INDUSTRIAL COURT OF QUEENSLAND

CITATION:	*Simon Blackwood (Workers' Compensation Regulator) v Civeo Pty Ltd and Anor* [2016] ICQ 001
PARTIES:	**SIMON BLACKWOOD (WORKERS' COMPENSATION REGULATOR)** (appellant) **v** **CIVEO PTY LTD (FORMERLY THE MAC SERVICES GROUP PTY LIMITED)** (first respondent) **SHANE CUMBERS** (second respondent)
FILE NO/S:	C/2015/16
PROCEEDING:	Appeal
DELIVERED ON:	20 January 2016
HEARING DATE:	21 July 2015
MEMBER:	Martin J, President
ORDER/S:	**1. The appeal is allowed.** **2. The decision of the Queensland Industrial Relations Commission is set aside and in lieu thereof it is ordered that that the appeal by Civeo Pty Ltd against Simon Blackwood (Workers' Compensation Regulator) be dismissed.**
CATCHWORDS:	WORKERS' COMPENSATION – ENTITLEMENT TO COMPENSATION – EMPLOYMENT RELATED INJURY, DISABILITY OR DISEASE – EMPLOYMENT SUBSTANTIAL OR SIGNIFICANT CONTRIBUTING FACTOR – TO INJURY – where the second respondent was employed by the first respondent as an Appliance Technician, required to travel between five accommodation sites as part of his ordinary duties – where the second respondent did not have a contractual obligation to reside or sleep at the accommodation provided by the first respondent – where the second respondent was assaulted while sleeping in his allocated room, sustaining physical and psychological injuries – where the second respondent's claim in respect of these injuries was accepted by the appellant – where on appeal by the second respondent the Queensland Industrial Relations Commission quashed the decision of the appellant – whether the injuries arose from the employment – whether the employment was a significant contributing factor to the injuries

	Workers' Compensation and Rehabilitation Act 2003, s 32
CASES:	*Comcare v Mather* (1995) 56 FCR 456 *Comcare v PVYW* (2013) 250 CLR 246 *Croning v Workers' Compensation Board of Queensland* (1997) 156 QGIG 100 *Hatzimanolis v ANI Corporation Ltd* (1992) 173 CLR 473 *Newberry v Suncorp Metway Insurance Ltd* [2006] 1 Qd R 519; [2006] QCA 48 *Oaks Hotels and Resorts (Qld) Pty Ltd v Blackwood and Anor* [2014] ICQ 23 *Westrupp v BIS Industries Limited* [2015] FCAFC 173
APPEARANCES:	P Ambrose QC and A Kitchin for the appellant, directly instructed D Kent QC and C Hartigan for the first respondent, instructed by Baker & McKenzie PT Cullinane for the second respondent, instructed by Macrossan & Amiet Solicitors

[1] On the evening of 15 December 2010 Mr Cumbers was asleep in his allocated room at the MAC Moranbah Village. The village was owned and operated by the first respondent ("Civeo"). Mr Cumbers was employed by Civeo as an Appliance Technician. At about 1:50 am a person gained entry to the room and assaulted Mr Cumbers causing soft tissue injuries to the right side of his face, thorax and the right rib cage.

[2] As part of his ordinary duties, Mr Cumbers was required to travel between five accommodation sites in the Bowen Basin region, namely, Moranbah, Dysart, Middlemount, Copperbella and Nebo Junction. Each of the accommodation sites were operated by Civeo. On the day of the assault, i.e., 16 December 2010, he was due to commence a shift working for Civeo.

[3] Mr Cumbers made a claim in respect of the injuries he suffered. The Regulator accepted that claim and Civeo appealed against that decision of the Regulator. At the hearing in the Commission it was accepted that Mr Cumbers was a worker for the purposes of s 32 of the *Workers' Compensation and Rehabilitation Act* 2003 ("the Act"). Civeo accepted that Mr Cumbers did sustain the soft tissue injuries but not that he suffered any psychological injuries. The Deputy President, though, was satisfied that Mr Cumbers had suffered a psychological injury, i.e., chronic, severe post-traumatic stress disorder and adjustment disorder with anxiety and depressed mood, chronic. That finding is not the subject of appeal.

