SUPREME COURT OF QUEENSLAND

CITATION:	*SS Family Pty Ltd v WorkCover Queensland* [2018] QCA 296
PARTIES:	**SS FAMILY PTY LTD** ACN 117 147 449 (applicant) **v** **WORKCOVER QUEENSLAND** ABN 40 577 162756 (first respondent) **MILJAN STANKOVIC** (second respondent)
FILE NO/S:	Appeal No 5285 of 2018 DC No 3948 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane – [2018] QDC 54 (Porter QC DCJ)
DELIVERED ON:	30 October 2018
DELIVERED AT:	Brisbane
HEARING DATE:	12 October 2018
JUDGES:	Sofronoff P and Fraser JA and Davis J
ORDERS:	**1. Application for leave to appeal is granted.** **2. The appeal is dismissed with costs.**
CATCHWORDS:	WORKERS' COMPENSATION – INSURANCE AND LEVIES – LIABILITY OF INSURERS AND STATUTORY AUTHORITIES – GENERALLY – where the second respondent applied for compensation but did not tick the box which would have identified him as a trustee at the time of the injury – where the first respondent, WorkCover, allowed his application for lump sum compensation under chapter 3 of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) – where the second respondent elected to seek damages under chapter 5 of the Act – where WorkCover now denies that it is obliged to indemnify the applicant employer on the ground that the second respondent was not a "worker" at the material time as he performed his work under a contract of service with a trust of which he was a trustee – where the applicant applied for orders striking out the allegations in WorkCover's amended defence denying its obligation to indemnify the applicant – where the primary judge rejected this application – whether an insurer's decision to allow an

application for compensation by a person claiming to have been a worker who sustained an injury in the course of working for an employer precludes the insurer from subsequently contending that the person was not a worker as a ground for denying that the alleged employer is entitled to an indemnity against legal liability for damages for the injury

Workers' Compensation and Rehabilitation Act 2003 (Qld), s 8, s 134, s 233, s 237

COUNSEL: R Douglas QC, with K Holyoak, for the applicant
G Diehm QC, with C Harding, for the first respondent

SOLICITORS: Barry Nilsson for the applicant
DWF (Australia) for the first respondent
Slater & Gordon for the second respondent

[1] **SOFRONOFF P:** I agree with the reasons of Fraser JA and the orders his Honour proposes.

[2] **FRASER JA:** The appeal from a decision in the District Court which the applicant seeks leave to bring would turn upon the proper construction of provisions of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld).[1]

[3] The applicant expressed the question in the proposed appeal as follows:

> If the First Respondent determines that a person is a worker to whom compensation is payable under chapters 3 and 4 of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) ("the Act") for an injury sustained by that person as a "worker", is the First Respondent bound, on the proper construction of the Act, by that determination in subsequent proceedings for damages for that injury by that person regulated by chapter 5 of the Act?

[4] I would grant leave to appeal because the issue raised in the proposed appeal is of some importance to workers, employers, insurers and others and the proposed appeal is arguable. Before discussing the issue it is useful to refer to the facts and some important provisions of the Act.

Background

[5] Section 108(1) in chapter 3 of the Act provides that compensation is payable under the Act for an injury sustained by a worker. Section 46(1) in chapter 2 imposes legal liability upon an employer for compensation for injury sustained by a worker employed by the employer. The word "compensation" is defined in s 9 to mean (so far as is directly relevant) "compensation under this Act, that is, amounts for a worker's injury payable under chapters 3 and 4 by an insurer to a worker".

[6] Section 48 obliges employers to maintain accident insurance against injury sustained by workers employed by the employer, both for the employer's legal liability for compensation and for the employer's legal liability for damages. "Accident insurance" is defined in s 8 as meaning "insurance by which an employer is

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[1] All references to the Act are to the version that was current as at 14 August 2012.

indemnified against all amounts for which the employer may become legally liable, for injury sustained by a worker employed by the employer for – (a) compensation; and (b) damages". The applicant held accident insurance with the first respondent ("WorkCover").

[7] The word worker is used in each of those sections and in many other places in the Act. Section 11(1) defines "worker" as "a person who works under a contract of service". That definition is qualified in various ways, including by the provision in s 11(3) that schedule 2, part 2, sets out who is "not a worker in particular circumstances." Relevantly to this matter, under item 1(b) of schedule 2, part 2, a person is not a worker if the person performs work under a contract of service with a trust of which the person is a trustee.

