# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Hawthorne v Thiess Contractors P/L & Anor* [2001] QCA 223 |
| PARTIES: | **CATHERINE THERESA HAWTHORNE**<br>(plaintiff/appellant)<br>v<br>**THIESS CONTRACTORS PTY LTD**<br>**ACN 010 221 486**<br>(first defendant/first respondent)<br>**WORKCOVER QUEENSLAND**<br>(second defendant/second respondent) |
| FILE NOS: | Appeal No 5605 of 2000<br>SC No 3399 of 2000 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | General Civil Matter |
| ORIGINATING COURT: | Supreme Court at Brisbane |
| DELIVERED ON: | 8 June 2001 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 30 March 2001 |
| JUDGES: | McMurdo P, Thomas JA and Byrne J |
| ORDER: | **Appeal dismissed with costs** |
| CATCHWORDS: | WORKERS' COMPENSATION – ALTERNATIVE RIGHTS AGAINST EMPLOYER AND THIRD PARTIES – ALTERNATIVE RIGHTS AGAINST EMPLOYER FOR DAMAGES AT COMMON LAW OR BY STATUTE – EFFECT OF CLAIM OR PROCEEDING FOR, OR RECEIPT OF COMPENSATION ON RIGHT TO DAMAGES – GENERALLY – where the appellant claims damages for personal injuries arising out of employment – whether any common law right to damages is extinguished by the *WorkCover Queensland Act* 1996 - meaning of damages under section 11(1) *WorkCover Queensland Act* 1996 – whether the appeal against the dismissal of a claim to declaratory relief should be allowed after the appellant instituted damages proceedings in contravention of a prohibition within section 265 *WorkCover Queensland Act* 1996<br><br>WORKERS' COMPENSATION – WORKERS' COMPENSATION - "INJURY" – WHAT CONSTITUTES INJURY – meaning of "injury" under section 34(1) |

*WorkCover Queensland Act* 1996 – whether the injury is a continuation of a pre-existing injury

WORKERS' COMPENSATION – WORKERS' COMPENSATION – CAUSAL RELATION BETWEEN INJURY AND INCAPACITY OR DEATH – GENERALLY – whether employment was a major significant factor in causing the injury

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – CONSIDERATION OF EXTRINSIC MATTERS – LEGISLATIVE HISTORY OF ACT – Minister's second reading speech – whether the *WorkCover Queensland Act* 1996 was intended to extend to all instances in which a PAYE employee seeks damages from an employer for work-related symptoms

*Acts Interpretation Act* 1954 (Qld), s 14A, s 14B(1), s 32A
*WorkCover Queensland Act* 1996 (Qld), s 5(2), s 5(4)(a), s 5(6), s 6 (1)(a), s 8, s 11(1), s 12(1), s 13(a), s 28(3)(b), s 34, s 253(10, s 265(1), s 302

*Astley v Austrust Ltd* (1999) 197 CLR 1, considered
*Bonnington Castings Ltd v Wardlow* [1956] AC 613, considered
*Bonser v Melnacis & Anor* [2000] QCA 13, CA 4369 of 1999, 8 February, 2000, considered
*Chappel v Hart* [1998] 195 CLR 232, considered
*Commissioner for Railways (NSW) v Agalianos* (1955) 92 CLR 390, considered
*March v Stramare (E & M H) Pty Ltd* [1990-1991] 171 CLR 506, explained
*Naxakis v Western General Hospital* [1999] 73 ALJR 782, considered

COUNSEL: R J Douglas SC with K F Holyoak for the appellant
G K Flint for the first respondent
P A Keane QC with R E Treston for the second respondent

SOLICITORS: Biggs & Biggs for the appellant
Moray & Agnew for the first respondent
Mullins & Mullins for the second respondent

[1] **McMURDO P:** I have read the reasons for judgment of Byrne J and agree with them.