[4] The Deputy President held that Mr Cumbers' injuries arose out of, or in the course of, employment. But he held that the employment was not a significant contributing factor to the injury and, thus, he quashed the decision of the Regulator.

The legislation

[5] At the relevant time, the following provisions of the Act[1] applied:

"**32 Meaning of *injury***

(1) An ***injury*** is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

…"

"**Subdivision 3 When injury arises out of, or in the course of, employment**

33 Application of sdiv 3

This subdivision does not limit the circumstances in which an injury to a worker arises out of, or in the course of, the worker's employment.

34 Injury while at or after worker attends place of employment

(1) An injury to a worker is taken to arise out of, or in the course of, the worker's employment if the event happens on a day on which the worker has attended at the place of employment as required under the terms of the worker's employment—

(a) while the worker is at the place of employment and is engaged in an activity for, or in connection with, the employer's trade or business; or

(b) while the worker is away from the place of employment in the course of the worker's employment; or

(c) while the worker is temporarily absent from the place of employment during an ordinary recess if the event is not due to the worker voluntarily subjecting themself to an abnormal risk of injury during the recess.

(2) For subsection (1)(c), employment need not be a significant contributing factor to the injury."

[1] Reprint 5B effective 1 November 2010.

The employment and the assault

[6] The circumstances leading up to the assault were summarised by the Deputy President in the following way:

> "[7] Mr Cumbers obtained his job when he answered an advertisement, his role was to service and repair commercial appliances used in the kitchens and laundries of five accommodation camps. This required him to travel between the five accommodation sites. He was based at the Moranbah village camp where he was provided with a donga for his own personal use.
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> [8] He worked at Moranbah on 15 December 2010 and finished work at around 4.30pm after which he joined a group of people, most of whom were employees of the appellant for social drinks in an area behind the kitchen. I am satisfied that this area comprised a concrete floor a couple of picnic tables, shade cloth and probably a small barbeque. It was often used by people who were accommodated at the camp for the purpose of socializing. Albeit, this may have been contrary company policy I am satisfied this practice was condoned by site management.
>
> [9] In the evening in question, Mr Cumbers and the others drank alcoholic beverages and shared a joint or joints of marijuana. Mr Cumbers went to bed at approximately 11.00pm. He locked the door of his donga and went to sleep in a relatively dark room. He was awakened at approximately 1.50am on 16 December by being assaulted by a person who had obtained the master key to the donga. Although it was dark Mr Cumbers identified his assailant as one of the people who had been at the gathering but who did not work for the appellant and who he had met at the gathering, but not previously. His assailant said nothing during the attack. As a result of the assault, Mr Cumbers sustained the soft tissue injuries and, he asserts, the psychological injuries."

[7] The Deputy President also made these findings:

> "[23] I am however satisfied that the injury was suffered at and by reference to a place where the appellant had induced or encouraged Mr Cumbers to be.
>
> [24] Although Mr Cumbers' contract of employment was silent as to the provision of accommodation there is no doubt that the appellant provided the accommodation at Moranbah for Mr Cumbers for which it made no charge, as well as providing him with meals.
>
> [25] Given that Mr Cumbers lived some 300 kilometers from Moranbah the provision of free food and lodging was obviously an inducement and encouragement for him to stay at the camp where the injury was sustained.
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> [26] In *PVWY* the majority held:

> "Because the employer's inducement or encouragement of an employee, to be present at a particular place or engage in a particular activity, is effectively the source of the employer's liability, the circumstances of the injury must correspond with what the employer induced or encouraged the employee to do. It is to be inferred from the factual conditions stated in *Hatzimanolis* that for an injury to be in the course of employment, the employee must be doing the very thing that the employer encouraged the employee to do, when the injury occurs."

