

- The court requires separate verdicts of quantum if both pain and suffering and pecuniary loss is claimed in order to assess the minimum threshold and maximum amount of each award (*Burch v Shire of Yarra Ranges* [2004] VSC 437).
- Important to note that the jury must not be informed of the thresholds or the maximums of each award of damages (Section 340 WIRCA) as such information has been characterized as ‘irrelevant’ (*Maurice Blackburn Cashman v Brown* (2011) 242 CLR 647) and as potentially ‘influencing’ the jury (Explanatory Memorandum for s 341 of the WIRCA).
- If an award for pecuniary loss is made, a Plaintiff may recover some of the repayable component of the weekly payments as the Plaintiff would have to repay the gross amount of weekly payments but only had the benefit of the net amount (*Papadopoulos v MC Labour Hire Services Pty Ltd & Anor (No 3)* [2009] VSC 183, [6]; *Fox v Wood* (1981) 148 CLR 438).
- The Court must, unless good cause is shown to the contrary, award interest on damages for past economic loss from the commencement of the proceeding and at a rate not exceeding that fixed under Section 2 of the *Penalty Interest Rates Act 1983* (*Supreme Court Act* s 60(1)).
- First the reductions are made, interest and Fox & Wood added and then judgment for damages is entered.

Caselaw***Reynolds v John Lewis Foods Services Pty Ltd* [2013] VCC 681**

Facts: the Plaintiff was awarded damages for pecuniary loss which were above the minimum threshold however the weekly payments already received were above the award of damages. The amount would have therefore been reduced to zero and the Plaintiff would have been precluded from receiving future weekly payments.

Decision: His Honour Judge Brookes held that the expression "where pecuniary loss damages are awarded" in the Act related to the final judgment, and not to the jury assessment prior to mandatory deductions. Accordingly, the reduction of the amount to zero meant pecuniary loss damages had not been "awarded", and the plaintiff was not precluded from seeking further weekly payments.

***Drew v Clyne and Clyne (Ruling)* [2012] VCC 1551**

Facts: The worker was injured in a transport accident. The jury's assessment of pecuniary loss was below the minimum threshold.

Decision: His Honour Judge Parrish expressed concern that if a judgment for NIL damages were entered, such judgment "may well be a lever" to inhibit future weekly payments of compensation and characterised such as result as "unjust". It was held neither necessary or appropriate to enter any judgment in respect of pecuniary loss damages.

QUIZ

Jury Verdict:

Pain and Suffering: \$500,000

Pecuniary Loss: 1,500,000

Contributory Negligence: 10%

Statutory Benefits already received

Impairment Benefit \$10,000

Weekly Payments \$100,000

Fox & Wood Component \$25,000

Interest payable is \$20,000

Award of Damages for Pain and Suffering:

Award of Damages for Pecuniary Loss:

Total award of damages: