Australian Frontier Holidays v Williams [1999] NTCA 121

PARTIES:	AUSTRALIAN FRONTIER HOLIDAYS LTD
	v
	WILLIAMS, ALAN
TITLE OF COURT:	COURT OF APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	COURT OF APPEAL EXERCISING TERRITORY JURISDICTION
FILE NO:	AP19 of 1998
DELIVERED:	12 NOVEMBER 1999
HEARING DATES:	27 MAY 1999
JUDGMENT OF:	MARTIN CJ., ANGEL & RILEY JJ.

CATCHWORDS:

WORKERS' COMPENSATION

Appeal by employer against finding of liability – meaning of "fixed work place" – whether injury sustained 'out of or in the course of his employment' – meaning of 'working day' within the *Work Health Act* 1986 (NT)

Work Health Act 1986 (NT), s 53

Mason v Social Welfare Dept (1974) VR 506, considered
Clissold v Country Roads Board (1960) VR 259, considered.
Buchanan & Brock Pty Ltd v Harris (1957) 98 CLR 22, applied.
Van Oosterom & Anor v Australian Metropolitan Life Assurance Co Ltd (1960) VR 507, distinguished.
Nichols and Anor v Attorney-General (1950) Tas S R 54, considered.

REPRESENTATION:

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Respondent:	P Barr

Solicitors:

Applicant:	Cridlands
Respondent:	Poveys Stirk

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[1] mar99018
IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA

Australian Frontier Holidays v Williams [1999] NTCA 121
No AP 19 of 1998

BETWEEN:

AUSTRALIAN FRONTIER HOLIDAYS LTD
Applicant

AND:

ALAN WILLIAMS
Respondent

CORAM: MARTIN CJ, ANGEL & RILEY JJ.

REASONS FOR JUDGMENT

(Delivered 12 November 1999)

MARTIN CJ:
[2]

[3] The respondent is a worker within the meaning of *Work Health Act* 1986 (NT). He suffered an injury which resulted in incapacity. He seeks to have the appellant employer held liable for payment of compensation prescribed by the Act (s 53). The worker says that all of the conditions precedent to fixing the employer with that liability have been proved. He says that the injury is to be taken to have arisen out of, or in the course of his employment (see definition of "injury" s 3) because it occurred while he, on the day on which he attended the place at which he worked, for the purpose

of working, was present at that place (s 4(1)(a)(i) and definition of "working day" in s 4(7) and definition of "work place" in s 3).

[4] The employer joins issue on the question as to whether, when the worker sustained the injury, he had attended the place at which he worked for the purpose of working and was present at that place at the time he suffered the injury.

[5] ***Facts found by Workers Compensation Court***

- The worker was head chef at the Oasis Motel in Alice Springs.
- His residential accommodation comprised a self-contained, one-bedroom unit located within the boundaries of the land upon which the employer conducted its motel business.
- The unit was separated from the building in which was located the kitchen, dining room and other facilities of the motel.
- Whether the worker lived in the unit was a matter for him. He had been informed that the options available for accommodation in Alice Springs were to either rent or buy premises in town, or accommodation could be made available on site at the motel. "It was his option".
- It was not a term or condition of employment that the worker "live in".
- It was of benefit to the employer for the worker to "live in". That benefit was identified as being the availability of the worker if there were

problems, and the removal of concern for the employee or worker late at night when otherwise he would need to travel a greater distance to his residence. His Worship did not accept that latter benefit to have been a significant one given the size of the township of Alice Springs.

- The employer did not encourage the worker to live in, but he was authorised and permitted to do so. No charge was made by the employer to the worker.

- In addition to the work as a chef involving food preparation and cooking, the worker's duties included cost and expenditure control, setting up and maintaining accurate reporting systems; stocktaking; developing improved systems for those duties; "paper work" for operations, personnel and financial reporting.

- The worker brought his own computer to Alice Springs that he set up in the accommodation unit on a table situated immediately to the left of the entrance doorway in the lounge room of the unit.

- The computer was used almost exclusively for work purposes during the time the worker was in Alice Springs, and much of the "paper work" was done outside the hours in which the worker was engaged in his duties in the kitchen at the motel.

- The worker was not directed to perform any of those duties in the accommodation unit. There was a work place adjacent to the kitchen

which had been used for that purpose and which was available to the worker. The worker performed the work in his accommodation unit as a matter of choice. The employer knew that and did not object to it.