[27] Here, unlike the situation in *Australian Leisure and Hospitality Group*, Mr Cumbers by sleeping in his donga was doing the very thing the appellant had encouraged him to do, when the injury occurred.

The notice of appeal

[8] There were numerous grounds of appeal. They were:

> "(a) The learned Deputy President erred in relying on a lack of contractual obligation on Mr Cumbers to reside or sleep at the accommodation village, rather than the overall circumstances of the employment in which Mr Cumbers found himself, the nature of his employment and the initiatives of his employer.
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> (b) The learned Deputy President erred in adopting an enquiry about "cause" rather than significant contribution when examining the "decisions and initiatives of the appellant" in terms of the circumstances of the injuries to Mr Cumbers.
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> (c) The learned Deputy President erred in finding that the assault was the cause of the injury and the employment was merely the setting in which it occurred.
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> (d) The learned Deputy President erred in fact in finding that there was no relationship between the employer and his assailant.
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> (e) The learned Deputy President erred in not making a finding that there was a relationship between Mr Cumbers on the one hand and the employer's Housekeeping Supervisor Corinna Spencer and the employer's Workplace Health and Safety Co-ordinator Trent Bichel on the other.
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> (f) The learned Deputy President erred in finding that there was no desire by the employer to have Mr Cumbers stay at the accommodation village to facilitate its operation "as was the case in Oaks".

(g) The learned Deputy President erred in finding that Mr Cumbers could have stayed at Moranbah had he been so minded and erred in attaching relevance to such a possibility.

(h) The learned Deputy President erred in finding that the fact that Mr Cumbers was induced by the employer to reside and sleep at the accommodation village established no more than that his injuries arose out of, or in the course of, the employment.

(i) The learned Deputy President erred in in not having any or any sufficient regard to facts which went towards employment being a significant contributing factor.

(j) The learned Deputy President erred in finding that employment was not a significant contributing factor to Mr Cumbers' injuries."

[9] In the appellant's written submissions it was contended that the Deputy President misapprehended the legal test under s 32 of the Act and that that was the "overarching error".

The notice of contention

[10] Civeo filed a notice of contention asserting that the decision could be supported on two other grounds. It only relied on one – that the injury did not arise out of or in the course of the employment.

Was the employment a significant contributing factor to the injury?

[11] In order to determine whether the decision was affected by appellable error it is necessary to consider the relevant tests and their application in these circumstances.

[12] The Deputy President relied upon the reasoning of de Jersey P in *Croning v Workers' Compensation Board of Queensland*[2]. In paraphrasing some of the obiter remarks in that decision he said of this case: "[36] … The assault was the cause of the injury, the employment was merely the setting in which it occurred."

[13] *Croning* is an unusual case which is based upon unusual facts. The Industrial Magistrate had found that the employment had not led to the worker's injury, rather it had been his "almost obsessive desire to implement his own preferred system [of tuition]". As de Jersey P observed:

> "The conditions in which the work was to be performed by the appellant obviously contributed to the appellant's condition. But the Magistrate is to be taken to have found that that contribution was not 'significant'. The significant contributing factor, in the Magistrate's judgment, and the only

[2] (1997) 156 QGIG 100.

> one, was the appellant's own difficulty accepting the working conditions to which, as the Magistrate has found, he was reasonably subject."

[14] *Croning* is a case which is based on a set of factual findings which are distinguishable those in this case. The President found that the Industrial Magistrate was entitled to make the findings of fact which he did make. He also said:

> "The work conditions did, as I have said, certainly provide the setting or background against which the appellant's particular disposition came into play. Although no doubt one should conclude then that the system operating at the place of employment was in that sense a 'contributing factor', it was not necessarily, as indeed the Magistrate must be taken to have found, a 'significant' one – **the only significant contributing factor** in accordance with his findings being the appellant's own disposition." (emphasis added)

[15] It is clear that his Honour, in referring to "the only significant contributing factor", was emphasising that it was the worker's own peculiar attitude which led to the injury.

