

CITATION: *Karl Tattersall v Northern Territory of Australia [2025] NTWHC 6*

PARTIES: *Karl Tattersall*

v

Northern Territory of Australia

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: CIVIL

FILE NO(s): 2024-00005-LC

DELIVERED ON: 20 November 2025

DELIVERED AT: Darwin

HEARING DATE(s): 4 to 7 March 2025

DECISION OF: Macdonald LCJ

CATCHWORDS:

Workers' compensation – *Return to Work Act 1986 (NT)* – ss 3, 3A & 4(1) and (4) – “overall period or episode of work” – Interval or interlude – Discrete periods of work – “for the purposes of or in connection with the employers trade or business”.

REPRESENTATION:

Counsel:

Worker: Ms K. Sibley

Employer: Mr T. Moses

Solicitors:

Worker: Kapetas Neill

Employer: Hunt & Hunt

Decision category classification: B
Decision ID number: [2025] NTWHC 6
Number of paragraphs: 35

IN THE WORK HEALTH COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 2024-00005-LC

BETWEEN:

Karl Tattersall

Worker

AND:

Northern Territory of Australia

Employer

REASONS FOR DECISION

(Delivered 20 November 2025)

JUDGE MACDONALD

Background

1. On 13 November 2025 the court dismissed the Application in this proceeding with an oral summary of reasons, with written reasons to be published. These are those reasons.
2. On 9 September 2023 Mr Karl Tattersall (the Worker) was severely injured at his workplace, being Limmen National Park (LNP).¹ The Worker had just turned 51, having engaged in a broad range of positive vocational pursuits across his working life. However, he had a long-standing and vital interest in the natural world, and prior to 2023 developed an ambition to become a park ranger. He enrolled in a Certificate IV in *Conservation and Ecosystem Management* at CDU and, in the second half of 2022, secured an unpaid position with the NT Parks and Wildlife Commission (Employer) as a volunteer host at a campground known as Munbililla, within LNP.²
3. That honorary position was for a 6 week period, during which time the Worker got to know officers of the Employer responsible for the management of LNP. That led to becoming aware of a vacancy in the LNP Ranger establishment. The Worker successfully applied for appointment, and commenced employment on a six-month fixed period contract at the beginning of February 2023. That was described by the Worker as a 'trial period' and, unsurprisingly, he thrived in his employment and acquitted the duties in an effective and professional manner. The Employer then permanently appointed the Worker as a higher-level Ranger, about 3 months prior to the accident, on 16 June 2023. The characterisation applied by the Employer to such appointments is "ongoing", being open-ended and indefinite employment.
4. At approximately 6:30am on Saturday 9 September 2023 the Worker was climbing a ridge approximately 300 m from his residence at the workplace when a large boulder rolled onto him,

¹ Although occupying a vast area, to describe LNP as the Worker's workplace is accurate given his duties. See the definition of "workplace" provided by s 4 of the *Return to Work Act 1986* (RTW Act).

² The Northern Territory Parks and Wildlife Commission is an emanation of the Crown in right the Northern Territory by the dint of the *Parks and Wildlife Commission Act 1980* (NT).

causing serious and permanent injuries.³ The worker made a claim under the *Return to Work Act 1986 (NT)* (RTW Act). The claim was disputed by the Employer on 16 November 2023 with the mediation then required being unsuccessful. The Worker then commenced proceedings in the Work Health Court and the litigation took its course to hearing.⁴

5. The hearing took place over 3 to 7 March 2025, with the evidence comprising Court Books together with some further miscellaneous exhibits. Oral evidence was received from the Worker and the Senior Ranger of LNP at the time, Mr Reece Verdoon. The Court also had the benefit of written submissions of parties, supplemented by oral submissions on 7 March.
6. The issues in dispute were of relatively narrow compass. No significant factual disputes on the documentary or oral evidence arose, it being conceded that the Worker was injured on Saturday 9 September 2023, with his formal terms and conditions of employment being generally well accepted by the parties, despite that some differences in perspective concerning the Employer's expectation of Rangers did emerge. The legal dispute is whether the Worker's injuries arose "*out of or in the course of employment*". The Statement of Claim (SoC) filed 24 April 2024 pleads, firstly, that the injury "*was sustained during an interval or interlude occurring within an overall period or episode of work*".⁵ Second and "*additionally and/or in the alternative*", that the injury "*was sustained when the worker was acting for the purposes of and in connection with the Employer's trade or business within the meaning of subsection 4(4)(b)*" of the RTW Act.⁶
7. Paragraph 14 of the SoC then alleges that "*the injury arose out of or in the course of employment*". The Worker then made clear through his counsel at hearing that "*arise ... in the course of employment*" was the basis of the claim, with "*arise out of ... employment*" not being pressed.⁷ Paragraph 14 of the SoC is to be read in the contexts of paragraphs 12 and 13 of the pleading, and the common ground that the Worker was not on paid duty or engaged in actual work at the time of the accident. It is not considered that the Worker alleges any other more general path to proof of liability under the RTW Act in the circumstances.⁸ That is despite an oral submission made on 7 March 2025.⁹ Paragraphs 12 and 13 of the SoC expressly allege injury during an interval or interlude within "*an overall period or episode of work*" and/or a deemed "*injury*" through ss 4(4)(b) of the RTW Act.