- There was an economic benefit to the worker in choosing to reside rent free in the accommodation unit.

- He had completed his duties as a chef on the evening in question.

- It was raining. He removed his shoes and socks and walked from the kitchen area of the motel to his accommodation unit ("the unit"). His feet were wet.

- As he approached the unit he stepped onto a tiled area in front of the door and then onto the two steps immediately in front of his door. He put his left foot onto the higher of the two steps and reached inside his unit to feel for the light switch with his left hand.

- He suffered an electric shock.

- He was returning to the unit for the purpose of retiring for the evening.

[6] ***Work Health Court***

His Worship found that the worker's workplace consisted of the motel kitchen and its precincts and that it did not include the accommodation unit. Having rejected the submission made on behalf of the worker that the worker's occupation and use of the accommodation unit was an incident of

his employment, his Worship went on to find that there was no evidence that the worker had gone to the accommodation unit for the purpose of working (see definition of "working day").

[7] His Worship also rejected a submission on behalf of the worker that he was travelling between his work place and place of residence upon the grounds that he had reached his place of residence prior to receiving the injury.

[8] ***Supreme Court***

The substantive grounds of appeal to the Supreme Court were that the Work Health Court erred in law in finding that there was a "fixed work place", within the meaning of the *Work Health Act;* in interpreting the word "work place" in s 4(1)(a)(i) of the Act so as to exclude the worker's accommodation unit; erred in law in finding that the worker's injury did not arise out of the worker's employment or in the course of his employment.

[9] His Honour allowed the appeal and set aside the orders of the Work Health Court and substituted a finding that the injury arose out of and in the course of the employment of the worker by the employer.

[10] His Honour reached his conclusion upon consideration of s 4(1)(a)(i), his reasons being as follows:

> "I consider that on the whole of the evidence there was only one work place, and this included the lounge room of the appellant's flat where he kept his computer. That conclusion I consider is supported by the following factors: the unit was on the same land as the hotel and formed part of that land; the appellant needed to go to the unit

from time to time during normal shifts to retrieve records, such as stocktakes kept on the computer which were not stored elsewhere; the appellant was in the habit of using the unit, not on a casual basis, but on a regular basis in the performance of his duties; the respondent was aware of the use of the unit as a workplace and did not object to it. I do not see how, realistically, it could be treated as a second or separate workplace. It was no more separate than the other parts of the hotel, such as the restaurant or the reception area or the manager's office, where the appellant was required to be in the performance of his duties from time to time."

[11] ***Court of Appeal***

The grounds of appeal to this Court are:

(1) his Honour erred in finding that the worker's alleged injury arose out of or in the course of his employment by virtue of s 4(1)(a)(i) of the *Work Health Act*;

(2) his Honour erred in finding that the worker was injured when on a working day he attended at his workplace;

(3) his Honour erred in finding that the worker had not left his workplace at the time of the injury;

(4) his Honour erred in finding that the lounge area of the worker's accommodation unit formed part of the worker's workplace at the time of the alleged injury;

(5) his Honour erred in failing to give due weight to the fact that on the day of the injury there was no evidence that the worker had or was about to perform any work duties at his accommodation unit;

(6) his Honour erred in failing to give due weight to the definition of "working day" in the Act.

[12] ***Background Law***

When looking at the facts and considering the application of the statute to them, it is well to remember that ordinarily the worker must establish either a causal ("out of") or temporal ("in the course of") relationship between the employment and the injury (*Kavanagh v Commonwealth* (1960) 103 CLR 547). It is only necessary to establish one of those relationships. Since the amendments to the legislation in 1949, substituting "or" for "and" it is not necessary to show both. The words "out of" point to the cause of the injury and "in the course of" point to the time, place and circumstance in which the injury was suffered. These distinct bases for finding liability in the employer are not treated separately in the deeming provisions.