[16] In considering this issue, the Deputy President referred to *Newberry v Suncorp Metway Insurance Ltd*[3] and considered *Oaks Hotels and Resorts (Qld) Pty Ltd v Blackwood and Anor*[4].

[17] The decision in *Newberry* is of considerable importance. But before turning to it, it is necessary to consider what the High Court said in *Comcare v PVYW*[5]. In that case, the question which was raised was described in this way:

> "[2] The respondent claimed compensation for her injuries under the *Safety, Rehabilitation and Compensation Act* 1988 (Cth) (the SR&C Act). It provides that Comcare is liable to pay compensation in respect of an 'injury' suffered by an employee. An injury for which compensation is payable includes a physical or mental injury 'suffered by an employee … arising out of, or in the course of, the employee's employment'. The question the respondent's claim for compensation raised for the Administrative Appeals Tribunal (the AAT) and the courts below was whether her injuries were suffered 'in the course of' her employment."

[18] In *PVYW* a Commonwealth employee was at the relevant time employed by a Commonwealth government agency. She had been required to visit a regional office of the agency in New South Wales with another work colleague to observe the budget review process, meet the regional staff and undertake training. For that purpose, she stayed overnight at a nearby motel which had been booked by her employer. During the course of the evening at the motel, the respondent engaged in sexual intercourse with an acquaintance. In that process, the glass light fitting above the bed was pulled from its mount by either the respondent or her acquaintance and it struck the respondent on her

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3 [2006] 1 Qd R 519.
4 [2014] ICQ 23.
5 (2013) 250 CLR 246.

nose and mouth. As a result, the respondent suffered physical injuries and a subsequent psychological injury.

[19] French CJ and Hayne, Crennan and Kiefel JJ considered that the question of whether or not an injury arose from a person's employment was to be determined according to the principles set out in *Hatzimanolis v ANI Corporation Ltd*[6]. Their Honours stated:

> "[38] The starting point in applying what was said in *Hatzimanolis*, in order to determine whether an injury was suffered in the course of employment, is the factual finding that **an employee suffered injury, but not while engaged in actual work**. The next inquiry is what the employee was doing when injured. For the principle in *Hatzimanolis* to apply, the employee must have been either engaged in an activity or present at a place when the injury occurred. The essential inquiry is then: how was the injury brought about? **In some cases, the injury will have occurred at and by reference to the place**. More commonly, it will have occurred while the employee was engaged in an activity. It is only if and when one of those circumstances is present that the question arising from the *Hatzimanolis* principle becomes relevant. 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 by reference to a place, 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." (emphasis added)

[20] It must be observed that the test under the Commonwealth legislation was less demanding – were the injuries suffered in the course of employment? The Act requires that the employment be a significant contributing factor. That extra requirement was considered by Keane JA (with whom de Jersey CJ and Muir J agreed) in *Newberry* where he said:

> "[27] It cannot be disputed that, when s. 32 of the *WCRA* speaks of 'employment' contributing to the worker's injury, it is referring to employment as a set of circumstances, that is to the exigencies of the employment of the worker by the employer. The legislation is referring to 'what the worker in fact does during the course of employment'. The requirement of s. 32 of the *WCRA* that the employment significantly contribute to the injury is apt to require **that the exigencies of the employment must contribute in some significant way to the occurrence of the injury** which the claimant asserts was caused by the breach of duty of the person (not the employer) against whom the claim is made." (emphasis added)
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> …
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> "[41] That having been said, however, I should also observe in passing that the fact that an injury has been suffered arising out of employment, or in the course of employment, is not sufficient to establish that the employment has been 'a significant contributing factor to the injury'. To read s. 32 of the

6 (1992) 173 CLR 473.