[8] The second respondent applied for compensation. In the claim form the second respondent stated that he sustained an injury when he was a worker employed by the applicant. He did not tick the box which would have identified him as a trustee at the time of the injury. Section 134 of the Act obliges the employer's insurer to make a decision allowing or rejecting a claimant's application for compensation. That section provides:

> "**134 Decision about application for compensation**
>
> (1) A claimant's application for compensation must be allowed or rejected in the first instance by the insurer.
>
> (2) The insurer must make a decision on the application within 20 business days after the application is made.
>
> (3) The insurer must notify the claimant of its decision on the application.
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> (4) If the insurer rejects the application, the insurer must also, when giving the claimant notice of its decision, give the claimant written reasons for the decision and the information prescribed under a regulation.
>
> (5) Subsection (6) applies if the insurer does not make a decision on the application within the time stated in subsection (2).
>
> (6) The insurer must, within 5 business days after the end of the time stated in subsection (2), notify the claimant of its reasons for not making the decision and that the claimant may have the claimant's application reviewed under chapter 13."

[9] WorkCover notified the second respondent that it had allowed his application for compensation. That decision implies that for the purpose of the second respondent's entitlement to compensation WorkCover accepted that the second respondent sustained an injury when he was a worker employed by the applicant.

[10] Under part 10 of chapter 3 of the Act, a worker may become entitled to compensation for permanent impairment. Pursuant to sections 179 and 183, WorkCover assessed the second respondent as having a permanent impairment, with a work related impairment ("WRI") of less than 20 per cent. He was offered lump

sum compensation to which he was entitled under s 180. WorkCover gave the second respondent the notice of assessment required by s 185 of the Act. Consistently with the Act, WorkCover stated that the second respondent needed to decide whether he agreed or disagreed with the assessment of the degree of permanent impairment in the notice of assessment, if he agreed with the assessment of permanent impairment he needed to make a decision about the offer of lump sum compensation within 20 business days, and under the Act WorkCover must stop paying his weekly compensation benefits and medical expenses upon the earlier of him notifying WorkCover of his decision about the offer of lump sum compensation or 20 business days after he received the notice of assessment containing the offer.

[11] The second respondent subsequently elected to sue the applicant. He issued proceedings against the applicant in the District Court claiming damages for personal injury for breach of duty in tort and contract. Chapter 5 of the Act extensively regulates aspects of claims by a "worker" for damages for "injury". That regulation includes provision in part 5 of chapter 5 for certain pre-proceeding procedures, which commence with the claimant giving a notice of claim under s 275(1). The effect of subsections 189(6) and (7) was that, if the second respondent had not previously given WorkCover a notice electing to reject WorkCover's offer of lump sum compensation, he was taken to have rejected lump sum compensation when he gave his notice of claim. An effect of s 239 in chapter 5 of the Act is that the second respondent was not entitled to both payment of the lump sum compensation and damages for the injury.

[12] After the second respondent commenced the pre-proceeding procedures required by chapter 5, WorkCover wrote to the second respondent's solicitors denying that it was obliged to indemnify the applicant upon the ground that the second respondent was not a "worker" at the material time because he performed his work under a contract of service with a trust of which he was a trustee.

[13] The applicant delivered a defence to the second respondent's statement of claim and issued third party proceedings against WorkCover. The applicant claimed that WorkCover was liable to indemnify it against the second respondent's claim. WorkCover denied liability upon the ground it had earlier articulated. In the pleadings in the third party proceeding, the applicant alleged and WorkCover denied that, in circumstances in which WorkCover had accepted the second respondent's application for compensation on the basis that he was a "worker" who suffered "injury" and had paid the applicant benefits and engaged in the conduct described in [10] of these reasons, upon the proper construction of the Act WorkCover was not entitled to deny that the second respondent was a "worker" in respect of whom the applicant was entitled to indemnity under the accident insurance.

[14] The applicant applied for orders including an order striking out the allegations in WorkCover's further amended defence which deny and allege it is entitled to deny indemnity on the ground that the second respondent was not a "worker" when he sustained injury. The primary judge rejected the applicant's construction of the Act and dismissed its application accordingly. It is that order against which the applicant seeks to appeal.