[13] The various factual situations as described in s 4(1), which are non-exhaustive, are taken to supply the relationship. They do not restrain the liberal and flexible interpretation given by the courts to the expression "in the course of employment" so as to compensate an injury which arises when what was being done was an "incident" of the employment (*The Commonwealth v Oliver* (1962) 107 CLR 358), a slight connection will suffice, ibid p 362, and includes what the worker is reasonably required, expected, or authorised to do in order to carry out his duties (*Danvers v Commissioner for Railways (NSW)* (1969) 122 CLR 529 and *Henderson v*

Commission for Railways (WA) (1937) 58 CLR at 293-294). In coming to a conclusion as to whether something is incidental to a worker's employment is a result reached "by reference to some principle or standard" *Hatzimanolas v ANI Corporation Limited* (1992) 173 CLR 473 at 478. At 479 their Honours referred to the flexible application of the test which had "enabled a satisfactory line of demarcation to be drawn between those injuries which are work related and those which are so remote from the notions of the worker's employment as not to call for compensation by the employer." The provisions contained in s 4(1) provide statutory examples of circumstances giving rise to the employer's liability presumably with the intention of further limiting the scope for uncertainty.

[14] This is the first time that these provisions have been subject to consideration in this Court. Reference has been made in argument to cases decided upon like provisions such as s 8(1)(a) of the Victorian Act. In that State the words "place of employment" are used, but are substituted in the Northern Territory by the word "workplace", and the words "pursuant to his contract of employment" are replaced by "for the purpose of working". However, I do not consider that dissimilarities in the legislation bring about any material difference on the facts of this case.

[15] No case has been cited which turns upon facts like those presented in this case. All those referred to are distinguishable. For example, in *Henderson* there was nothing to show that the worker regularly worked in the camp in which he resided; similarly, in *Nichols & Anor v Attorney-General*

(Tasmania) (1950) TAS SR 54; the appellant in *Carbis v Bounceball Pty Ltd* (1972) VR 211 was not a "worker" at the time he suffered the injury, he was not in employment; the widowed applicant for special leave to appeal failed in *Goward v The Commonwealth* (1957) 97 CLR because of a lack of evidence as to what the deceased was doing or where he was going when he was killed; in *Danvers v the Commissioner for Railways (NSW)* (1969) 122 CLR 529, the lodgings in which the worker died were especially provided by the employer for that purpose, and the worker had no real choice as to where he should reside. At p 544 Menzies J. pointed out that each case turned very much upon its own facts and "it may be that there is room for a difference of opinion about the correctness of the conclusion drawn from the evidence in some of them".

[16] The case which seems to provide the closest analogy is *Mason v Social Welfare Department* (1974) VR 506. In *Mason* the worker was employed as a cookery instructor at a detention centre for young prisoners at which a number of the staff were provided with housing. He was offered a house on terms of paying rent; the employer invited him to use the house and contemplated that he would do so, although it did not bind him from living elsewhere. Part of its motive for arranging his occupation of the house was to facilitate the more efficient execution of its own work. His occupation of it, although not pursuant to contractual obligation, was of convenience and benefit to the employer in that a responsible and mature staff member was available on easy call for emergencies. After what was for him a working

day, after working late at night in the kitchen and escorting inmates to their sleeping quarters, the worker proceeded in his car with his wife to the house which he occupied at the centre, and was injured there after entering the gate, but before entering the house. It was held that the worker's place of employment comprised the property on which the institution was carried on, that it was not confined to the kitchen and other areas at which work was carried out by him, and thus the injury occurred when he had on a working day "attended at the place of employment pursuant to his contract of employment" and was "present at his place of employment" within the meaning of s 8(2)(a)(i) of the *Workers Compensation Act* 1958 Victoria. At p 510 the Full Court said that on the facts established in that case, "… it is impossible to carve some part of the area comprising the establishment out of a whole and identify it as the place of his employment, or carve it out for a particular day and label it as the place of employment for the day". In the circumstances, it was held that the worker's place of employment was not confined to the kitchen area where he prepared food or to that area extended into some ill defined areas where he carried out such work as escorting inmates back to their sleeping quarters. "It is not an attractive view that the place of employment comprised the property of the institution other than the living quarters allotted to the applicant or all such living quarters". Accordingly, it was held that he had attended at the place of employment pursuant to his contract of employment and that he was present, carrying out the duties allotted to him for that day on that part of the property which

comprised the kitchen area and on any part necessary to escort the inmates to their sleeping quarters, and he had not left his place of his employment, in the sense of the establishment, before the injury occurred. "He was still present at his place of employment, albeit within the precincts of the living quarters allotted to him on the place of employment and no longer carrying on any active duties."

[17] It seems to me that their Honours were making a distinction between "active duties" and duties which were not "active", in the sense of then actually being performed. However, it is clear that the worker's presence within the boundaries of the institution meant that he could be called upon to meet an emergency. Living on site was an incident of that part of his employment.