> *WCRA* in that way would be to read the latter words out of the section, and in my respectful opinion to accord scant respect to the evident intention of the legislature to require a more substantial connection between employment and injury than is required by the phrases 'arising out of employment' or 'in the course of employment'.
>
> [42] Further, there is no warrant in the language of s. 32 of the *WCRA* for reading the words 'if the employment is a significant contributing factor to the injury' as lessening the stringency of the requirement that the injury 'arise out of the employment', as was suggested in the course of argument on the appeal. It is clear, as a matter of language, that the words 'if the employment is a significant contributing factor to the injury' are intended to be a requirement of connection between employment and injury additional to each of the requirements that the injury occur in the course of employment or arising out of the employment. It cannot, in my respectful opinion, sensibly be read as lessening the stringency of the latter or increasing the stringency of the former."

[21] Both *PVYW* and *Newberry* were considered in *Oaks*. In that case, the worker was sexually assaulted in her bed in the early hours of the morning by a fellow worker. She had been induced to stay in the same apartment as the fellow worker by her employer. The focus in *Oaks* was principally upon whether the worker had been induced to stay at the apartment in which she was later assaulted. The Commissioner's decision that there was inducement was upheld on appeal. The Commissioner also held that the worker's employment was a significant contributing factor to her personal injury because, *inter alia*, she was subject to transfer in accordance with her employment conditions, she had been transferred to Brisbane by the appellant, and that while it was not the usual practice of the appellant to involve itself in matters of staff accommodation, it became involved in the worker's case, partly in response to her reluctance to move.

[22] In this case, the Deputy President made the following findings:

(a) Mr Cumbers did not have any contractual obligation to reside or sleep at the Moranbah camp.

(b) Mr Cumbers was assaulted by someone who had no connection with the employer.

(c) It could not be said that there was anything in the nature and terms of Mr Cumbers' employment, together with the decisions and initiatives of Civeo, which caused Mr Cumbers to be exposed to his assailant.

(d) There was no desire or necessity by Civeo to have Mr Cumbers stay at the camp to facilitate its operation.

(e) Mr Cumbers could have stayed at Moranbah had he been so minded.

[23] On the basis of those findings, the Deputy President reached the following conclusion:

> "[37] … I am satisfied that this case is significantly distinguishable from *Oaks* and *Kennerly* so as to enable me to be satisfied that the employment was not a significant, contributing factor to the injuries. There was no relationship between the appellant and the assailant, it was not a condition of Mr Cumber's employment that he stay at the camp. There was no desire or necessity by the appellant to have Mr Cumber's stay at the camp to facilitate its operation as was the case in *Oaks*. Mr Cumbers could have stayed at Moranbah had he been so minded."

[24] The test applied in determining whether employment was a significant contributing factor must be applied in a practical way. It is the "exigencies" of employment which must be considered and, while that will ordinarily include the contractual terms of engagement, it will generally require an analysis of the circumstances surrounding the employment. In this case, Mr Cumbers was practically obligated to stay at the camp in order that he might be able to perform his work. The Deputy President found that the offer of accommodation was an inducement to enter into the arrangement. It was, if not essential, a very sensible arrangement to enter into given the shift cycle of 10 days on and four days off.

[25] The Deputy President did not address the correct question when considering the decisions in *Oaks* and *Croning.* His Honour referred ([35] and [36] of his reasons) to the question of the cause of the injury. But that is not the matter to be considered under the Act. Section 32 of the Act does not require an examination of the cause of the injury in the manner adopted by the Deputy President. While causation will, necessarily, be part of any analysis, the Act recognises that there may be more than one factor in play. The action of the intruder was the immediate cause of the injuries suffered by Mr Cumbers but it was not the only contributing factor.

[26] The nature of Mr Cumbers' employment led to the practical requirement to live at the camp during his shift cycle. But for that, he would not have met nor have been assaulted by the other worker. The Deputy President said (at [37]) that Mr Cumbers could have stayed at Moranbah had he been so minded. It is submitted for the appellant that there was no evidence as to the availability and suitability of any such accommodation. But, even if Mr Cumbers could have stayed at Moranbah, the fact was that he was induced and encouraged to stay at the camp and, so, that must be taken into account as one of the exigencies of the employment.