³ Being a Saturday, and neither on duty nor present at the Ranger Station, is what gave rise to the dispute. It should also be noted that the Worker's activity on 9 September 2023 was not engaged in while availing himself of a TOIL credit. Had that been the case, a different legal conclusion may have ensued.

⁴ The original Statement of Claim was filed 23 February 2024, with the final pleadings for hearing being an Amended Statement of Claim filed 24 April 2024 and a Defence filed 8 May 2024.

⁵ Paragraph [12].

⁶ Paragraph [13].

⁷ Paragraph [21] of the Worker's Submissions 5 March 2025.

⁸ For example, by reference to the broader historical authorities referred to in *Hatzimanolis v ANI Corporation Ltd* (1992) 173 CLR 473, and discussed in *Comcare v Mather & Anor* [1995] FCA 1216

⁹ At page 113 of the transcript; "*... your Honour could be satisfied that the Worker's activity was in part associated with his obligations or duties, or the expectations that he would familiarise himself with the park, and understand its geography, its risks and its rewards; that what he was doing was part [and] parcel of his job, and the fact that he was doing something else as well doesn't detract from that; and that your Honour could be satisfied, in the alternative, that the injury occurred whilst the worker was in an interval, in an overall period of employment, and that - and that the worker was induced, authorised or encouraged to explore the park, which he was doing at the time he suffered injury*" (emphasis added).

Facts Found

8. The LNP comprises approximately 12,000 km² of country on the western side of the Northern Territory, on the margin of the Gulf of Carpentaria. Visitation by the public is approximately 10,000 per year, with the Park being inaccessible for portions of the year due to the wet season.¹⁰ As earlier noted, the whole of LNP constituted the Worker's workplace. He lived where he worked,¹¹ however the LNP was not his home and it may be concluded that the Worker was 'living away from home'.¹²
9. The Worker was initially employed for a fixed period of 6 months from 1 February 2023 and was then permanently appointed as an "ongoing" employee from 16 June 2023.¹³ Accommodation, electricity and water were provided to the Worker by the Employer to enable residence at the Ranger Station and the ongoing duty required by the employment. His standard hours were worked over Monday to Friday, with the yardstick being 38 hours per week, but working on weekends where operational demands required.¹⁴ Due to the varied and fluctuating demands and nature of the duties and responsibilities of a Ranger, conditions of employment included time off in lieu (TOIL), Programmed Days off (PDOs) and payment of overtime in respect of emergency situations, if approved by Regional Management. Entitlements also included Fares Out In Lieu (FOILs) up to 3 times per year, due to the extremely isolated and remote circumstances of service at LNP.
10. The incidents or circumstances of employment set out at paragraph 13 of the Worker's Submissions of 5 March 2025 are, with the exception of paragraphs (xv) and (xxiii), borne out by the evidence and accepted in full. The propositions at paragraphs (xv) and (xxiii) were largely established, but are subject to some nuance, discussed further below.
11. The Worker's standard hours of employment did not include working on Saturdays or Sundays, with work on weekends (which occurred on a not infrequent basis) being industrially addressed by overtime or TOIL, depending. Most relevantly, despite that weekends were officially said to be spent as the Rangers saw fit, a general expectation existed that the Ranger Station would not be left unattended for any significant length of time.¹⁵ I find that was for the dual purposes of

¹⁰ The thousands of visitors, almost all of whom could not be 'day-trippers', would most frequently be present in the LNP over a 6-month period ending in October each year.