[18] In this case, the worker could also be called upon to perform duties outside the hours he worked in the kitchen, but it is not suggested that he could not have performed those duties had he lived in Alice Springs , but outside the employer's property

[19] In *Clissold v Country Roads Board* (1960) VR 259 the Full Court was considering a case in which the applicant had been injured in a house which he rented from his employer. He had no fixed place of employment and the case fell to be considered under the definition of a place of employment which was "deemed to include a reference to the whole area, scope and ambit of the employment". "In some cases it must be a matter of degree where the cessation of work has changed what had been a place of

employment into a place which is no longer his place of employment." The Court was of the opinion that where there is no fixed place of employment, and the worker moves from place to place in the doing of his business, what was a place of employment at one hour of the day may cease to be a place of employment at another hour. In such a case "the criterion to determine whether a particular place is or is not his place of employment is, we think, was he at that place pursuant to his contract of employment" p 511.

[20] ***This Case***

The worker's submission is that he worked in both the kitchen and related areas at the motel, and in the area in which the computer was located in the unit; the two areas combined amounted to one workplace, he had attended at the kitchen for the purpose of working, and had not left the workplace when he suffered injury at the unit. The employer says that each of the two areas could be a workplace, but that they did not together form one workplace; as the worker had not attended at the unit on that day for the purpose of working, it was not a workplace when the worker suffered the injury; he was not then entering upon the area for the purpose of working, his purpose in going there at the time he was injured was to retire for the evening, his work in the kitchen having finished for the day.

[21] No contrary intention being shown, the word "workplace" is not confined to the singular, but includes the plural (*Interpretation Act* 1978 (NT) s 24(b)). The legislature must be taken to have understood that there would be

circumstances in which a worker could work in more than one fixed workplace.

[22] With respect to the views to the contrary, in my opinion, it is possible to carve out the kitchen and related areas at the motel as a place where the worker worked and the unit as another place where the worker worked. That should be done. The areas are separately identifiable. In the circumstances of this case, it does not matter that the unit was on the same property as the motel, the worker could have done such work as he did there at premises outside the property and be available, if required, beyond the hours he worked in and about the kitchen as a chef. The employer had not arranged for the worker's occupation of the unit "to facilitate the more efficient execution of its own work". The worker chose to do some of his work at the unit, the employer exercised no management or control over the unit as a place where the worker worked. Part only of the unit was a place where the worker worked, and it was used for non-work related purposes at the option of the worker.

[23] What the worker was doing when he the suffered the injury did not have a sufficient connection with his work to have arisen in the course of his employment. He was not then required, expected or authorised to go to the unit to carry out his duties. He had completed the journey from the kitchen to his residence. Furthermore, the deeming provisions in s 4(1)(a)(i) have no application to the case. The worker had not attended at the unit on that day for the purpose of working.

[24] If it is held that the kitchen and the unit are together one workplace, it is necessary to determine whether on the facts as found the worker suffered the injury on a day on which he attended there for the purpose of working and was present there. At face value it would appear that all the preconditions have been met.

[25] What has troubled me is the wide range of circumstances which could give rise to the provisions being applied, some of which were debated with counsel in the course of argument. My doubts in that regard have been resolved by what was said by Dixon CJ. and Kitto and Taylor JJ. in *Buchanan and Brock Pty Ltd v Harris* (1957) 98 CLR 22 at p 27. Speaking of the Victorian provisions, their Honours said:

> "The effect of s. 8 of the Acts is to make unnecessary in any particular case to institute an inquiry whether a worker's injury has, in fact, arisen out of or in the course of his employment; it is sufficient … if the injury has occurred whilst the worker, having attended at his place of employment on a working day pursuant to his contract of employment, is present at that place …. ."

[26] Those conditions having been fulfilled "it is unnecessary to go further for the purpose of finding some relation between the injury and the course of the worker's employment". Their Honours describe those provisions as being a "broad notion" and at p 30, McTiernan J. said: "The provisions of this section make a wide extension of the area beyond the actual sphere of the workman's employment." Accordingly, if there was but one workplace, the worker would be entitled to succeed.

[27] I would allow the appeal upon the grounds that the injury did not arise out of or in the course of employment, in the general sense, and for the reasons given nor did it arise under s 4(1)(a)(i).

ANGEL J:

[28] The facts and circumstances of this appeal appear in the reasons for judgment of the other members of the Court and I will not repeat them.

