

## Exclusion is not the aim of the game when it comes to considering the reasonableness of ‘aids or appliances’ *Monk and Comcare [2018] AATA 224*

### Key Points

- Does a transporter van qualified as an ‘aid or appliance’, as prescribed by section 39(1)(e) of the SRC Act?
- The Tribunal applied the principle that an item required to “*maintain personal sufficiency as largely as possible in the pursuit of his personal domestic life*” is reasonable to obtain/repair.

### Background

Ms Monk sustained a spinal injury in 1988 during the course of her employment which left her confined to a wheelchair and with substantial physical limitations, including an inability to enter a standard vehicle unaided. Following a decision of the Tribunal in 1996 (see *Monk and Comcare* [1996] 43 ALD 677), the applicant obtained compensation pursuant to section 16 of the SRC Act to purchase a VW Transporter van which was retrofitted to allow her significant independence in mobility.

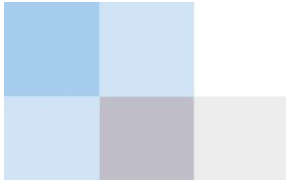
In or about 2015, Ms Monk obtained a quote for the repair of her van amounting to \$9,000 which she submitted to Comcare. While Comcare accepted that Ms Monk’s van required repair, it denied liability to reimburse the applicant. Ms Monk sought review of Comcare’s decision on the basis that her existing van ought to be repaired in accordance with section 39(1)(d), or a new, modified van ought to be paid for as it constituted an aid or appliance under section 39(1)(e) of the SRC Act and was reasonable for her to obtain.

### The Law

In determining Ms Monk’s Application, the Tribunal was required to consider whether:

1. A transporter van qualified as an aid or appliance in Ms Monk’s circumstances; and
2. A new van was reasonably required by Ms Monk having regard to the nature of her impairment and, where appropriate, the requirements of a rehabilitation program.

Section 39(1) of the Act refers to the provision of ‘aids or appliances’ to an employee who has suffered an impairment and has undergone, is undertaking or has been assessed as incapable of undertaking a rehabilitation program. The Tribunal was required to consider the application of paragraphs (d) and (e) of this section, namely whether Comcare was liable to pay compensation of a reasonable amount in respect of the costs of any modification of a vehicle or article used by Ms Monk.



The Tribunal noted that the authorities had tended to treat the expression ‘aid or appliances’ quite widely so long as a connection to rehabilitation is established. It also referred to the decision in *Grace and the Commonwealth* [1987] 6 AAR 372, where the Tribunal held that the relevant test is whether the item “*is needed in order that the employee maintain personal sufficiency as largely as possible in the pursuit of his personal domestic life*”.

Comcare attempted to rely on the maxim of interpretation referred to as *expression unius est exclusion alterius* (i.e. the nomination or mention of one specific matter impliedly excludes another matter) and submitted that as 39(1)(d), only allows for the reimbursement of the cost of modifying a vehicle, that the cost of acquiring a vehicle in the first place was not intended to be reimbursed under section 39(1)(e).

## Conclusion

Senior Member Manetta rejected Comcare’s submission on the basis that the *expression unius* principle merely concerns the drawing of inferences rather than as a presumptive rule of exclusions.

Senior Member Manetta took into account the beneficial nature of the legislation and the relevant test expressed in *Grace and the Commonwealth*, and determined that because the modification of a vehicle to enable Ms Monk to continue to drive was expressly compensable under section 39(1)(d), there was no reason to suppose that the acquisition of a vehicle was intended to fall outside the concept of an ‘aid or appliance’. Therefore, Senior Member Manetta considered Ms Monk’s van should be taken to be an aid or appliance, therefore Comcare was responsible for its repair and for the cost of replacing it if reasonably necessary.

While Senior Member Manetta determined that Comcare was responsible for the repair of Ms Monk’s existing van, having taken into account that the van was not beyond repair and that Ms Monk was elderly, Senior Member Manetta considered that it would be reasonable for Comcare to either pay for the repair of Ms Monk’s vehicle or purchase a suitable second-hand vehicle and retrofitting it, rather than purchasing an entirely new van.

## Lessons Learnt

The expression ‘aid or appliance’ is widely interpreted and generally in an employee’s favour. It is further submitted that Monk is an example of community standards generally moving towards a more expansive view of what is reasonable in terms of disability assistance.



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