[2] Legislation such as the *WorkCover Queensland Act* 1996 (Qld) ("the Act") which significantly cuts down the right of access of injured workers to the courts must be read strictly: see *Neuss v Roche Bros Pty Ltd*.[1]

[3] Nevertheless, s 14A *Acts Interpretation Act* 1954 (Qld) requires that:

> "In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation."

The Minister's Second Reading Speech,[2] the provisions of the Act[3] and general principles of statutory interpretation[4] are all against the appellant's contention.

[4] It would be a nonsense to conclude that Parliament intended the Act to limit the right of workers to obtain damages for personal injuries in circumstances where the employment was "a significant contributing factor to the injury"[5] but left in place the worker's common law rights where the employment was merely "a" contributing factor but not "a significant contributing factor".

[5] To decide otherwise would lead to an irrational and unjust result: a claim, such as that of the appellant, that the employment was not a significant contributing factor to the injury could be defeated by proof that it was, so that only claims for damages for injuries with a minimal link to the employment could proceed by way of a common law action. The contrary interpretation should be preferred to avoid such an irrational and unjust result. [6]

[6] The appellant, not having complied with the provisions of the Act, was unable to seek damages for injury either under the Act or at common law.[7]

[7] I agree with the order proposed by Byrne J.

[8] **THOMAS JA:** I agree with the reasons prepared by Byrne J. As the matter is of some importance I shall state my own further reasons.

[9] The essence of the appellant's claim is that her employer, knowing that she had suffered a previous condition (described as CMV) assigned more work to her than a reasonably prudent employer would have assigned. In consequence it is alleged that she now suffers from chronic fatigue syndrome and psychiatric injury. If the claim were litigated at common law questions of competing or concurrent causes would be very much alive. However, the appellant was unable to obtain the necessary certificate that would allow her to pursue a damages claim against her employer under the *WorkCover (Queensland) Act* 1996. A Medical Board found her condition not to be related to work circumstances and that it did not amount to "an injury" as defined. That finding is not challenged. Indeed, it is embraced.

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1 [2001] 2 QdR 487, 489 [10].
2 *Acts Interpretation Act* 1954, s 14B(1).
3 See, in particular, Part 2 – Objects, ss 4-6 inclusive, *WorkCover Queensland Act* 1996.
4 See *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 384.
5 *WorkCover Queensland Act* 1996, s 34(1).
6 See *Public Transport Commission of New South Wales v J Murray More (NSW) Pty Ltd* (1975) 6 ALR 271, 282; Pearce and Geddes, "Statutory Interpretation in Australia", Butterworths 1988, p 20.
7 Ss 265 and 302 of the Act; *Bonser v Melnacis & Anor* [2002] 1 QdR 1, [41].

[10] In Australia the common law courts have refrained from attempting to define the concept of causation in claims for damages for personal injury. *March v Stramare (E & M H) Pty Ltd*[8] holds that causation is essentially a question of fact to be answered by reference to commonsense, experience and involve considerations of policy and value judgment. In cases where there are competing causes which might be responsible for the injury it is enough for a plaintiff to show that the injury is "caused or materially contributed to" by the defendant's wrongful conduct.[9] In an attempt to suggest that "material contribution" may be satisfied by fairly slight causal connection, counsel for the appellant (Mr R Douglas SC) referred to a number of judicial statements. These include Lord Reid's statement in *Bonnington*[10] that any contribution which exceeds the de minimis principle must be taken to be material. He also referred to statements in medical negligence cases such as *Chappel v Hart*[11] and *Naxakis v Western General Hospital*[12] as supporting a low bench mark for the level of contribution necessary to establish causation in cases where competing causes exist. It is still, however, necessary for a plaintiff to prove that the defendant's conduct materially contributed to the sustaining of the injury. I do not discern any intention in the judgments in those cases to make the test of causation still lower than that stated in *March v Stramare*.