¹¹ And the Worker clearly 'resided' at LNP; see *Buric v Transfield* NTSC 111, Mildren J delivered 24.12.1992.

¹² Until commencement at LNP on 1 February 2023 the Worker had led a peripatetic existence for a period, and travelled to Darwin because his son lived there, and to pursue his dream of becoming a Ranger. The closest place to 'a home' was Darwin. I accept the Worker's submission that "*The accommodation is provided to the Worker for the purposes and furtherance of his ability to perform the work. It is not his home. It is accommodation that's made available to him whilst he's engaged or employed as a ranger in the Limmen National Park*"; T p101.

¹³ Section 29 of the *Public Sector Employment and Management Act 1993* (PSEM Act) prescribes the bases on which a person can be employed. The classification of "ongoing" is permanent employment for an indefinite or open-ended period, with termination of employment then only being possible in accordance with the terms of the PSEM Act.

¹⁴ Standard hours were 7:00am or 7:30am to 3:00pm or 3:30pm, with extra hours generally being accommodated by TOIL. The "9 hour" workday referred to in evidence was probably 8 hours, including the lunchbreak. PDOs are industrially required to reconcile the difference between a 38 hour week and hours actually worked.

¹⁵ The evidence was that Rangers were free to spend their weekends as they saw fit, including outside the LNP. For example, at Borroloola, Mataranka or Katherine, which were hundreds of kilometres distant from LNP. The

ensuring essential infrastructure at the Ranger Station was operational, and due to the public nature of the LNP.¹⁶ That would be hardly surprising given the extent of public visitation and the challenges and perils inherent in the environment comprising the LNP. Such a position would certainly be consistent with public expectations, given the boundless itineraries of outback adventurers.

12. The Worker had a keen interest in flora and fauna, and was enthusiastic at the opportunity to become intimately familiar with what LNP contained in that regard. He was also an avid photographer, in that he always carried his phone, including to enable images to be made. The Worker also often posted photos to the iNaturalist website, which was also indirectly linked to a site maintained for public access and use by the Employer.¹⁷ Most relevantly, the Worker at times had provided photos to the Senior Ranger of notable or potentially problematic flora and fauna encountered in the LNP while off and on duty. It is accepted that this was for a range of purposes, including engagement in the management of the LNP and fulfillment of his duties as a Ranger. For example, providing the photo of a plant to the Senior Ranger which he encountered while exploring on a Saturday was in that nature. The Worker had not previously seen the particular grass in LNP, and the focus of the SMS conversation concerned the possibility that the plant was a noxious weed.¹⁸
13. On Saturday 9 September 2023 the Worker woke at about 6:00am, and gathered a camel-pack, a Personal Locator Beacon (PLB) which he owned, his phone (which included a camera) and the keys to the Employer's ATV. He then drove a couple of hundred metres from the Ranger Station and across a creek, to the base of a ridge adjacent to the Station. The Worker had visited that ridge previously, firstly shortly following his commencement at LNP in the company of the Senior Ranger for a 'sunset beer'. A park bench had been situated at the top of that ridge, which presented as an attractive vantage point. The Worker hiked up that ridge, then down the other side, then commenced ascending the next ridge towards the top, from which he hoped to view sunrise. The accident causing injury occurred part way up the second ridge, following the Worker placing his hand on a boulder which proved to be unstable, rolling onto him and causing multiple serious injuries.
14. In relation to his activity early on 9 September, the Worker's evidence was that one purpose of his expedition was to see the sunrise, which inevitably would have included taking a photograph of that. He also said "*I hadn't thought exactly what I was going to do, what I might see*".¹⁹
15. It is accepted that the Worker was diligent in familiarising himself with the LNP, and was active in his time there in acquainting himself with the geography, flora and fauna of the Park. That was while on and off duty. At the time of the accident and injury, the Worker was engaging in recreation, including hiking or bushwalking, exploring and photography. He was not wearing the Employer's uniform and had not taken the usual precaution of preinforming the Senior Ranger of his expedition. I find that was due to the short distance to be travelled from the Ranger Station, the time of day and not wishing to disturb his colleague's sleep, and that he would return fairly

practicalities of that position, including due to the Employer's fuel being unavailable for purchase or use by employees, were slim.

¹⁶ Although not 'on call' in the industrial sense, I accept the Workers submission that "*the reality of the situation in the park was if they were there and something arose, they were expected to be there.*"; T p101.

¹⁷ Page 30.5 of the transcript.

