

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No S260 of 2017

BETWEEN:



SAS TRUSTEE CORPORATION
Appellant
and

PETER MILES
Respondent

RESPONDENT'S OUTLINE OF ORAL ARGUMENT

10 **Part I: SUITABILITY FOR PUBLICATION**

1. The respondent certifies that this outline is in a form suitable for publication on the internet.

Part II: ARGUMENT

2. The "context" of the relevant provisions in the *Police Regulation (Superannuation) Act 1906* ("the Act") provide little assistance. The headings for example are simply the briefest summary of the subject with which the relevant provision deals (RS [19]).
3. The Act has no "objects" clause. One has to go to its provisions to see what the objects are.
4. The Police Superannuation Fund is established by s. 3(1) of the Act. It is controlled by
20 the appellant. The Fund consists of money from five possible sources. It includes the amounts deducted under s. 5(1) from the salaries of police officers: see s. 3(2)(b) (RS [14], [33]).
5. The fund is to provide monies to persons who have been servants of the state (RS [18]). The provisions are likely to have been the subject of political or industrial compromises that are not apparent from the legislative text or secondary materials (RS [12(a)]).
6. The heading – whether of s. 3, or the Part, tells no more than that the Fund is to be a
30 superannuation fund and is likely to be for the benefit of police officers, i.e. "members of the police force" within the terms of that definition in s. 1(4A). To see what are the "benefits provided by this Act" in terms of s. 3(3)(a), one must go to the provisions of the Act dealing with that topic. "Context" tells you nothing more.
7. It is Part 4 of the Act which deals with the benefits payable.

8. One starts with s. 7(1). The heading to s. 7 is "*Superannuation allowance except where member hurt on duty*". As its opening words make apparent, it deals with two classes of case, firstly retirement on or after 60, having served 20 years or more, and secondly, discharge under 60 but because of incapacity, 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*. It may be noted in passing that the provisions of s. 7(1) provides for a pension to be paid to a former officer where that officer is incapacitated and the incapacity is wholly unrelated to the officer's former duties – in other words, the Act is not *simply* concerned with providing "*compensation*" for work injuries (RS [5], [15] –
10 [17]).
9. Turning to s. 10, the heading is "*Superannuation allowance where member hurt on duty*". The entitlement claimed was pursuant to s. 10(1A). It provides for the "annual superannuation allowance for a disabled member of the police force".
10. "*Disabled member of the police force*" is defined by the definition provision of s. 10(1). To fall within the definition of "*disabled member of the police force*", it is not *sufficient* to have been "*hurt on duty*". Rather the infirmity resulting from having been so hurt must make the former member incapable of personally exercising the functions of a police officer (RS [22]). "*Hurt on duty*" is defined by s. 1. It means injured in such circumstances as would, if the member were a worker under the *Workers*
20 *Compensation Act*, entitle the member to compensation under that act (RS [22] – [23]).
11. Section 10(1)(a) provides for current members of the police force, whereas s. 10(1)(b) provides for former members of the police force.
12. There are three further relevant features of s. 10B. Firstly, s. 10B(2A) concentrates on the incapacity to perform the functions *of a police officer*. Secondly, s. 10B(3) requires the Commissioner of Police to decide whether the certified infirmity was caused by the member being hurt on duty. Thirdly, the Commissioner of Police must decide the date on which the member was "*hurt on duty*". Section 10B sets out the mandatory preconditions to an entitlement to a "*hurt on duty*" pension (RS [26]).
13. One returns to s. 10(1A) to determine the quantum of the "*annual superannuation allowance*" payable to a person falling within the definition of "*disabled member of the police force*" (RS [19], [46(b)], [48]). The terms of s. 10(1A) have the effect that
30 the *minimum* figure is 72.75% of the member's "*attributed salary of office*" and there

may be two additional amounts. The minimum figure is the same as the maximum amount payable pursuant to s. 7(1) (RS [15], [28]). Section 10(1A)(c) applies if two criteria are satisfied, firstly that the disabled member is totally incapacitated for work outside the police force and secondly that the member was “hurt on duty” – as defined – because of exposure to risks as there set out (RS [37]).

14. If one or other of these criteria is not satisfied, one goes to s. 10(1A)(b) which provides for an additional amount of up to 12.25%, giving a possible total of 85%. The point within the 12.25% band is to be commensurate with the member’s incapacity for work *outside* the police force. This is a different criterion from that of being incapable of personally exercising the functions of a police officer. The “*incapacity*” referred to in each instance is for potentially different functions. The question is not whether the police officer has been “*hurt on duty*” or “*is a disabled member of the police force*” – those matters having already been established. The question that then arises is different, namely, to what extent the member is *now* capable of work outside the police force (RS [32]).

15. It is clear too that the amount payable under s. 10(1A) may be varied and the power to make such determinations, and the time from which they take effect, is given to the appellant (see s. 10(1D)) (RS [36]). There is a time limitation: s. 10(1BA), but subject to compliance with that, there is no restriction.

16. Reliance is placed on extrinsic materials but they do not assist the appellant. See in particular page 1844 of Hansard “*The 85 per cent of salary will be paid where the injured officer is totally incapacitated for all work as distinct from Police duties*”. (AB61 [79]).

17. The emphasis placed by the appellant that the increase under s.10(1A)(b) must relate to the certified “*hurt on duty*” injury is misplaced.

18. The policy underlying the relevant provisions of the Act is to provide a pension for injured servants of the state having lost their career and prospects as members of the police force (RS [18], [33]).

Dated: 16 August 2018

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D.F. Jackson QC

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