that the annual superannuation allowance for a disabled member of the police force may increase by an additional amount that is commensurate with the member's "incapacity for work outside the police force". In 2013, Mr Miles applied to STC under that provision for an additional amount of annual superannuation allowance arising from an infirmity of post-traumatic stress disorder ("PTSD") which increased his incapacity for work outside the police force. STC rejected that application. Mr Miles applied to the District Court of New South Wales as a person aggrieved by STC's decision. The primary judge held that, notwithstanding that the PTSD had increased Mr Miles' incapacity for work outside the police force, the 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.

Mr Miles appealed to the Court of Appeal, contending that once a person had met the definition of a disabled member of the police force, as he had, the incapacity for work outside the police force in s 10(1A)(b)(ii) may be an incapacity that arises at any time and from any source, and could in this case arise from the PTSD. STC contended that the incapacity for work outside the police force must arise from a specified infirmity the subject of STC's certification and determined by the Commissioner of Police to have been caused by the member being hurt on duty, and must in this case arise from the specified infirmities of an orthopaedic nature. A majority of the Court of Appeal allowed Mr Miles' appeal holding that there was no reason to restrict s 10(1A)(b)(ii) to an incapacity for work outside the police force caused by the member having been hurt on duty.

By grant of special leave, STC appealed to the High Court. The Court held that the context and purpose of s 10(1A)(b)(ii) favoured the conclusion that a disabled member of the police force was not entitled to an additional amount of annual superannuation allowance under s 10(1A)(b)(ii) unless the member's incapacity for work outside the police force was attributable to a specified infirmity determined to have been caused by the member being hurt on duty.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*