¹⁸ Despite some of the evidence at pp 91 to 93 of the transcript, it is accepted that if the plant had been an invasive noxious weed, appropriate eradication measures would have found their way into the Management Plan for LNP.

¹⁹ Transcript p60.

directly. No express permission had been obtained to use the ATV for his purpose. However, I find that a particular unwritten policy existed at LNP, enabling the use of the Employer's vehicles for purposes other than duty, including on weekends. That approach was born of practical necessity, so appropriate.²⁰

16. In my conclusion the Employer both authorised and reasonably required employees to generally engage in recreation on weekends, when not responding to unprogrammed requirements of the job.²¹ It was also expected that Rangers, in the context of their employment, become familiar with LNP, and to act upon anything untoward observed by them in their travels, including when off duty. It may be noticed that the recreational opportunities highlighted by the Employer to the Worker prior to commencement of employment (so in that context induced or at least endorsed) included "bushwalking" and "photography".²²
17. Some general evidence was also led at hearing concerning the injuries sustained by the Worker, and incapacity which ensued. The detail of those issues would need to be further considered in the event liability under the RTW Act is established.

The law and findings

18. The Worker asserts an injury sustained in the course of employment on two bases. Firstly, on the basis of the *Hatzimanolis* principle, being an injury in the course of employment arising during an interval or interlude in an overall period of or episode of work. Second, that s 4(4)(b) of the RTW Act applies to deem the injury to have been sustained in the course of employment, due to the circumstances of his employment and having regard to the manner in which the injury was sustained.
19. In relation to the first basis asserted, subject to some further qualification, an injury sustained during an "interval or interlude" within an "overall period or episode" of work but when a worker is not performing actual work, may satisfy "in the course of employment".²³ That is in contradistinction to injury occurring at a time between two discrete periods of work. It should be noted that injury during an interval or interlude may also occur within a discrete period of work, such as in the case of *Oliver*, which possibility had been recognised long before the establishment of the *Hatzimanolas* principle in 1992.²⁴ The High Court's decision in *Hatzimanolis* sought an "organising principle" by which to assess injury sustained during an interval or interlude in an overall period or episode of work, and included;

"For the purposes of workers' compensation law, an injury is more readily seen as occurring in the course of employment when it has been sustained in an interval or interlude occurring within an overall period or episode of work than when it has been sustained in the interval between two discrete periods of work. Where an employee performs his or her work at a permanent location or in a permanent

²⁰ Oral and documentary evidence was also directed to the Employer's written policy, which proscribes 'company vehicle' use when not on duty. I do not consider anything turns on the disparity.

²¹ The terms and conditions of the PSEM Act and delegated legislation provide as much. Official written information provided by the Employer to employees contemplating Ranger service at LNP included reference to the vast distances travel to the closest towns entailed, and that "Recreation opportunities are limited at Nathan River"; Ext W3

²² Page 3 of the written information authored by the Employer and provided the Worker prior to commencing duty at LNP.

²³ *Hatzimanolis v ANI Corporation Ltd* (supra), as refined in *COMCARE v PVYW* (2013) 250 CLR 246.

²⁴ *The Commonwealth v Oliver* (1962) 107 CLR 353, and many of the cases referred to therein, and *Hatzimanolis v ANI Corporation Ltd* (supra) referred to in *COMCARE v PVYW* (supra) at [61].

locality, there is **usually** little difficulty in identifying the period between the daily starting and finishing points as a discrete working period. A tea break or lunch break within such a period occurs as an interlude or interval within an overall work period. Something done during such a break is more readily seen as done in the course of employment than something that is done after a daily period of work has been completed and the employee has returned to his or her home. On the other hand, there are cases where an employee is required to embark upon some undertaking for the purpose of his or her work in circumstances where, notwithstanding that it extends over a number of daily periods of actual work, the whole period of the undertaking constitutes an overall period or episode of work. Where, for example, as in *Danvers*, an employee is required to go to a remote place and live in accommodation provided by his or her employer for the **limited time until a particular undertaking is completed**, the correct conclusion is likely to be that the time spent in the **new locality** constitutes one overall period or episode of work rather than a series of discrete periods or episodes of work. An injury occurring during the interval between periods of actual work in such a case is more readily perceived as being within the current conception of the course of employment than an injury occurring after ordinary working hours to an employee who performs his or her work at a permanent location or in a **permanent locality**²⁵ (emphasis added)