Consideration

[15] The applicant claims that WorkCover is liable under the statutory accident insurance to indemnify the applicant against legal liability for damages sought to be established by the second respondent. Section 8 of the Act relevantly confines the indemnity under that insurance to a case in which an employer may become legally liable for compensation or damages in respect of injury sustained by a "worker" employed by the employer. The effect of s 32A of the *Acts Interpretation Act* 1954 (Qld) is that the definition of "worker" must be applied except so far as the context or subject matter otherwise indicates or requires. Accordingly the task for the applicant is to identify an indication or requirement in some relevant context or subject matter that the definition of "worker" does not apply to that word in s 8.

[16] In deciding whether or not there is some such indication or requirement in the Act, it is necessary to bear in mind the differences between the insurer's obligation to pay compensation to a worker and its obligation to indemnify an employer against legal liability for damages claimed by a worker. Section 8 describes the statutory accident insurance both in relation to compensation and in relation to legal liability for damages claims, but they are quite different heads of liability. A worker's rights in relation to compensation derive from the Act and are regulated in chapters 3 and 4. Those chapters give effect to the objects summarised in s 5(1)(a) of "providing benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, for persons other than workers, and for other benefits". Damages claims are regulated by a different part of the Act, chapter 5, which has very different objects. Chapter 5 does not create any entitlement for workers or their dependants. Instead it extensively limits the common law rights of persons to seek damages for injuries sustained by a worker. This chapter gives effect to the object expressed in s 5(4)(c) of providing "for the protection of employers' interests in relation to claims for damages for workers' injuries" and the object expressed in s 5(5) that "compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community".

[17] Those expressions discourage a construction of the Act which would extend the effect of determinations implicit in an insurer's decision to allow compensation beyond that subject matter and in a way that would enlarge the scope of the statutory accident insurance described in s 8 with reference to defined terms, including "worker".

[18] The applicant's case relies in part upon a decision by an insurer to accept an application for compensation under s 134. That section contains no indication that any determination implicit in such a decision that a person was a "worker" employed by an employer might exclude the application to s 8 of the definition of "worker" for the different purpose of deciding whether the statutory accident insurance indemnifies the alleged employer against a subsequent claim for damages by the person.

[19] Furthermore, s 168 provides that an insurer is entitled from time to time to "review a person's entitlement to compensation" and upon such a review, to "terminate, suspend, decrease or increase an entitlement", and s 170 entitles an insurer to recover from a worker or other person the difference between the amount of a payment of compensation and the amount to which the worker or other person is entitled. Those provisions seem difficult to reconcile with the proposition that an insurer's decision to accept an application for compensation in any way alters the scope of the statutory accident insurance for compensation, much less for an alleged employer's liability for damages.

[20] The applicant relied upon a limitation upon the statutory rights to review an insurer's decision under s 168 to terminate a person's entitlement to compensation. Such a decision may be reviewed by the Workers' Compensation Regulatory Authority upon application by a "claimant, worker or an employer" who is aggrieved by the decision.[2] If the review decision favours the insurer, the claimant, worker or employer who is aggrieved by that decision may appeal to an "appeal body", which in this context is an industrial magistrate.[3] If the review decision favours the worker the insurer has no right to appeal.[4] The absence of such a right merely reflects the fact that the original decision is made by the insurer. It says nothing one way or the other about the application in s 8 of the Act of the definition of "worker".

[21] In the course of argument reference was made to various provisions in which "worker" is used to describe a person whose application for compensation has been allowed under s 134. For example: s 135 empowers an insurer to require "a claimant or a worker" to undergo a personal examination by a registered person; s 136 obliges a "worker" who is receiving compensation for injury to give to the insurer notice of any return to work or engagement in a calling; and s 137 entitles an insurer to suspend compensation "payable to a worker" if that worker is serving a term of imprisonment. The examples may be multiplied, but each of them appears in a provision related to compensation. Those provisions, like s 134 itself, are consistent with a decision to allow an application for compensation having effect only in relation to compensation, and even then only in the absence of any review under s 168.

[22] The applicant argued that once a plaintiff has "passed through the portal or gateway to seeking damages" in s 237 in chapter 5 of the Act it is not contestable that the plaintiff's claim for damages concerns an injury sustained by a "worker" as defined. This argument is based upon s 237(1) and related provisions, and other provisions in chapter 5 that regulate claims for damages and confer certain rights upon WorkCover as an insurer.

