



INSURANCE  
CONSTRUCTION &  
ENGINEERING  
RESOURCES  
CORPORATE  
COMMERCIAL  
PROPERTY  
LITIGATION &  
DISPUTE  
RESOLUTION  
AVIATION

## Rewind on *Byrne v People Resourcing*

Glenn Biggs, Partner  
Allison Haworth, Senior Associate

On 8 September 2016, the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016* (Qld) (**Act**) became law. The Act amends the *Workers' Compensation and Rehabilitation Act 2003* (Qld) and the *Workers' Compensation and Rehabilitation Regulation 2014* (Qld).

As set out in our June 2016 newsletter titled 'Two years on - Reversing the effect of the decision in *Byrne v People Resourcing*', the Bill was intended to restore the 'original policy intent' of the scheme by overriding the decision and by altering the definition of damages and inserting a new sub-s 4 as follows:

4. Further, a reference in subsection (1) to the liability of an employer does not include a liability to pay damages, for injury sustained by a worker, arising from an indemnity granted by the employer to another person for the other person's legal liability to pay damages to the worker for the injury.

The effect of the proposed amendment would have meant that pursuant to s 8 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld),

WorkCover Queensland would no longer be obliged to indemnify an employer for a contractual indemnity extended to a third party.

The proposed amendment to s 10 has not however occurred, with the following amendments now implemented.

### Section 236B

The new s 236B which provides as follows:

#### *236B Liability of contributors*

1. This section applies to an agreement between an employer and another person under which the employer indemnifies the other person for any legal liability of the person to pay damages for injury sustained by a worker.
2. The agreement does not prevent the insurer from adding the other person as a contributor under section 278A in relation to the employer's liability or the insurer's liability for the worker's injury.

3. *The agreement is void to the extent it provides for the employer, or has the effect of requiring the employer, to indemnify the other person for any contribution claim made by the insurer against the other person.*
4. *In this section - damages includes damages under a legal liability existing independently of this Act, whether or not within the meaning of section 10.*

In light of the above, the new s 236B preserves the right of WorkCover Queensland to bring a contribution claim against a third party that an employer has agreed to contractually indemnify, but prevents the third party from relying on the contractual indemnity to claim indemnity from the employer in relation to WorkCover Queensland's contribution claim against it.

The wording of s 236B suggests it does not apply where an injured worker only claims against the third party and that party seeks to rely on the contractual indemnity against the employer, as the section only applies to contribution claims brought by WorkCover Queensland.

## Section 725

The transitional provision is s 725 which provides as follows:

### *725 Existing or new claims for damages*

1. *This section applies to -*
  - a. *a claim for damages started under chapter 5 before the commencement if, at the commencement -*
    - i. *settlement for damages has not been agreed; and*
    - ii. *a court has not started hearing a proceeding for the claim.*

The changes outlined above are therefore retrospective in their application absent a settlement for damages, or where a court has not started hearing a proceeding for the claim, as at 8 September 2016.

## Practical implications

Ultimately, in the absence of the proposed change to the definition of damages, quite where this has left us remains to be seen.

The legislature has created somewhat of an anomaly over the effect of s 236B in that a third party can still pursue a contractual indemnity from WorkCover Queensland if there is a *Personal Injuries Proceedings Act 2003* (Qld) (**PIPA**) claim on foot.

Only in the situation where there is a contribution claim brought against a third party by WorkCover Queensland, can WorkCover Queensland avoid the contractual indemnity. Even then this may be altered by the subsequent serving of a PIPA claim on the third party.

From our experience it is rare to see a WorkCover claim where a PIPA claim is not on foot, particularly when taking into consideration the more attractive costs regime under the PIPA.

Accordingly, we wonder where, if anywhere, these changes will take us, however we expect that until the legislature attends to remedy the anomaly s 236B creates, its effect will be contentious.

## Authors



**Glenn Biggs**

*Partner*

P: (07) 3000 8319  
E: gbiggs@carternewell.com



**Allison Haworth**

*Senior Associate*

P: (07) 3000 8350  
E: ahaworth@carternewell.com

Please note that Carter Newell collects, uses and discloses your personal information in accordance with the Australian Privacy Principles and in accordance with Carter Newell's Privacy Policy, which is available at [www.carternewell.com/legal/privacy-policy](http://www.carternewell.com/legal/privacy-policy). This article may provide CPD/CLE/CIP points through your relevant industry organisation. To tell us what you think of this newsletter, or to have your contact details updated or removed from the mailing list, please contact the Editor at [newsletters@carternewell.com](mailto:newsletters@carternewell.com). If you would like to receive newsletters electronically, please go to [www.carternewell.com](http://www.carternewell.com) and enter your details in CN|Newsletter signup.

*The material contained in this newsletter is in the nature of general comment only, and neither purports nor is intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering, and if necessary, taking appropriate professional advice upon their own particular circumstances.*

© Carter Newell Lawyers 2016

### Brisbane

Level 13, 215 Adelaide Street  
Brisbane QLD Australia 4000  
GPO Box 2232, Brisbane QLD 4001

### Sydney

Level 6, 60 Pitt Street,  
Sydney NSW Australia 2000  
Phone +61 2 8315 2700

Phone +61 7 3000 8300  
Client feedback [feedback@carternewell.com](mailto:feedback@carternewell.com)  
ABN 70 144 715 010  
[www.carternewell.com](http://www.carternewell.com)