20. Not all injuries sustained during an interval or interlude in an overall period or episode of work will be compensable. However, the Court then referred to its decision in *Danvers* and proceeded to emphasise that;

*"In determining whether the injury occurred in the course of employment, regard must always be had to the general nature, terms and circumstances of the employment 'and not merely to the circumstances of the particular occasion out of which the injury to the employee has arisen'"*²⁶

21. That statement was in the context of injury sustained in an interval or interlude in an overall period or episode of work. In that vein, the courts have approached the characterisation of "overall period or episode" with flexibility.²⁷ For example, FIFO workers are very often not engaged for a "particular undertaking" and, although each 'period of employment' will ordinarily be for a fixed period, their overall employment is often ongoing or open ended. The feature which results in such employment ordinarily falling within the 'overall period or episode' category is their living away from home for fixed periods, which is when the classification classically arises.²⁸ However, other indicia may then also be relevant in characterisation of such employment.
22. On 9 September 2023, the Worker "... suffered injury, but not whilst engaged in actual work."²⁹ The characterisation of the Worker's employment as either an "overall period or episode" or, alternatively, employment comprising "discrete periods", becomes crucial. That is because the characterisation then regulates whether the injury occurred during an "interval or interlude" or, instead, during a hiatus in employment.³⁰

²⁵ *Hatzimanolis v ANI Corporation Ltd* (supra) at 483.

²⁶ *Hatzimanolis v ANI Corporation Ltd* (supra) at 484 and *Danvers v Commissioner for Railways* (1969) 122 CLR 529 at 537.

²⁷ See also *Comcare v Mather & Anor* [1995] FCA 1216 at [15].

²⁸ *Waylexson Pty Ltd v Clarke* [2010] NTCA 1 at [21].

²⁹ *COMCARE v PVYW* (supra) at 262.

³⁰ Failure to demonstrate that an injury occurred during an interval within an overall period of work may not disqualify a claim under the RTW Act, due to the breadth of the concept of "in the course of employment" in s 3A. However, the test then to be applied will be different and more rigorous than that laid down in *Hatzimanolis* (supra) at 484 and refined in *COMCARE v PVYW* (supra) at 261 to 265. Section 4 of the RTW Act does not seek

23. As was noted in *Hatzimanolis* and authorities following, an “interval or interlude” may be more readily found where the basis of service is an “overall period or episode of work”, compared with service in employment comprising separate and discrete periods of work.³¹ Once an interval in an overall period of work is established, further examination of the circumstances of injury was then necessary. To wit;

*“... an interval or interlude in an overall period or episode of work will ordinarily be seen as being part of the course of employment if the employer, expressly or impliedly, has induced or encouraged the employee to spend the interval or interlude at a particular place or in a particular way.”*³²

24. The High Court went on to state the “organising principle” to be;

*“... the modern cases show that, absent gross misconduct on the part of the employee, an injury occurring during such an interval or interlude will invariably result in a finding that the injury occurred in the course of employment. Accordingly, it should now be accepted that an interval or interlude within an overall period or episode of work occurs within the course of employment if, expressly or impliedly, the employer has induced or encouraged the employee to spend that interval or interlude at a particular place or in a particular way. Furthermore, an injury sustained in such an interval will be within the course of employment if it occurred at that place or while the employee was engaged in that activity unless the employee was guilty of gross misconduct taking him or her outside the course of employment.”*³³ (emphasis added)

25. Over 20 years later the High Court then clarified and qualified application of that broad statement as follows;

*“... a proper understanding of what was said in the joint reasons in *Hatzimanolis* and its application is not to be ascertained by construing its terms as if they were the words of a statute. The words of the principle articulated in *Hatzimanolis* are not to be applied literally to facts without further consideration of what is conveyed by the reasoning about the principle and without bearing in mind the terms of the [relevant Act] and the limit it seeks to place upon an employer's liability for compensation.”*³⁴

26. Most relevantly, it was observed that application of the test set down in *Hatzimanolis* for interval cases, being inducement or encouragement of the worker by the employer “to spend the interval or interlude at a particular place or in a particular way [activity]” required a selective approach.³⁵ That is, each qualifying criterion of “activity” or “place” were separate and discrete, with particular cases being required to fall within one or the other, depending upon the manner or cause of the injury. Specifically;

“When an activity was engaged in at the time of injury, the question is: did the employer induce or encourage the employee to engage in that activity? When injury occurs at and

to confine the breadth of the phrase by reference only to “a working day on which the worker attends at the worker's workplace”. See for example, *Henderson v Commissioner of Railways* (1937) 58 CLR 281 at 287-288.