[23] Section 237(1) provides:

> "**237 General limitation on persons entitled to seek damages**
>
> (1) The following are the only persons entitled to seek damages for an injury sustained by a worker–
>
> (a) the worker, if the worker–
>
> (i) has received a notice of assessment from the insurer for the injury; or
>
> (ii) has not received a notice of assessment for the injury, but–
>
> (A) has received a notice of assessment for any injury resulting from the same event (the ***assessed injury***); and

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2 Section 541.
3 Sections 548A and 549(1).
4 See s 549(2), which does not extend to a decision under s 540(1)(a)(ix) or s 540(1)(b)(iii).

(B) for the assessed injury, the worker has a WRI of 20% or more or, under section 239, the worker has elected to seek damages;

(b) the worker, if the worker's application for compensation was allowed and the injury has not been assessed for permanent impairment;

(c) the worker, if–

(i) the worker has lodged an application, for compensation for the injury, that is or has been the subject of a review or appeal under chapter 13; and

(ii) the application has not been decided in or following the review or appeal;

(d) the worker, if the worker has not lodged an application for compensation for the injury;

(e) a dependant of the deceased worker, if the injury results in the worker's death."

[24] Section 233 defines some terms for chapter 5. Relevantly, "***claimant*** means a person entitled to seek damages" and "***worker***, for a claim, means the worker in relation to whose injury the claim is made". The word "damages" is defined in s 10 in a way that confines the concept to damages for injuries sustained by a "worker".[5]

[25] In s 237(1), subparagraph (a)(i) is the only provision that might apply to the claim for damages brought by the second respondent. That subparagraph expresses the condition that a notice of assessment for the injury has been received. Under the Act that can occur only if the insurer has allowed an application for compensation. Similarly, under s 237(1)(b) it is an express condition that the insurer has allowed an application for compensation.

[26] In every other case described in s 237(1), another provision in chapter 5 requires a decision by the insurer that the claimed damages are for an injury to a worker.[6] It is sufficient to mention two examples:

(a) First, in subdivision 3 of division 3 part 2 of chapter 5, s 244 provides that the subdivision "applies to a claimant who is a person mentioned in section 237(1)(a)(ii)". The operative provision in this subdivision is s 245(3), which provides that "the claimant may seek damages for the injury only if the insurer decides that the claimant– (a) was a worker when the injury was sustained; and (b) has sustained an injury".

(b) Secondly, s 258 in division 6 of part 2 of chapter 5 applies to a claimant who is a person mentioned in s 237(1)(d). Section 258(1) provides that the "claimant"

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5 The word "damages" is defined in s 10(1) as meaning "damages for injury sustained by a worker in circumstances creating, independently of this Act, a legal liability in the worker's employer to pay damages to– (a) the worker; or (b) if the injury results in the worker's death – a dependant of the deceased worker".

6 The relevant provisions are: for s 237(1)(a)(ii) – s 245; for 237(1)(c) – s 254; for s 237(1)(d) – s 258; and for s 237(1)(e) – s 262.

is entitled to claim damages for the injury only if the insurer decides that the claimant "was a worker when the injury was sustained" and "has sustained an injury", and the insurer "gives the claimant a notice of assessment for the injury." Section 258(2) obliges the insurer to have the degree of permanent impairment assessed and to give a notice of assessment to "the claimant", and s 258(4) declares that "the assessment does not give the claimant an entitlement to lump sum compensation".

[27] The applicant relied also upon the following provisions in chapter 5:

(a) Part 5 contains provisions the stated object of which is to "facilitate the just and expeditious resolution of the real issues in a claim for damages at a minimum of expense".[7] In this part of chapter 5, s 275 requires a "claimant" to give a notice of claim before starting a proceeding in a court for "damages" and s 280 obliges an employer against whom negligence is alleged in connection with "a claim" to "cooperate fully with and give WorkCover all information and access to documents in relation to the claim that WorkCover reasonably requires".