[29] In summary, my conclusions are as follows:

1. On the night in question the fixed workplace of the respondent [30] worker did not include the interior of his accommodation unit because he was not using it or intending to use it as such at the time he was electrocuted.

[31] 2. The learned Magistrate found, correctly, I think, that at the time he was electrocuted, the respondent worker "was returning to that accommodation unit for the purpose of retiring for the evening". The worker was standing on steps outside his accommodation unit, reaching inside the unit to the light switch when he was electrocuted. In my opinion, contrary to the argument of the appellant employer, the respondent worker had not arrived at his place of residence when the accident happened, but rather was in the course of arriving when it happened. He had not entered inside the limits of his actual place

of residence – see *Vickers v Jarrett Industries* (1977) 15 SASR 525 at 531 per Bray CJ, at 534, 535 per Walters J, at 544 per Zelling J. The line must be drawn somewhere and I would draw it at the front door of the accommodation unit.

[32] 3. If the worker's fixed workplace that night is to be treated as confined to the restaurant and kitchen area and precincts the appellant is arguably liable on the basis that the worker respondent was travelling by the shortest convenient route between his workplace and his place of residence – s 4(1)(b) *Work Health Act*. Compare *Gilbert v JRR Nominees Pty Ltd* [1985] WAR 209.

4. However I take a broader view of the matter. The worker respondent's contract of employment describes his place of employment as the whole of the appellant's premises. His Honour held that the worker respondent, at the time he was electrocuted, had not yet gone out through the hypothetical "factory gates". I agree with this conclusion, if not the learned Judge's reasons for reaching it – in the circumstances of this case I think the front door of the respondent's accommodation unit had to be fully traversed before it could be said the respondent had entered his place of residence and left his workplace.

[33] I would dismiss the appeal.

RILEY J:

[34] The worker in these proceedings was employed by the employer as the head chef at the Oasis Motel in Alice Springs. He claims to have been injured in the course of his employment at about 11.15pm on 16 January 1995.

[35] There was no dispute before the Work Health Court that the employer provided accommodation to the worker at the employer's premises at Gap Road in Alice Springs. The accommodation consisted of a unit situated in the staff accommodation block which was quite some distance – "measured in metres" – from the kitchen area.

[36] The worker's duties went beyond food preparation and cooking and included "costs and expenditure control; setting up and maintaining accurate reporting systems for this; stocktaking; developing improved systems for the foregoing; 'paperwork' for operations, personnel and financial reporting; and the need to have such paperwork completed on time."

[37] For the purposes of carrying out his duties the worker brought his own computer with him to Alice Springs which he set up in his accommodation unit. The computer was situated at a table located just inside the entry to the accommodation unit. The learned Magistrate found that the computer was used almost exclusively for work purposes and that much of the "paperwork" was done after hours and at the worker's accommodation unit. This occurred as a matter of convenience for the worker and was known to the employer who did not object to it. There was a work space provided

adjacent to the kitchen for the purpose of the worker doing the "paperwork" but the worker used the space in the accommodation unit "as a matter of choice".

[38] The circumstances of the incident do not appear to be in dispute and are recorded by the learned Magistrate as follows:

> "The appellant was head chef at the Oasis Motel, Gap Road, Alice Springs. He had completed his duties for the evening. It was raining. He removed his shoes and socks and walked from the kitchen area of the motel to his accommodation. His feet were wet. As he approached his accommodation, he stepped onto a tiled area in front of the door and then onto the two steps immediately in the front of his door. He put his left foot onto the higher of the two steps and reached inside his unit to feel for the light switch with his left hand. He suffered an electric shock. He was returning to that accommodation unit for the purpose of retiring for the evening."

[39] The worker made a claim for compensation under the *Work Health Act* (the Act) but that claim was rejected by the employer on the basis that the injury did not arise out of or in the course of his employment.

[40] The matter came before the Work Health Court and that Court dismissed the claim holding that the injury did not arise out of or in the course of the employment. This decision was in turn appealed and the matter came before Mildren J who allowed the appeal and substituted a finding that the injury arose out of and in the course of the employment of the worker with the employer.