³¹ *Hatzimanolis v ANI Corporation Ltd* (supra) at 483 and *COMCARE v PVYW* (supra) at 260 are the leading High Court authorities, with a significant number of superior court authorities then applying the enunciated principles to particular situations.

³² *Hatzimanolis v ANI Corporation Ltd* (supra) at 484, referring to *The Commonwealth v Oliver* (1962) 107 CLR 353 and cases which followed.

³³ *Hatzimanolis v ANI Corporation Ltd* (supra) at 484 cited in *COMCARE v PVYW* (supra) at 276 etc.

³⁴ *COMCARE v PVYW* (supra) at 256

³⁵ *COMCARE v PVYW* (supra) at 261 to 262

by reference to a place [with the evidence not disclosing 'activity'], the question is: did the Employer induce or encourage the employee to be there? If the answer to the relevant question is affirmative, then the injury will have occurred in the course of employment. **It follows that where an activity was engaged in at the time of the injury, the relevant question is not whether the Employer induced or encouraged the employee to be at a place. An Employer's inducement or encouragement to be present at a place is not relevant in such a case**³⁶ (emphasis added).

27. If it is concluded that the Worker's injury occurred during an interval within an overall period of work, the relevant test must then be applied. Namely; Did the Employer expressly or impliedly induce or encourage the Worker to spend the interval at a particular place or in a particular way, such that it can be said that the Worker's injury sustained in the interval occurred 'at the place or while the employee was engaged in that activity'? If the selective characterisation were to be applied to the Worker's circumstances at the time of injury, his injury would be found to be the product of "activity" rather than "place". At its broadest, that activity could be described as 'recreation'.
28. However, I return to the issue of characterisation of the Worker's employment. Although the LNP was not the Worker's home, it was the permanent locality at which he performed his work. He had relatively fixed working hours during the standard working week, albeit that the potential to be called on duty always existed. The basis of the Worker's employment at LNP was permanent, ongoing and indefinite, and not for a "limited time".³⁷ Likewise, no distinction existed between his usual duties and those he was required to fulfil leading up to the time of injury. His duties at the time did not involve any "particular undertaking". Having regard to the authorities, it is my conclusion that on 9 September 2023 the Worker sustained his injury during a break between two discrete periods of work, the relevant "period of work" being each working day. The characterisation of his employment at the relevant time falls short of "an overall period or episode of work", such that the injury occurred during a break between two discrete periods of work, rather than during an interval or interlude within the meaning of *Hatzimanolis* and the authorities which follow.
29. It is therefore unnecessary to proceed to further analyse the facts and circumstances leading to the Worker's injuries in light of those authorities. However, if I am wrong, the Worker would be found to have been engaged in an "activity", given that he was recreating, in the form of hiking or bushwalking, exploring and photography.³⁸ The test to be applied is "did the employer induce

³⁶ *COMCARE v PVYW* (supra) at 262

³⁷ It may be noticed that the Worker's initial employment was for a fixed period of 6 months, with one descriptor of the 'undertaking' being a "trial period"; pp 19 and 47 of the transcript. It is possible that, if the Worker could clearly establish he was 'living away from home', that period may have met the characterisation of an "overall period or episode of work". For example, in *Comcare v Mather & Anor* (supra) the worker was temporarily posted to Darwin for a 3 month period to engage in *Exercise Kangaroo 1992*, such that his duties at the time constituted an "overall period or episode" of work, rather than "discrete periods of service". He was injured while on "authorised local leave" (which is in some sense analogous to the Employer's general requirement that the Worker take weekends off for recreation) many kilometres from his Squadron Camp accommodation at the Darwin Showgrounds, but within "the boundaries of the exercise", which could be characterised as his workplace.

³⁸ The Worker would no doubt have also noted and reported anything untoward or contrary to sound LNP management, however that possibility would be happenstance. It is noted that no hybrid or composite test of "place" and "activity" is admitted through *COMCARE v PVYW*. Were the situation otherwise, the Worker's claim could have been approached on that footing, given the fundamental significance which the LNP had to his employment.

or encourage the employee to engage in that activity?”³⁹ Despite the Employer’s requirement that employees take time off to recreate, and its published information provided to potential LNP Rangers as to recreational opportunities, it is not my conclusion that the Worker was induced or encouraged to the necessary extent or in the relevant sense, such that the test would be satisfied on the balance of probability.

