

## *Heffernan v Comcare* [2015] AATA 655 (31 August 2015)

### Key Points

- The Tribunal said that the terms ‘aids’ and ‘appliance’ should be construed widely in the context of s 39(1)(e) in order to give the worker the best possible outcome as is consistent with the purpose of the SRC Act.
- The Tribunal held that a vehicle could not be considered an aid or appliance under s 39(1)(e) of the SRC Act.

### Background

In 2005, Mr Heffernan sustained serious back injuries for which Comcare accepted liability under s 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). It was accepted by Comcare that Mr Heffernan’s back injuries were aggravated by driving, so in June 2006, Comcare accepted liability in respect of a modification to the driver’s seat of a 1996 Landcruiser owned by Mr Heffernan at that time.

In 2009, Mr Heffernan sold the 1996 Landcruiser and purchased a 2004 Nissan. The vehicle was assessed separately by two qualified Occupational Therapists. The reports concluded that the 2004 Nissan was unsuitable for Mr Heffernan due to his back condition and the vehicle could not be modified to minimise his discomfort. Mr Heffernan then sold the 2004 Nissan and purchased a 2010 Landcruiser. Mr Heffernan then lodged a claim under s 39(1)(e) of the SRC Act to be compensated for the purchase of the 2010 Landcruiser and car seat covers for the vehicle.

On 11 June 2014 Comcare made a determination which denied liability for the vehicle purchase cost under s 39 of the SRC Act. On 22 August 2014, Mr Heffernan applied to the AAT for a review of the decision.

The Tribunal was required to consider whether the 2010 Landcruiser could be classified as an aid or appliance under s 39(1)(e) of the SRC Act.

### The Law

Section 39 of the Act which provides that:

“(1) *Where:*

- (a) an employee suffers an injury resulting in an impairment; and*
- (b) the employee is undertaking, or has completed, a rehabilitation program or has been assessed as not capable of undertaking such program; the relevant authority is liable to pay compensation of such amount as is reasonable in respect of the cost, payable by the employee, of:*
- (c) any alteration of the employee’s place of residence or place of work;*
- (d) any modifications of a vehicle or article used by the employee; or*

*(e) any aids or appliances reasonably required by the employee, having regard to the nature of the employee's impairment and, where appropriate the requirements of the rehabilitation program."*

## Conclusion

The Tribunal accepted a wide construction of the words 'aid' and 'appliance' should be taken and that there was no certain rule as to whether a vehicle could or could not be considered an 'aid' or 'appliance'. In order for a vehicle to be considered an aid or appliance under s 39(1)(e) of the SRC Act the Tribunal considered that the function or purpose of the vehicle should be to yield assistance or help or give support to the claimant in a medical or rehabilitative sense. A vehicle that is merely commercially produced and designed for transport could not, therefore, be considered an aid or appliance in the context of s 39(1)(e).

Comcare contended that the 2010 Landcruiser could not be considered an aid or appliance under s 39(1)(e) of the SRC Act. Comcare agreed that because the word vehicle is expressly dealt with under s 39(1)(d), Parliament did not also intend to have the words aid or appliance under s 39(1)(e) to be read so expansively as to include a motor vehicle. In its reasons the Tribunal agreed that the separation of s 39(1)(d) and s 39(1)(e) of the SRC Act gives the appearance that Parliament intended subsection (d) to deal with vehicles and subsection (e) to deal with aids and appliances, thus excluding vehicles.

The Tribunal then considered the plain meaning of the words "*aid*" and "*appliance*". The Tribunal stated that the definition of aid, read at its widest, means something which helps or assists. This reading would not necessarily preclude a motor vehicle from being considered an aid.

The Tribunal then considered whether the 2010 Landcruiser could be considered an aid or appliance for the use of Mr Heffernan in this case. Mr Heffernan submitted that he was denied the mobility provided by a car unless the vehicle is modified. Comcare accepted that a vehicle that is specifically designed to accommodate a wheelchair driver could (in certain circumstances) be considered an aid or appliance, however, a commercially available vehicle such as the 2010 Landcruiser could not.

The Tribunal affirmed Comcare's decision to deny compensation to Mr Heffernan for the purchase of the 2010 Landcruiser on the basis that the vehicle could not be considered an aid or appliance under s 39(1)(e) of the SRC Act.

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