[41] Mildren J reached the conclusion that, on the whole of the evidence, there was "only one work place, and this included the loungeroom of the

employer's flat where he kept his computer". His Honour spelled out his reasons for reaching that conclusion in the following passage:

> "… the unit was on the same land as the hotel and formed part of that land; the [worker] needed to go to the unit from time to time during normal shifts to retrieve records, such as stocktakes, kept on the computer which were not stored elsewhere; the [worker] was in the habit of using the unit, not on a casual basis but on a regular basis in the performance of his duties; the [employer] was aware of the use of the unit as a work place and did not object to it. I do not see how, realistically, it could be treated as a second or separate work place. It was no more separate than the other parts of the hotel, such as the restaurant or the reception area or the manager's office, where the appellant was required to be in the performance of his duties from time to time."

[42] His Honour therefore held that the worker fulfilled the second limb of s 4(1)(a)(i) namely that his injury occurred "whilst he, on a working day … attended his working place". His Honour held that when the worker opened the door to the unit and placed his hand on the light switch he was still in the workplace and had not yet gone out through the hypothetical "factory gates", as he might have done once he entered the bedroom.

[43] The employer appeals from the whole of the judgment of Mildren J on the following grounds:

(1) his Honour erred in finding that the worker's alleged injury arose out of or in the course of his employment by virtue of s 4(1)(a)(i) of the *Work Health Act*;

(2) his Honour erred in finding that the worker was injured when on a working day he attended at his workplace;

(3) his Honour erred in finding that the worker had not left his workplace at the time of the injury;

(4) his Honour erred in finding that the lounge area of the worker's accommodation unit formed part of the worker's workplace at the time of the alleged injury;

(5) his Honour erred in failing to give due weight to the fact that on the day of the injury there was no evidence that the worker had or was about to perform any work duties at his accommodation unit;

(6) his Honour erred in failing to give due weight to the definition of "working day" in the Act.

Workplace

[44] The learned Magistrate held that the worker's workplace "consisted of the motel kitchen and its precincts … it does not include the worker's accommodation unit". As has been noted above Mildren J considered that there was only one workplace and that included the loungeroom of the worker's flat where he kept his computer.

[45] In the Act "workplace" is defined as "a place, whether or not in a building or structure, where workers work". It is further defined in s 4(7) of the Act as follows:

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

[46] In this case it was not contended that the worker did not have a "fixed workplace" and it follows that the broad definition contained in s 4(7) of the Act does not have application. The real issue was whether the fixed workplace of the worker included that part of the accommodation unit where the worker "regularly" worked. Alternatively, as the learned Magistrate found, was the workplace to be more narrowly confined to include only the restaurant and kitchen area and its precincts with that part of the accommodation unit on some occasions constituting a second fixed workplace?

[47] It was conceded by the employer that when the worker was at his accommodation unit and performing work related administrative activities (his paperwork), he was at a workplace. However it was contended that, if the loungeroom of the accommodation unit was at any time a workplace, then it was a second workplace rather than simply being part of *the* "workplace".

[48] Mildren J observed that the workplace is not necessarily confined to a particular desk or room but must include everywhere on the employer's premises where the worker is expected or permitted to go in order to perform his duties. This would include the "means of access to and egress from the employer's premises, and to and from the places where the duties are performed". This must be so. The factory worker whose precise work location is at the rear of the factory must still be at the "workplace" whilst

he walks from that location to the front door of the premises. During that process he remains in "a place where workers work".

[49] This must also be so for the worker who has his bench in one corner of the factory and has cause to complete paperwork in an office outside the factory door but within the factory yard. In passing from one location to the other the worker does not leave the premises of the employer. He is expected and permitted, (indeed he may be required) to carry out his duties at each location. It seems to me to be unrealistic to suggest that he has more than one workplace or that both locations are not part of the one workplace.

[50] This is not a case such as that considered by the Full Court of the Supreme Court of Victoria in *Van Oosterom & anor v Australian Metropolitan Life Assurance Co. Ltd.* (1960) VR 507. In that case the worker had no fixed place of employment but moved from place to place in the course of his employment as a life assurance agent or inspector. In such a case it is necessary to determine whether a particular place is or is not the worker's place of employment from time to time. Such considerations arise under the Act in circumstances where there is no fixed workplace and where, pursuant to s 4(7), one must consider "the whole area, scope or ambit of the worker's employment". That is not the case where there is a fixed workplace.

[51] The Act requires the consideration of different matters when there is a fixed workplace as opposed to the situation where there is no fixed workplace. If there is a fixed workplace then the concern is with an actual physical

location – a place where workers work. On the other hand, if there is no fixed workplace, it is necessary to look to the matters identified in s 4(7) of the Act being "the whole area, scope or ambit of the worker's employment". This is logically so because in the latter circumstance the same location may be a workplace or may not be a workplace, depending upon the prevailing circumstances.

