

Topic 1: Introduction to Workers' Compensation in Victoria

Introduction to Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)

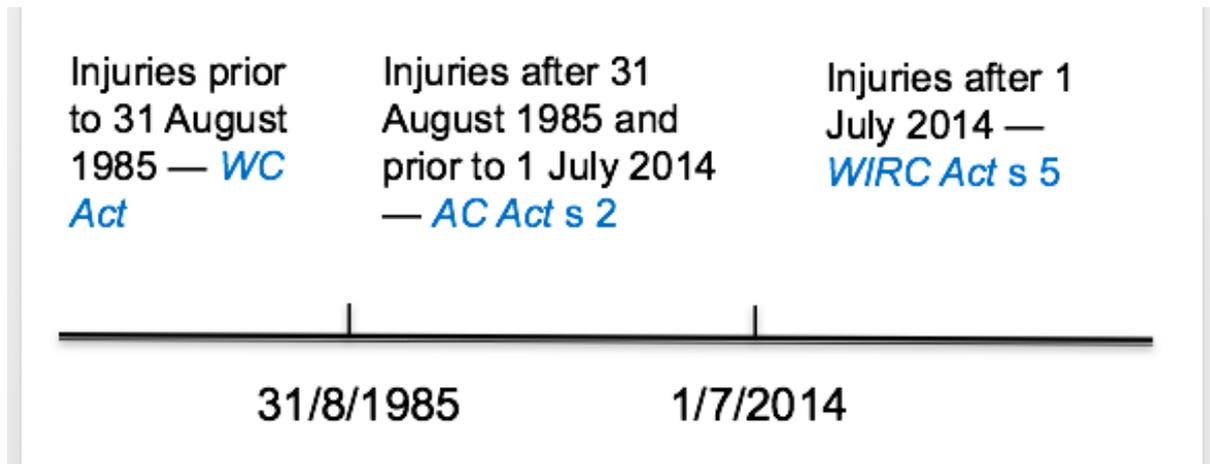
- Scheme of compensation for persons injured at work on or after 1 July 2014
 - Dual system:
 - No-fault compensation for:
 - Income loss or loss of the capacity to earn income
 - Lump sum payment for 'permanent impairment'
 - Medical and like expenses ('MLE')
 - Death benefits
 - Restricted common law rights—2 steps
 - Application for 'serious injury' threshold
 - Proceedings for damages
- Replaced the *Accident Compensation Act 1985 (Vic)* (AC Act), which still applies to pre-1 July 2014 injuries

Historical Background

- Kevin Purse 2005 identifies 4 'nodal points of policy development' (p. 9)
 - 18th century to end of 19th century (pp. 9-): Laissez-faire, CL, & 'Unholy Trinity'
 - Industrial revolution 18th-19th cc
 - Problems in common law at this time—Unholy Trinity of:
 - Common employment
 - Voluntary assumption of risk
 - 'Contributory negligence'
 - Workmen's Compensation Act 1897 (UK)
 - Employer liable
 - No fault system introduced
 - 1900-1925 (pp. 11-12): profound and rapid change
 - Australian jurisdictions adopted UK legislation between 1897 and 1914
 - *Workmen's Compensation Act 1900 (SA)*
 - *Workers Compensation Act 1914 (Vic)*
 - Mid-1920s to 1979 (pp. 12-): 'incrementalist interregnum'
 - 1970 to mid-1990s (pp 13-): 'reform and counter-reform'
 - Background to AC Act: pressures to reform
 - WC Act 1958 problems: costs of scheme, especially dramatic increase in insurance premiums payable by employers
 - 1970s committees advocating no-fault insurance
 - Woodhouse Committee 1974 (Cth)
 - Harris Report 1977 (Vic)
 - 1984: AC Bill
 - Envisaged 'pure' no-fault scheme—abolition of CL rights
 - 1985: AC Act passed
 - Compromise: limited CL rights retained plus no-fault benefits
 - Post-1985: multiple amendments
 - VWA replaced ACC

- Journey claims abolished

Which Act applies?



WIRC (Workplace Injury Rehabilitation Compensation) Act

- Came into effect on 1 July 2014
- All claims for compensation lodge by Victorian workers on or after 1 July 2014 will be governed by the lodgment provisions in Part 2, Divisions 1 and 2 of the WIRC Act: s 6(1)

WIRC Act – s 5	<p>Application of this Act to injuries</p> <p>1) Except as otherwise expressly provided in this Act, this Act applies to the entitlement of a worker to compensation under this Act in respect of—</p> <p>a) an injury to the worker arising out of, or in the course of, or due to the nature of, employment on or after 1 July 2014; and</p> <p>b) an injury arising—</p> <p>i. out of, or in the course of, or due to the nature of, employment; and</p> <p>ii. by way of gradual process over a period beginning before, and continuing on or after 1 July 2014—</p> <p>but does not apply to or in relation to an injury arising out of, or in the course of, or due to the nature of, employment solely before 1 July 2014.</p>
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Aims and Rationales of WIRC Act

- The AC Act and WIRC Act are statute based regimes of compensation, and so principles of statutory interpretation apply. It is necessary to revisit these principles that you encountered as first year students

Relevant Principles of statutory interpretation (Cook et al 2012, 8th ed):

1. Establish whether the legislation was **in force** at the relevant time. If it only commenced operation at a later time, check whether it nevertheless applies retrospectively to the problem.