[27] It was argued for Civeo that the appellant's case relied upon Mr Cumbers being exposed to the system employed by Civeo for securing the master key. In this case, it was obtained by the other worker in order to gain entry to Mr Cumbers' accommodation. Civeo submitted that its system was not to blame for the key being forcibly removed from the housekeeping supervisor but rather the key was taken as a result of the actions of a person or persons acting in concert to take the key without the supervisor's permission. This submission, with respect, is concerned with blame or fault whereas the Act directs attention to identifying whether the injury arose out of employment and whether the employment was a significant contributing factor. There was a connection between the system employed by Civeo for security of the master key and the injury. The evidence compels a conclusion that the system used was insufficiently secure. Access to Mr Cumbers' room was facilitated, at least in part, by another employee of Civeo.

[28] It was submitted by Civeo that random crimes by unknown visitors were not part of the system of work. So much can be accepted. But the circumstances in this case go beyond that submission. The camp in which both these people lived was subject to the policies promulgated by Civeo concerning the conduct which must be observed by residents and of the restrictions, both as to association and privacy, imposed on residents. A substantial purpose of the rules imposed on residents was to create a place which would conduce to better work performance.

[29] Civeo also argued that the circumstances of this case differed considerably from those in *Oaks* in that the nature and terms of the employment did not cause the worker to drink excessively and smoke cannabis in the company of others including the assailant. That was an argument which was not advanced any further on appeal and, before the Commission, it was the subject of a concession that there could be no inference drawn in relation to what occurred between Mr Cumbers and the assailant.

[30] It was contended that the nature and terms of the employment did not provide for the worker to be in a place that could not be secured. This was said in order to draw a distinction between the apartment in *Oaks* and the self-contained cabin occupied by Mr Cumbers. This is, with respect, focusing on fault or blame rather than on the requirement of the Act. In any event, in *Oaks* there was no discussion about whether or not the door to the worker's bedroom could be locked or not.

[31] It was also argued that the nature and terms of the employment "did not contrive of a situation where the worker would be sleeping (and residing) in the same place (i.e. the donga) as the assailant." There is a difference in scale between this case and the circumstances in *Oaks.* In each case, though, the victim was sleeping in a bedroom and the assailant was outside and entered the sleeping area. The camp in which Mr Cumbers was accommodated was a closed environment. It was subject to the rules referred to above and was not open to the public.

[32] The exigencies of Mr Cumbers' employment were such that there was a practical requirement for him to sleep in the camp. He was assaulted while doing something, ie, sleeping, which Civeo must be taken to have intended that he do by allowing him to be accommodated in the camp. Had he not been there he would not have been assaulted. The Deputy President erred in holding that employment was not a significant contributing factor to the injury.

The first respondent's contention

[33] Civeo contends that the injury did not arise out of or in the course of employment. It argues that the Deputy President erred in finding that he was satisfied that the injury was suffered at and by reference to a place where the respondent had induced or encouraged Mr Cumbers to be.

[34] It was argued that *PVYW* was authority for the proposition that an injury sustained outside working hours during an overall period of work will only be held to have occurred in the course of employment if:

(a) it is sustained while performing an activity that the employer induced or encouraged the worker to perform, and was sustained because the worker was undertaking that activity; or

(b) it is sustained while staying at a place the employer induced or encouraged the worker to stay at, and was sustained because of the place at which the worker was staying.

[35] Civeo argued that the essential inquiry is: how was the injury brought about? Civeo would answer that question by saying that the injury came about because the worker was assaulted by a third party. The answer, it is argued, is not that he was assaulted because of the place he was sleeping in; nor because sleeping was an encouraged "activity".

[36] The second element of the test proposed in *PVYW* was not correctly described in the submission of Civeo. It is not whether the injury had been sustained *because* of the place at which the worker was staying. In *PVYW* the majority said:

> "[38] … The essential inquiry is then: how was the injury brought about? In some cases, the injury will have occurred at and by reference to the place.… When injury occurs at and by reference to a place, 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."