[52] In the present case the fixed workplace of the worker incorporated all the places where the worker was expected and permitted to work and, therefore, included the work area in the accommodation unit. At the time he suffered his injury the worker was still at his workplace.

An Entitlement to Compensation

[53] If the worker has a fixed workplace then, in order to be entitled to compensation, the worker must establish that an injury occurred while he, "on a working day that he attends at his workplace is present at the workplace". That is that he is present at the physical location.

[54] In the Act the expression "working day" is defined to mean "any day on which (a worker) attends at his workplace for the purpose of working".

[55] A combination of the relevant definitions leads to a conclusion that, for present purposes, an injury to a worker shall be taken to arise out of or in the course of the worker's employment if the injury occurs while he, on any day on which he attends at his workplace for the purposes of working, is present at the workplace. No other requirement is necessary in order for a

prima facie case of entitlement to arise. The purpose of this deeming provision would seem to be to avoid the tortuous arguments of the past as to when a worker is or is not in the course of his employment. These arguments may continue to arise in cases where there is no fixed place of work because one there has to consider "the whole area, scope or ambit of the worker's employment". However, in the majority of cases, where there is a fixed workplace, it is no longer necessary to consider these matters.

[56] Where there is a fixed workplace the limitation upon the breadth of the deeming provision is to be found in the expressions "present at the workplace" and "for the purposes of working".

[57] In *Nichols v Anor v Attorney-General* (1950) Tas.S.R 54 the Supreme Court of Tasmania considered the equivalent section of the *Workers Compensation Act* in that state. The relevant section was in the following terms:

> "Without limiting the generality of the provisions of subsection (1), but subject to the provisions of subsection (2), an injury by accident to a worker shall be deemed to arise out of and in the course of the employment if the accident occurs –
>
> (i) while the worker on any working day on which he has attended at his place of employment *pursuant to his contract of employment* is present at his place of employment". (emphasis added)

[58] It will be seen that the words in italics are the only words of significance that differ from those in s 4(1)(a)(i) of the Northern Territory *Work Health Act*. In that case Morris CJ said (56):

> "Before considering whether the humpy could be called his place of employment, it is necessary to determine whether this means that once a worker has attended at his place of employment on a working day pursuant to his contract of employment, then whether he has gone away and come back for a wholly private or even unauthorised purpose even after the close of the working day, any accident he might sustain there shall be deemed to have arisen out of and in the course of his employment. I do not think that that is the meaning to be given to it. I think the purpose is to resolve all doubts as to whether an accident arises out of and in the course of the employment in favour of the worker if he is present following on or in consequence of his having attended his place of employment pursuant to his contract of employment. One must ascertain, if possible, what the section intends to say and to lean against a construction which would lead to absurdity or a result which the Court thinks the legislature could not possibly have meant."

[59] His Honour went on to say (57):

> "One would hesitate to give to a section so wide a meaning as to make a presence late at night at the place of employment at a time when the employment is long over and consequent upon a purely private purpose, or even an unauthorised one, the basis of entitlement to compensation for an accident then occurring upon the footing that the accident had arisen out of and in the course of the employment. I therefore think that the presence is to be related to the attendance pursuant to the contract of employment and its substantial continuity at any rate is contemplated."

[60] Although the Northern Territory provision does not include a reference to the worker being present at his place of employment "pursuant to his contract of employment" the definition of "working day" requires that he be at his workplace "for the purpose of working". For present purposes I see no significant difference between the two requirements.

Conclusion

[61] If it be accepted that the workplace of the worker included that part of the accommodation unit which was regularly used for work purposes then, at the time of his injury, the worker was still present at his workplace. He had attended at that workplace on a working day for the purpose of working. At the time of the occurrence his presence at the workplace was related to his work and there existed "substantial continuity" in the sense that his presence was directly connected to his work.

[62] This is not a case where there was any interruption to his presence at the workplace for the purposes of working. Whilst there will be cases where it may be considered that the presence of the worker at the workplace was not for the purpose of working, or was no longer for that purpose because it was not able to be characterised as having substantial continuity with that purpose, this is not such a case.

[63] In my opinion the injury suffered by the worker occurred at his workplace and arose out of and in the course of his employment by the employer. I would dismiss the appeal.