(b) Part 6 concerns the settlement of claims. Section 289(1) mandates a conference between the parties before the "claimant" starts a proceeding for "damages". Section 289(3) provides that the compulsory conference must be held within three months after the insurer gives the "claimant" a written notice under s 281, which the insurer is obliged by that section to give within a specified time which is related to other provisions of chapter 5. The persons obliged to attend a compulsory conference include the claimant in person and a person authorised to settle on the insurer's behalf: s 289(8). If the insurer is WorkCover, it must advise the worker's employer of the time and place of the compulsory conference (s 289(5)), but s 289 does not make it obligatory for the employer to attend the compulsory conference.

(c) In part 7 of chapter 5, s 300(1) provides that if a proceeding is brought for "damages" it "must be brought against the employer of the injured or deceased worker and not against WorkCover". Section 300(2) stipulates exceptions to that provision. The proceeding must be brought against WorkCover in three cases: if the employer was an individual who cannot be adequately identified, is dead, or cannot practically be served; the employer was a corporation that has been wound up; or if the employer was self-insured and WorkCover has since assumed liability for the injury.

(d) Part 12 of chapter 5 regulates costs orders which a court may make in certain circumstances, including in cases in which the "claimant" is a "worker" and the worker has a "WRI" of 20 per cent or more (s 310) or a "WRI" of less than 20 per cent (s 315).

[28] Those various provisions of chapter 5 illustrate, as the applicant argues, that there are very close connections between decisions by an insurer and the regulation of common law claims for damages by persons claiming to be workers who were injured in the course of their employment.

[29] It does not follow that an insurer's decision under s 134(1) to accept a claim for compensation (which is relevant under s 237(1)(a)(i) or s 237(1)(b)), or an insurer's

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7 Section 273.

decision that a person is a "worker" which is made for the purposes of any of ss 237(1)(a)(ii), (c), (d) or (e), justifies not applying in s 8 the definition of "worker" to determine the scope of the indemnity available to the alleged employer under the statutory accident insurance against the claim for damages.

[30] The applicant primarily relied upon s 237(1). The purpose of s 237(1) is made plain by the provision in s 237(5) that s 237(1) "abolishes any entitlement of a person not mentioned in the subsection to seek damages for an injury sustained by a worker". It is no part of that purpose to make an insurer's decision under s 134(1) that a person is entitled to compensation binding upon the insurer in the different context of the alleged employer's entitlement to indemnity against such a claim. To construe s 237(1) in such a way would not give effect to the statutory objects mentioned in [16] of these reasons. Nor is such a construction required by the statutory text. The definition of "worker" is one of the pivotal provisions upon which the scope of the Act depends. Its use in the introductory text of s 237(1) is naturally to be understood as attracting the definition. The natural and literal construction is that each claimant for damages for injury sustained by a "worker" as defined may bring such a claim only after having obtained the decision required by the subparagraph which is applicable to such a claim. Subsection 237(1) does not apply to regulate a proceeding which is not for damages for an injury sustained by a "worker" as defined, whether or not a decision by an insurer under s 134(1), or under a provision in chapter 5 related to s 237(1), suggests that the proceeding is of that character.

[31] There are textual indications within each of the subparagraphs of s 237(1) that militate against the applicant's construction. Each person described in s subparagraph (a)(i) and paragraph (b) will previously have been the beneficiary of a determination by the insurer that the person is a worker, but under each provision a person who wishes to claim damages must also be a "worker". Upon the applicant's construction one of those two elements is otiose. On the other hand, in paragraphs (a)(ii), (c), (d) and (e), the word "worker" does not connote a person who has previously been determined by the insurer to be a worker, but those parts of s 237(1) are supplemented by other provisions requiring the insurer to decide if a person is a "worker" and each such provision is introduced by a section providing that the relevant subdivision applies to a "claimant who is a person mentioned in" the provision.[8] The term "claimant" is defined in s 233 to mean "a person entitled to seek damages". By reference to the definition in s 10 of "damages", there is again introduced the additional requirement that the claimed damages be for an injury sustained by a "worker". These provisions again regulate claims concerning injury sustained by a "worker" by expressing an additional requirement that the claimant obtain a decision by the insurer that the person is a worker.

[32] As the applicant argued, "worker" in the introductory text of s 237(1) means "the worker in relation to whose injury the claim is made" as defined in s 233, but the definition of "worker" is applicable in s 233 as well as in s 237, and the word "damages" also limits the regulated claims to ones referable to injury sustained by a "worker". Section 233 does not assist the applicant's argument.

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8 See sections 244, 253, 257 and 261.