2. Use the table of contents and headings to check through the whole piece of legislation seeking relevant provisions.
3. When you find a relevant provision, read it carefully and note any words or phrases that appear significant.
4. Check whether any of those words or phrases are **defined** in the legislation.
5. If necessary, check the **meaning** of any words in a dictionary.
6. Consider whether any provisions of the relevant legislation are **on point**.
7. Consider whether any of the **adjacent provisions** in the legislation throw light on a relevant provision, remembering that words are normally used consistently.
8. If appropriate, check whether any relevant provision has been given **judicial interpretation**.
9. Attempt to interpret the words according to their **ordinary meaning** or, where appropriate, their technical or legal meaning, and try to apply them to the problem.
10. Attempt to identify the **purpose** of the legislation, or of a particular provision, by looking at the whole of the legislation, and try to interpret the words consistently with that purpose.
11. If the provision is ambiguous or obscure or, taking account of its context and underlying purpose or object, its ordinary meaning leads to an absurd or unreasonable result, reference may be made to **parliamentary, executive, and related materials** to determine the meaning of the provision.
12. If the preconditions referred to in 11 are not present, reference may be made to relevant **extrinsic materials** to discover the mischief or defect addressed.
13. Interpret a provision against a background of any relevant **common law presumptions**.

Aims: 'beneficial' or financially responsible?

- The WC Act contains no provisions that provide guidance as to whether it should be construed liberally in the worker's favor or strictly against the worker, in situations where there is uncertainty. Despite this, a number of cases read into the WC Act beneficial intentions.
- Read as a piece of 'beneficial' legislation?: YES
 - **Yes: Hill and Bingeman, *Principles of the Law of Workers' Compensation Particularly in Victoria* (1981). It is a 'well-known principle' (p. 3)**
- **'where two constructions of a Workers' Compensation Act are possible, that which is favourable to the worker should be preferred': *Wilson v Wilson's Tile Works (HCA, 1960), at 335 (Fullagar J)*.**
 - Workers' comp legislation 'should not be construed in any narrow spirit' b/c it is 'akin to insurance' and is 'remedial' legislation: *McGuire v Union Steamship* (HCA, 1920), at 583-84 (Isaacs and Rich JJ)
 - *Dodd v Executive Air* (VSC, 1975): cited Fullagar J's comments as an 'established principle'
 - Cf: *Byrne v TAC* [2008] VSC 92,[46] (Cavanough J *obiter* [46])

Byrne v TAC	
<i>Cavanough J</i>	<ul style="list-style-type: none"> • The TAC drew to my attention the following passage from the judgment of Winneke P (with whom Batt JA and Warren AJA agreed) in <i>Transport Accident Commission v Lincoln</i> [23]: "It is true

that, over the years, courts which have been called upon to interpret compensation statutes have repeatedly said that the underlying scheme of those Acts is ‘beneficial’ and ought to be interpreted broadly in favour of the applicant. In this State those words are achieving a ‘hollow ring’ because one of the primary objects of the present legislation is to ‘reduce the cost to the Victorian community of compensation for transport accidents.”[\[24\]](#)

- I note the following comment by Judge Bowman in *Robb v Transport Accident Commission*[\[25\]](#): “The observations of Winneke P in *Lincoln* have been brought to my attention and it may be that words such as ‘beneficial’ in relation to legislation such as this now have a ‘hollow ring’ about them.
- However, with respect, I do not interpret the words of His Honour as meaning that such a general approach to the interpretation of compensation statutes no longer exists or has forever departed. I understand him to be saying that, in this state, such an approach is no longer in the robust condition that it once was. It may also be that an approach based upon the beneficial interpretation of compensation statutes is becoming an argument of last resort ...”

<p>Interpretation of legislation Act 1984 – s 35</p>	<p>Principles of and aids to interpretation</p> <p>In the interpretation of a provision of an Act or subordinate instrument—</p> <p>(a) a construction that would promote the purpose or object underlying the Act or subordinate instrument (whether or not that purpose or object is expressly stated in the Act or subordinate instrument) <u>shall</u> be preferred to a construction that would not promote that purpose or object;</p>
<p>Aim’s of the WIRC Act s 10</p>	<p>The objectives of this Act are to—</p> <p>(a) reduce the incidence of accidents and diseases in the workplace; and</p> <p>(b) make provision for the effective occupational rehabilitation of injured workers and their early return to work; and</p> <p>(c) increase the provision of suitable employment to workers who are injured to enable their early return to work; and</p> <p>(d) ensure appropriate compensation under this Act or the Accident Compensation Act 1985 is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible; and</p> <p>(e) ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses; and</p> <p>(f) establish incentives that are conducive to efficiency and discourage abuse; and</p>