30. In relation to the second basis advanced by the Worker as establishing liability under the RTW Act, s 4 relevantly provides;

4 Out of or in course of employment

(1) *Without limiting the generality of the meaning of the expression, an injury to a worker shall be taken to arise **out of or in the course of his or her employment** if the injury occurs while the worker:*

(a) *on a working day on which the Worker attends at the Worker's workplace:*

(i) *is present at the workplace; or*

(ii) *having been present at the workplace, is temporarily absent on that day in the course of employment or during an ordinary recess and does not during that absence voluntarily subject himself or herself to an abnormal risk of injury; or*

....

(4) *An injury shall be deemed to arise out of or in the course of employment even though at the time that the injury occurred the worker was acting:*

(a) *in contravention of a regulation (whether by or under an Act or otherwise) applicable to the work in which he or she is employed; or*

(b) *without instructions from his or her employer,*

if the act was done by the worker for the purposes of and in connection with his or her employer's trade or business.

....

working day, in relation to a worker, means any day on which he or she attends at his or her workplace for the purpose of working.

workplace, where there is no fixed workplace, includes the whole area, scope or ambit of the worker's employment.

31. It is noted that “injury” is relevantly confined by s 3A of the RTW Act to an injury arising “in the course of employment”. s 4(1) commences with the qualification “[w]ithout limiting the generality of the meaning of the expression”, referring to “out of or in the course of his or her employment”. Section 4 is also predicated on a worker attending the “workplace” on a “working day”, however that may be taken as simply seeking to address the most usual scenario without circumscribing

³⁹ *COMCARE v PVYW* (supra) at 262. It is also significant that the extant test does not include ‘authorised’ or ‘permitted’ (even in the affirmative sense).

the phrase 'out of or in the course of employment'.⁴⁰ On 9 September 2023 the Worker was present at his workplace, however it was not a working day.

32. The qualifying criteria to a deeming through s 4(4)(b) is that the worker's "act" (so here activity, as above) "was done by the worker for the purposes of and in connection with his or her employer's trade or business". The phrases "for the purposes of" and "in connection with" are conjunctive. Although it could be suggested that the term "connection" adds nothing to "purposes", it is unnecessary to consider whether ss 4(4) is an exceptional provision where "and" was intended by Parliament to mean "or".⁴¹
33. Some aspect(s) of the Worker's actions on 9 September 2023 might be properly characterised as "in connection with" the Employer's "business". However, it cannot be concluded that the Worker's actions were done "for the purposes of" that business, being the due management of LNP. It is accepted that "purposes" should not be read as the 'sole or exclusive' purpose(s). Nonetheless, the relevant purpose(s) which a Worker is required to establish in order to satisfy the qualification would need to be a clear or dominant purpose, rather than some ancillary or auxiliary purpose. My view of the evidence is that the Worker has not proven "for the purposes of [the] employer's ... business" on the balance in the necessary or relevant sense.⁴²
34. Regardless, I accept the Employer's submissions on the operation, effect and underpinning Parliamentary intent of s 4(4).⁴³ That includes in the context of the finding on the *Hatzimanolis* principle. On that basis, s 4(4) is not apposite to the Worker's circumstances and injury in any event.
35. The Worker's Application cannot be acceded to by reliance on s 4(4) of the RTW Act. Given that conclusion, it is unnecessary to further consider or determine other aspects of the claim which would otherwise be extant.

Orders

- (i) The Worker's Application is declined and dismissed.
- (ii) I will hear the parties as to costs.

⁴⁰ Section 4 defines "working day" as "in relation to work, means any day on which he or she attends at his or her workplace or the purpose of working."

⁴¹ D Pearce, *Statutory Interpretation in Australia 9th Edition* at [2.49] and the Annexure. This is despite that some of the Worker's written submissions at [24] might be read as suggesting that course.

⁴² It appears that the only relevant Territory authority is *Tiver Constructions Pty Ltd v Clair* (1992) 110 FLR 239, which considered a precursor to s 4(4) of the RTW Act, with the Worker having engaged in unlawful activity but suffering serious and permanent injury.

⁴³ Noting the extensive discussion and analysis of an analog to s 4(4) in *Scharrer v Redrock Co Pty Ltd* [2010] NSWCA 365.