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## Two years on - Reversing the effect of the decision in *Byrne v People Resourcing*

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### Introduction

The *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016 (Bill)* was introduced into parliament on 14 June 2016 and has been referred to the Parliamentary Finance and Administration Committee (**committee**).

The Bill proposes to amend the *Workers' Compensation and Rehabilitation Act 2003 (Qld) (Act)* and the *Workers' Compensation and Rehabilitation Regulation 2014 (Qld)*.<sup>1</sup>

Importantly the Bill amends the Act to restore the deemed original policy intent and intended interpretation of various provisions that have been called into question by various recent Queensland court decisions,

including the decision in *Byrne v People Resourcing (Qld) Pty Ltd & Anor*.<sup>2</sup>

### ***Byrne v People Resourcing (Qld) Pty Ltd & Anor***

In *Byrne*, Carmody CJ concluded the court was bound by the decision of *State Government Insurance Office (Queensland) v Brisbane Stevedoring Pty Ltd*.<sup>3</sup> It was held the host employer's right to recoup the contractual indemnity was a legal liability to pay damages and that WorkCover must meet this.

The employer sought and won indemnity from WorkCover Queensland for a claim for contractual indemnity by a third party (a host employer).

The effect of the Supreme Court decision in *Byrne* required WorkCover and self-insurers to indemnify employers for the whole of the employer's liability which, relevantly, included liability incurred under contract.

## Implications of the Bill

The Bill seeks to amend the Act and prohibit the contractual transfer of liability for injury costs from principal contractors or host employers to employers with a workers' compensation insurance policy (such as subcontractors or labour hire employers).

Ultimately, the Bill seeks to expressly exclude from coverage under an employer's workers' compensation policy the employer's liability flowing from an indemnity granted to a third party in respect of that third party's liability to pay damages to a worker and ensure that liability is retained by a contributing third party.

These further reforms shift the burden once more from WorkCover to public liability insurers, third parties and employers and will have obvious significant financial implications.

The timing of the enactment of this legislation remains unclear as a period of consultation will now be undertaken. Carter Newell will monitor developments in relation to the Bill as it progresses through the committee stages and is reintroduced to parliament for enactment.

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<sup>1</sup> It should be emphasised that this is a Bill only and the final form of the legislation may change if it is eventually enacted.

<sup>2</sup> [2014] QSC 269.

<sup>3</sup> [1969] HCA 59.

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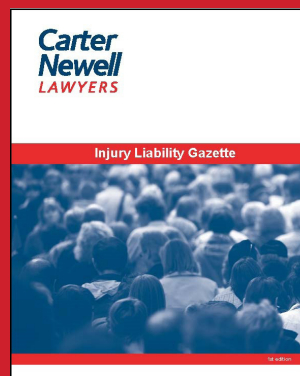
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## Injury Liability Gazette 7th edition

The 7th edition Injury Liability Gazette covers Queensland and New South Wales liability and personal injury decisions under the categories of occupier's liability, workplace law, damages and sports and recreational activities.

This edition includes a summary of *Coles Supermarket v Bright*, where the plaintiff suffered an injury to her left ankle due to a slip and fall which was recorded on CCTV, and *Jacobe v QSR Pty Ltd t/as Kentucky Fried Chicken Lakemba*, where the plaintiff tripped over a concrete wheel stop in a KFC car park and failed in his claim.

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