[11] The test of causation was not always so relaxed. It used to be necessary for a plaintiff to prove that the defendant's wrongful act was the "real cause" or the "effective cause" of the injury.[13] Historical reasons, particularly the consequences of the contribution and tortfeasor legislation, explain how that test came to be whittled down.[14] Whilst the lowering of the standard is therefore understandable in tort cases, there is no similar justification in contract. When competing causes exist for a given result, liability should be found in contract cases only if the defendant's acts can be regarded as of equal or close to equal potency with the other causes.[15] A double standard would seem to have emerged if Mr Douglas' submissions as to the low level of causation necessary in personal injury cases is correct. Claims of the present kind are almost invariably brought in the alternative upon both breach of contract and negligence, and since *Astley*[16] contributory negligence has become a virtual dead letter because of the plaintiff's ultimate right to elect to proceed in contract. In such cases the relaxed *Stramare* test of causation is used by the courts whether the judgment is founded on contract or negligence. This does not sit easily with other contract cases such as commercial claims where, when there are concurrent or competing causes of the damage, a somewhat tighter application of

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8 (1991) 171 CLR 506, 514-519.

9 *Ibid* p 514.

10 *Bonnington Castings Ltd v Wardlaw* [1956] AC 613, 621 (the disease was pneumoconiosis).

11 (1998) 195 CLR 232, 244; "If a wrongful act or omission results in an increased risk of injury to the plaintiff and that risk eventuates, the defendant's conduct has materially contributed to the injury that the plaintiff suffers whether or not other factors also contributed to that injury occurring." (Per McHugh J)

12 (1999) 73 ALJR 782, 786, 797, 807.

13 *Leyland Shipping Company v Norwich Union Fire Insurance Society* [1918] AC 350, 370.

14 *March v Stramare* above at 511.

15 *Simonius Vischer & Co v Holt & Thompson* [1979] 2 NSWLR 322, 346; *Heskell v Continental Express Ltd* [1950] 1 All ER 1033, 1046-1048.

16 *Astley v Austrust Ltd* (1999) 197 CLR 1.

the causation principle may be seen.[17] I had occasion to note this phenomen in *Wylie v The ANI Corporation Ltd*[18] and will not again canvass the authorities.

[12] In a case like the present, where the plaintiff has sued in contract and tort, there surely should not be a different test of causation according to the final election of the plaintiff. To say the least, the authorities on causation are in a very unsatisfactory state. A low and undefined level of causation may well be a significant factor in the development of an increasingly litigious society. The problems of lack of definition or criteria are compounded by the existence of arguably different principles or at least practices in relation to contract and tort. Hopefully some day serious consideration will be given to the imposition of and a more definite and perhaps higher threshold of causation than present authorities recognise. In the meantime, it is enough to note that the authorities to some extent support Mr Douglas' submission that a low level of connection may suffice to prove causation in claims for damages for personal injury, although it is impossible to identify that level.

[13] The above discussion leads to the point that is at the heart of the present case. In enacting the *WorkCover Queensland Act* 1996 the legislature chose, consistently with the reasons mentioned in the Act itself, to state a test of causation ("the major significant factor causing the injury") which is much closer to that which had formerly prevailed.[19] The Act provides for a scheme of compulsory workplace insurance by employers which secures employees' rights to workers compensation and common law damages against the employer, and establishes an insurer to cover the payment of such entitlements. Similar though by no means identical statutory schemes have existed in this state since 1916. The definition of "injury" is central to the entire scheme, as indeed it was in former schemes. The term is defined in s 34 as "personal injury arising out of, or in the course of, employment if the employment is the major significant factor causing the injury".[20] Mr Douglas submits, in my view correctly, that this is a harder test to satisfy than the currently applicable common law test in relation to such claims, although, as earlier indicated, the borderlines are hard to see. There will therefore be cases which would succeed according to the common law test but which will not now succeed in satisfying the statutory test. As there is a gap between the two tests I shall refer to such cases as "gap cases". To facilitate discussion I shall assume that the plaintiff's case is one of these.