[37] The Deputy President found that Mr Cumbers had been encouraged or induced to be in the place where he was eventually injured. There was evidence to support that finding and it should not be disturbed. That finding was consistent with the principle enunciated by Kiefel J in *Comcare v Mather*[7] where her Honour said:

> In my view "encouragement" is not to be taken as of narrow meaning and limited to some positive action and in specific terms which might lead the employee to undertake a particular activity or attend at a particular place. The two particular cases which their Honours in *Hatzimanolis* were concerned with in this context, *Commonwealth* v *Oliver* (1962) 107 CLR 353 and *Danvers* v *Commissioner for Railways (NSW)* (1969) 122 CLR 529 involved, respectively, an expectation of presence coupled with a recognised practice and making available facilities for an employee's use. The facts in *Hatzimanolis* did not require the Court to discuss in greater detail what was encompassed by the phrase 'induced or encouraged'. **To be said to have, expressly or impliedly, induced or encouraged an undertaking or presence at some location could refer to, by way of example only, requirements, suggestions, recognition of practices, fostering of participation, or providing assistance and may include the exercise of discretion or choice on the part of the employee.** Further attempt at definition would be fruitless. **In each case, the question will be whether the attendance at the place at which or the undertaking in which the employee is involved when injured in an interval falls within the ambit**

[7] (1995) 56 FCR 456.

> **of statements, acts or conduct made by the employer and what may be said to logically arise from them. And in each case, importantly, they must be viewed in the background of the particular employment and the circumstances in which the employer is then placed.**" (emphasis added)[8]

[38] After the hearing of this appeal, the Full Court of the Federal Court of Australia delivered judgement in *Westrupp v BIS Industries Limited*[9]. That case concerned a person employed as a fly in/fly out worker on a roster of two weeks on, one week off. He was required to reside at the camp attached to the mine while he was working. His home, though, was in New Zealand. On the evening in question Mr Westrupp went to a tavern located in the camp. Later that evening he was assaulted by a fellow employee. The conditions of accommodation at the camp were similar in many relevant respects to those which applied to the camp conducted by Civeo. Mr Westrupp sought compensation for the injuries he suffered as a result of the assault. The Administrative Appeals Tribunal refused his appeal against the denial of his claim.

[39] In a unanimous decision, the Full Court considered the decision in *PVYW* and its application to the case before that court. Their Honours[10] said:

> "44 The majority judgment in *PVYW* summarised part of the reasoning in *Hatzimanolis* as being to the following effect:
>
> > 29 … Where an employee is required to live in a remote location for a period until a particular work-related undertaking is completed, the notion of an overall period or episode of work could apply to that whole period. Thus, on the facts in *Danvers*, it might be concluded that the time spent at the remote location and in the accommodation provided by the employer constituted one whole period of work, rather than a series of discrete periods. In such a circumstance, an injury which occurs in an interval between periods of actual work might more readily be understood as being within the course of employment than one occurring after working hours in the ordinary situation.
>
> and:
>
> > 32 An employer's inducement or encouragement may create an interval according to *Hatzimanolis*, but it is not itself a sufficient condition for liability. Further factual conditions necessary for the application of that principle are stated in the passage, following the word "Furthermore". There, it is said that an injury sustained in such an interval will be in the course of employment if it occurred at that place or while the employee was engaged in that activity. It will be so considered unless the employee has been guilty of gross misconduct.

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8 Ibid at 462-3.
9 [2015] FCAFC 173.
10 Buchanan, McKerracher and Katzmann JJ

> 33 To these conditions it is added, in similar words to those used in *Danvers*, that it will always be necessary to have regard to the "general nature, terms and circumstances of the employment" in determining the overall question, whether the injury occurred in the course of employment. Attention is not to be focused just upon the occasion giving rise to the injury.
>
> (Footnote omitted.)

