

## *Ergarac v Comcare* [2014] AATA 592 (22 August 2014)

### Key Points

- The Tribunal had to consider whether the applicant's injury resulted in reasonable requirement for household and gardening assistance and the amount of assistance required
- The Tribunal found that what is "*reasonably required*" takes into account the circumstances of a matter, but what is "*reasonable*" is subject to an objective test.

### Background

Ms Ergarac is employed as a housemaid by Australian National University.

Ms Ergarac injured her back at work on 26 April 1995 and has not worked since that time. She has an accepted claim for "*degeneration/thoracic/lumbar intervertebral disc and adjustment reaction*".

Ms Ergarac has been provided with home help and gardening assistance since 1998. She sought to increase the level of assistance.

Comcare, issued a reviewable decision of 4 July 2013, which affirmed a previous determination, which accepted liability to provide household services for two hours per week and gardening services two hours a fortnight only up to and including 30 June 2014. On 19 September 2013, Ms Ergarac sought further review of that decision by the Tribunal.

The Tribunal was required to consider whether Ms Ergarac's injury resulted in a reasonable requirement for household and gardening assistance and if so, the amount of assistance required.

### The Law

Section 29 of the SRC Act provides for Comcare to pay for a percentage of the cost of household services, defined in section 4(1) to include '*house cleaning ... and gardening services that are required for the proper running and maintenance of the employee's household*'.

### Conclusion

Ms Ergarac submitted that she lived with her ex-husband in the same dwelling, who also suffered from multiple health conditions and provided some assistance with shopping, driving her to the shops, gardening and some heavier domestic tasks.

Ms Ergarac's son was able to visit daily when her pain was bad to provide assistance.

Ms Ergarac submitted that she required a daily cleaner for two hours a day or at least twice a week for two to three hours, and gardening assistance once a week for at least three hours.

Ms Ergarac submitted that she maintained a high standard of order, cleanliness and tidiness as it was culturally important to her given her Serbo-Croatian background.

The Tribunal considered that what was “*reasonably required in a particular case*” should take into account Ms Ergarac’s requirements based on:

- i. her accepted injury;
- ii. the size and nature of the house and garden; and
- iii. what assistance from other members of the household could be expected.

The Tribunal found that what was “*reasonable*” was an objective test based on what would be required for the general population with the same kind of injury.

As such, the Tribunal determined that Comcare was only liable to pay compensation based on the practices of the general population. They were not required to take into account standards adopted by specific nationalities.

In relation to assistance that “*might reasonably be expected*”, the Tribunal found that Comcare was entitled to expect that the assistance provided by Ms Ergarac’s husband would continue on the basis that he was still living in the house and could be expected to contribute to domestic tasks.

The Tribunal noted that Ms Ergarac’s house and garden was neat and tidy at the time of assessment which suggested that the level of assistance provided was reasonable.

Consequently, the Tribunal affirmed the decision under review.

## Lessons Learnt

This decision confirms that whilst what is “reasonably required” takes into account the subjective circumstances of a particular matter, what is “reasonable” is determined through an objective test based on what would be considered reasonable to the general population. Licensees are not required to take into account an employee’s personal standards of order, cleanliness and tidiness.

For more information please contact:

Lori Lim  
Solicitor  
Email: [lori.lim@hbalegal.com](mailto:lori.lim@hbalegal.com)  
Direct Line: (08) 9265 6007

Brett Ablong  
Partner  
Email: [brett.ablong@hbalegal.com](mailto:brett.ablong@hbalegal.com)  
Direct Line: (08) 9265 6001

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