[14] The submission continues that the Act does not expressly or impliedly prevent a plaintiff who fails to satisfy the definition of "injury" in the Act from bringing a case against the employer, outside the ambit of the Act, based on causation of a level that falls within the area of the gap. The employer will of course not be insured by WorkCover in respect of such a claim. In Mr Douglas' submission, prudent employers will now take out insurance to cover such gap cases. The gap insurance, as it seems to me, would be in respect of those cases where the employer is only a little bit responsible for the employee's injury.

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17 *Alexander v Cambridge Credit Corporation Ltd* (1987) 9 NSWLR 310; *Simonius Vischer* (above); *Heskell* (above).

18 [2000] QCA 314 paras 43 to 48.

19 Viz *Leyland Shipping Co v Norwich Union Fire Insurance Society* [1918] AC 350, 370.

20 Section 34.

[15] Such a claim would necessarily be defeated if it were shown that the defendant's wrongful conduct was the major significant factor causing the injury, because the *WorkCover Act* precludes such a claim unless the plaintiff has obtained an appropriate certificate, which this plaintiff has not and cannot obtain.

[16] In my view the Act limits the right of employees to obtain damages for personal injuries against their employers to those who have suffered an "injury" as defined. I agree with the reasons which Byrne J has written in reaching the view that there is no residual category of common law claim for damages for personal injury in favour of employee claimants who fail to obtain a certificate of the kind required by the Act. There is no room for a further category of gap cases in which the employee might have succeeded had the previous common law test of causation been retained. Some odd consequences follow if the appellant's arguments are correct, namely -

- a new category of claims in which a plaintiff would lose if he or she proved too much causation;
- a need for additional insurance by employers who were identified in the legislation as intended to be protected against too heavy a burden;[21]
- a second level of insurance in respect of the somewhat nebulous gap that has been mentioned; and
- the prospect of contribution proceedings between WorkCover and other insurers whose incentive would be to prove that their client's fault contributed mightily to the consequences.

Such possible consequences could not reasonably have been intended. It is quite clear that the workers compensation scheme and associated common law damages scheme covered by compulsory insurance was intended to be the sole avenue of claim against employers in respect of injuries sustained by workers in their employment. The legislature has simply, and understandably in my view, stiffened the test for proof of causation.

[17] The appeal should be dismissed with costs.

[18] **BYRNE J:** The appellant has instituted proceedings claiming damages for personal injuries arising out of her employment with the first respondent ("Thiess"). According to her statement of claim, she was a Thiess employee when in mid-1997, "in response to an increased work load and demands in performance of the contract of employment", she experienced symptoms "described as a relapse of post viral fatigue …" and an "aggravation of, a psychological or psychiatric disturbance as a reaction to her increased work load and demands or in consequence of … the post viral fatigue" resulting in "Chronic Fatigue Syndrome, …. major depression and general anxiety".

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[21] Section 5(6) – "because it is in the State's interests that industry remain locally, nationally and internationally competitive, it is intended that compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community …"

[19] Before an appearance was entered, Thiess and WorkCover Queensland asserted that the litigation was incompetent, maintaining that any common law right to damages for the symptoms and conditions manifested in 1997 had been extinguished by the *WorkCover Queensland Act* 1996 ("the *Act*"). The appellant then applied for a declaration to establish her entitlement to sue. The Judge concluded that she had no right to pursue the claimed cause of action against Thiess. This appeal is brought from the dismissal of her claim to declaratory relief.