[33] The other provisions of chapter 5 upon which the applicant particularly relies (see [27] of these reasons) are limited by their use of defined terms ("damages", "employer"[9] and "claimant"), in the same way in which the application of s 237(1) is limited, to cases in which a person seeks damages for an injury sustained by a "worker". The applicant relied upon the involvement of the insurer in pre-proceeding settlements and in the conduct of the litigation sanctioned by statutory provisions, but those provisions are generally analogous to common contractual and common law rights of insurers. It is not inconsistent with such provisions for an insurer to deny liability upon the ground that the insurance does not comprehend the claim against the insured. These statutory provisions also do not indicate that the definition of "worker" is not to be applied to that term in s 8 for the purposes of determining the scope of indemnity to which an employer is entitled against a claim for damages.

[34] The effect of the applicant's construction is that an insurer is not permitted to deny indemnity against the liability of an employer to pay damages which is outside the scope of the statutory accident insurance on the ground that the claimant is not a "worker" as defined in the Act merely because the insurer earlier allowed a claim for compensation upon the basis of a mistaken determination that the applicant was a "worker" as defined in the Act. That construction of the Act is not reconcilable with the definition of "accident insurance" in s 8 read with the definitions of key terms, it does not find support in other provisions, none of which is directed to the scope of the accident insurance, and it is incompatible with the statutory purposes expressed in the Act.

[35] It is necessary finally to refer to the applicant's argument that odd, capricious and inconsistent results flow from the primary judge's construction:

(a) First, the applicant contends that the statutory right to elect between damages and lump sum compensation would be rendered nugatory and the defendant employer would be left uninsured, exposing the injured person to the risk of not recovering a judgment in the common law proceeding which was permitted only by the insurer's decision. These consequences would occur only if the injured person is found not to be a "worker" as defined in the Act. There is nothing obviously unreasonable about such consequences when only injury to a worker attracts an entitlement to compensation under the Act and an employer is entitled to an indemnity pursuant to the statutory accident insurance only in respect of compensation or legal liability for damages in respect of a claim for an injury sustained by a worker.

(b) Secondly, the applicant contends that an odd consequence of the insurer being able to contest the "worker" question in common law proceedings is that in the absence of fraud or misrepresentation the insurer lacks power to revoke its decision under s 134 allowing the applicant's claim for compensation,[10] that being the decision which grounded the election to seek damages. This argument wrongly assumes that it is necessary for an insurer to revoke a decision under s 134 to allow a claim for compensation before the insurer is entitled to deny

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9 Section 30(1): "An employer is a person– (a) for whom an individual works under a contract of service; or (b) who enters into a contract with an individual in the circumstances mentioned in schedule 2, part 1".

10 The applicant cited *Fire Arm Distributors Pty Ltd v Carson* [2001] 2 Qd R 26 for the proposition that this was the effect of s 24AA of the *Acts Interpretation Act* 1954 (Qld). It is not necessary to consider that issue.

indemnity in respect of an employer's legal liability for damages for injury sustained by a person who is not a "worker" as defined.

(c) Thirdly, the applicant contends that a consequence of the primary judge's construction is that the compensation properly paid to the applicant would be refundable. It is not obvious that this is inconsistent with the statutory purposes or why it would follow unless it was a consequence of the proper construction and application of s 168 or s 170, in which case it could not be regarded as unreasonable.

Disposition and proposed orders

[36] The question framed by the applicant (see [3] of these reasons) assumes in the applicant's favour that a proceeding for damages by a person whose application for compensation was accepted despite not being a "worker" as defined in the Act, is regulated by chapter 5. For reasons I have given the assumption is not justified. I would reframe the question as follows:

> Upon the proper construction of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) does an insurer's decision to allow an application for compensation by a person claiming to have been a worker who sustained an injury in the course of working for an employer preclude the insurer from subsequently contending that the person was not a worker as a ground for denying that the alleged employer is entitled to an indemnity against legal liability for damages for the injury?

[37] I would answer "no" to that question and affirm the primary judge's construction.

[38] It follows from these reasons, which substantially accord with the primary judge's detailed analysis of the Act and the parties' arguments, that the application for leave to appeal should be granted but the appeal should be dismissed with costs.

[39] **DAVIS J:** I agree with the reasons of Fraser JA and the orders his Honour proposes.