45 That is not to say that the circumstances of the injury are not relevant. Their Honours went on (at [38]):

> 38 … For the principle in *Hatzimanolis* to apply, the employee must have been either engaged in an activity or present at a place when the injury occurred. The essential inquiry is then: how was the injury brought about? In some cases, the injury will have occurred at and by reference to the place. More commonly, it will have occurred while the employee was engaged in an activity. It is only if and when one of those circumstances is present that the question arising from the *Hatzimanolis* principle becomes relevant. …

and:

> 38 … When injury occurs at and by reference to a place, the question is: did the employer induce or encourage the employee to be there? …

46 It is clear from what follows in the majority judgment that the idea of an injury which occurs "at and by reference to a place" may require close examination on the facts of the particular case. In *PVYW* itself, mere presence at the place where the injury occurred was insufficient to establish that the injury occurred "by reference to" the place (although it occurred "at" the place (see at [45])). By contrast, the majority held (at [40]):

> 40 … An injury occurs at a place when the circumstance of the injury is referable to the place. The circumstances of *Danvers*, which was the basis of this criterion of liability, make this plain. They explain why the mere presence of an employee at a place in circumstances where an injury is associated with that place may be sufficient to bring that injury within the course of the employee's employment.

47 The explanation continued (at [44]):

> 44 Attention must then be directed to the circumstances of the employee's death in *Danvers*. He died because the van in which he was required to live caught fire. His death occurred by reference to that place and that circumstance. The place where an employee is required to be assumes particular importance when it is the cause of an injury or death.

> This is not to inject notions of causation into the application of the principle, just as the statement that an injury occurred as a result of being engaged in an activity does not involve such notions. To identify the relevant connection does not raise any question about causation. It simply identifies the circumstance in which the injury is suffered. It is that circumstance which must be the subject of the employer's inducement or encouragement."

[40] Later, after further consideration of *PVYW*, they said:

> "51 We understand the distinction to be, where a "place" is involved, that not every injury arising from every activity will be in the course of employment – i.e. mere presence does not necessarily supply the requisite connection, although it may do."

[41] On this topic, their Honours concluded that it is not necessary to ask whether the place at which the injury occurred and the activity in which the employee was engaged were each induced or encouraged by the employer.

[42] The Full Court set aside the decision of the Administrative Appeals Tribunal and held that the claim for compensation fell within the relevant Commonwealth legislation. In reaching that decision, the full Court said that the only question which might arise from *PVYW* was whether Mr Westrupp was entitled to compensation because the employer induced or encouraged him to spend an interval or interlude at a particular place and he did so in a way which maintained a sufficient connection with his employment. Of particular relevance to the circumstances of this appeal are the following reasons of the Full Court:

> "67 If Mr Westrupp had been injured by a fire at his quarters while sleeping (*Danvers*) or whilst showering (*Comcare v McCallum* (1994) 49 FCR 199 ("*McCallum*")) or had been struck by a car while returning to his accommodation (*Mather*; see also *Watson v Qantas Airways Ltd* (2009) 75 NSWLR 539) ("*Watson*")) or had been assaulted by strangers while returning to his quarters after a meal and a few beers (*Kennedy v Telstra Corporation* (1995) 61 FCR 160 ("*Kennedy*")), then, on the authority of *Danvers*, and cases in this Court and in other courts which have applied *Hatzimanolis*, he would have been entitled to compensation. We do not understand those authorities to have been overruled, expressly or by implication, by *PVYW*. The circumstances of the present case, in our view, are not materially different."

[43] That reasoning applies with similar force to the circumstances of this case. Mr Cumbers' injury occurred at and by reference to a place and in circumstances where the employer had induced or encouraged him to be. His injury arose out of or in the course of employment.

Order

[44] The appeal is allowed. The decision of the Queensland Industrial Relations Commission is set aside and in lieu thereof it is ordered that that the appeal by Civeo Pty Ltd against Simon Blackwood (Workers' Compensation Regulator) be dismissed.