[20] Division 1 of Part 2 of Chapter 5 of the *Act,* headed "Limitations on persons entitled to seek damages", operates to restrict access to curial proceedings to recover compensation under the general law for injury sustained in connection with employment. By its principal provision,

> "**General limitation on persons entitled to seek damages**
> **253.(1)**The following are the only persons entitled to seek damages for an injury sustained by a worker-
> (a) the worker, if the worker has received a notice of assessment from WorkCover stating that-
> (i) the worker has sustained a certificate injury; or
> (ii) the worker has sustained a non-certificate injury; or
> (b) the worker, if the worker's application for compensation was allowed and the injury sustained by the worker has not been assessed for permanent impairment; or
> (c) the worker, if the worker has not lodged an application for compensation for the injury; or
> (d) a dependant of the deceased worker, if the injury sustained by the worker results in the worker's death.
> (2) The entitlement of a worker, or a dependant of a deceased worker, to seek damages is subject to the provisions of this chapter.
> (3) To remove any doubt, it is declared that subsection (1) abolishes any entitlement of a person not mentioned in the subsection to seek damages for an injury sustained by a worker."

[21] As a PAYE taxpayer working for Thiess under a contract of service, the appellant was a "worker".[22] And it is common ground that she had not lodged an "application for compensation" in relation to the post-viral fatigue or associated psychiatric or psychological conditions. Her circumstances were therefore comprehended by s 253(1)(c).

[22] Section 265, which applies to persons mentioned in s 253(1)(c),[23] stipulates:

> "**Access to damages if no previous application for compensation**
> **265.(1)** The person may seek damages for the injury only if WorkCover gives the person a damages certificate under this section …
> **(3)** WorkCover may only, and must, give the certificate if –
> (a) WorkCover decides that the person was a worker when the injury was sustained; and
> (b) WorkCover decides that the worker has sustained an injury; and

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22 See s 12(1) and s 13(a) definitions of "worker" and "PAYE taxpayer".

23 s 264.

> (c) the worker's degree of permanent impairment has been assessed in the way mentioned for the injury under chapter 3, part 9, division 2. …
>
> **(8)** If WorkCover makes a decision about a matter mentioned in subsection (3)(b) and a person does not agree with the decision, WorkCover must refer the matter to a medical assessment tribunal for decision. …"

[23] The applicant applied for such a certificate as s 265 envisages, describing her injury as "post viral fatigue and depression" attributable to "significant increase in workload, travel, hours and responsibility". WorkCover, having refused the certificate, arranged for referral to medical assessment tribunals. One such tribunal considered that she "appears to have depression which is not related to work circumstances …". Another determined that "the matters alleged for the purpose of seeking damages do not constitute an injury," expressing the opinion that "personality factors were the dominant cause of her current state and that her work load would be regarded as a reasonable one …". So when the impugned litigation ensued, the appellant had not obtained a s 265 certificate.

[24] Section 302 of the *Act* provides:

> "The claimant may start a proceeding in a court for damages only if the claimant has complied with –
>
> (a) the relevant division under part 2; and
>
> …"

[25] Section 265 is within that Part 2. "Damages" is defined by s 11(1) to mean "damages for injury sustained by a worker in circumstances creating, independently of this Act, a legal liability in the worker's employer to pay the damages …".

[26] The statement of claim alleges that the fatigue and psychiatric condition "were caused by the increased workload …". The pleading also asserts that neither the fatigue nor the associated condition is "an injury within the meaning of section 34" of the *Act*.[24] According to s 34(1),[25] "An 'injury' is personal injury arising out of, or in the course of, employment *if the employment is the major significant factor causing the injury*".[26]

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[24] Section 34 also provides:

> "(3) 'Injury' includes the following -
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> (a) a disease contracted in the course of employment, whether at or away from the place of employment, if the employment is the major significant factor causing the disease;
>
> (b) an aggravation of a disease if the employment is the major significant factor causing the aggravation;
>
> …
>
> (4) 'Injury' does not include a personal injury, disease or aggravation of a disease sustained by a worker if the injury is a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances –
>
> (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment ..."

[25] By s 8 of the *Act*, "the dictionary in schedule 3 defines particular words used in this Act". Against "injury" in the schedule 3 dictionary appears "see section 34". Accordingly, pursuant to s 32A of the *Acts Interpretation Act* 1954, that definition will "apply except so far as the context or subject matter otherwise indicates or requires".

[26] Emphasis added.

[27] The reference in the pleading to s 34 was meant to convey that employment with Thiess was not "the major significant factor" causing the symptoms. The appellant's case is that although her employment materially contributed to – that is to say, caused[27] - the fatigue and associated condition, nonetheless, to adopt the language of s 34(1), the employment was not "the major significant factor causing" them. On that factual premise, the appellant founded her legal contention: that her damages claim was not for "injury" and therefore did not contravene the statutory prohibition on litigating without a s 265 certificate.

[28] Despite the form of the primary proceedings, the Judge was not, it seems, invited to decide whether the appellant's "employment" was "the major contributing factor" in her symptoms. WorkCover and Thiess maintained that that factual issue was not germane, contending that the absence of a s 265 certificate was fatal to an entitlement to pursue the damages claim even if the relationship between employment and injury were somewhat tenuous. The appellant apparently contended, in effect, that her suit was permissible if at a trial she might prove no greater connection between employment and injury than that the former had materially contributed to the latter.

[29] In these circumstances, the question is whether the damages suit was competent, assuming that the appellant's "employment", though a cause of her symptoms, was not "the major significant factor causing" them.

[30] In *Bonser v Melnacis*,[28] this Court[29] said[30] that:

> "the combined effect of the scheme introduced by the *WorkCover Act* … effectively abolishes any entitlement on the part of an injured worker to commence proceedings against the employer and … such a right comes into existence only upon compliance with the prescribed steps."[31]

[31] The appellant, however, claims to stand outside that statutory regime.

[32] A few provisions of the *Act* set the context in which the effect of the expression "if the employment is the major significant factor causing the injury" in the s 34(1) definition is to be ascertained. Several of them plainly[32] detrimentally impact upon common law rights to pursue damages claims for work-related injury: as examples, burdensome steps must be taken before court proceedings may be initiated;[33] proof of liability will sometimes be more challenging;[34] the burden of proof on the issue of failure to mitigate damages is reversed;[35] no compensation may be awarded in

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27 cf *March v E & M H Stramare Pty Ltd* (1991) 171 CLR 506, 514.

28 [2002] 1 Qd R 1.

29 de Jersey CJ, Thomas JA, Helman J.

30 Par [41].

31 See also *Tanks v WorkCover Queensland* [2001] QCA 103 pars [26], [54].

32 As to the disinclination to construe legislation as derogating from common law rights absent a clear and unambiguous expression of such an intention, see *Durham Holdings Pty Ltd v New South Wales* (1999) 47 NSWLR 340, 352-353; (2001) 75 ALJR 501, [28] - [31]; *Booker v State Rail Authority of NSW [No 2]* (1993) 31 NSWLR 402, 410.

33 s 302.

34 s 312(1).

35 s 275(2).

respect of gratuitous services;[36] a worker may be "guilty of completely causative … negligence";[37] contributory negligence may sometimes be more readily established than under the general law;[38] and loss of consortium claims cannot be maintained.[39]

[33] Some explanation for these intrusions into established rights and remedies is to be found in the *Act*. Among its objects[40] is that "the main provisions of the scheme provide the following for injuries sustained by workers in their employment"[41]: viz,

> "(b) regulation of access to damages;
>
> …
>
> (d) employers' obligation to be covered against liability for … damages … under a WorkCover insurance policy …".

[34] By s 5(4)(a), the Parliament expresses its intention "that the scheme should … maintain a balance between … providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and … ensuring reasonable premium levels for employers".

[35] Section 5(6) emphasises financial implications for employers:

> "Because it is in the State's interests that industry remain locally, nationally and internationally competitive, it is intended that compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community."

[36] And by s 6(1)(a), "This Act …provides for the protection of employers' interests in relation to claims for damages for workers' injuries…".

[37] It seems most unlikely that a statutory regime with those objects and incidents, and which so clearly and fundamentally affects damages claims where there is a substantial causal relationship between features of employment and complaints, was designed to exempt from its operation claims involving a tenuous employment connection. For such an arrangement would function as an incentive to injured staff of wealthy employers to avoid the rigours of the statutory regime by setting up a case that the connection with employment, though sufficient to attract liability, is remote where in fact it is considerable. The Parliament is unlikely to have wished to encourage such a fiction. Perhaps more to the point, an employer sued in such proceedings is in economic peril. Although WorkCover may also insure employers in respect of claims by non-PAYE staff,[42] such additional insurance "must not exceed the cover available under this Act for … damages",[43] which appears to mean that the extra cover cannot extend to cases where employment is not "the major significant factor …". So the employer - or where the employer procures cover from another insurer in respect of claims involving insubstantial connection

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36 s 315.
37 s 312(5), whatever that may mean.
38 s 314(1).
39 s 316.
40 By s 4(2), "The objects are an aid to the interpretation of this Act".
41 s 5(2).
42 s 28.
43 s 28(3)(b).

between employment and injury, that insurer - could be expected to defend[44] the case on the different basis that the connection between employment and symptoms is substantially greater than that asserted; and to advance such a case against WorkCover in an attempt to secure indemnity under the compulsory policy. Predictable complications such as those are not easily to be reconciled with the expressed intention of "ensuring reasonable premium levels" and "the protection of employers' interests …". In short, the consequences which would attend acceptance of the interpretation for which the appellant contends seem so peculiar that it is scarcely to be supposed that Parliament could have intended them.[45]

[38] The notion the *Act* was intended to extend to all instances in which a PAYE employee seeks damages from an employer for work-related symptoms accords with the Minister's second reading speech,[46] where Parliament was informed :

> "By requiring employment to be 'the major significant contributing factor' causing the injury, the legislation will exclude those injuries which have only a minimal work-related component. The new definition will require the link between employment and the injury to be stronger. This is intended to ensure that employers are held liable only to the extent that their employment of the worker contributed to the injury, or aggravation or acceleration of a pre-existing non-work related condition."[47]

[39] Both that speech and the indications of legislative intention discernible from the objects, incidents and sections already mentioned sufficiently reveal that "if the employment is the major significant factor causing the injury" was included in the s 34(1) definition for the purpose[48] of restricting an employer's liability in damages[49] to circumstances where the stated degree of causal connection existed, not to exclude from the reach of the scheme those cases in which a plaintiff might demonstrate a less substantial connection between employment and complaints.

[40] Sir Owen Dixon wrote that:[50]

> "the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed."

[41] So it is here.

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44 Mr Douglas SC conceded that an employer who established such a contention at trial would thereby prove that the plaintiff's claim must fail as having been statutorily prohibited and invalid: cf *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 390.

45 cf *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297, 320; *Project Blue Sky* at 384; *Hervey Bay City Council v Workers' Compensation Board of Queensland* [1999] 1 Qd R 274, 277.

46 *Hansard*, 27 November 1996, p 4459, 2nd col.

47 As to the use of such extrinsic material as an aid to interpretation, see s 14B(1) *Acts Interpretation Act:* cf *R v T* [1997] 1 Qd R 623, 633 fn 10.

48 "[T]he interpretation that will best achieve the purpose of the Act is to be preferred": s 14A(1) *Acts Interpretation Act*; cf *A Raptis & Sons Holdings Pty Ltd v Commissioner of Stamp Duties (No 1)* [1999] 1 Qd R 458, 460-461; *Project Blue Sky* at 382; *Australian Securities and Investments Commission v DB Management Pty Ltd* (2000) 74 ALJR 524, 532.

49 and entitlement to workers' compensation.

50 *Commissioner for Railways (NSW) v Agalianos* (1955) 92 CLR 390, 397, cited approvingly in *Project Blue Sky* at 381.

[42] The damages proceedings were instituted in contravention of the prohibition on litigating such a claim without a s 265 certificate.

[43] The appeal should therefore be dismissed with costs.