SUPREME COURT OF QUEENSLAND

CITATION:	*WorkCover Queensland v Wallaby Grip Limited & Anor* [2021] QCA 11
PARTIES:	**WORKCOVER QUEENSLAND** ABN 40 577 162 756 (applicant) **v** **WALLABY GRIP LIMITED** (first respondent) **WALLABY GRIP (BAE) PTY LIMITED (In Liq)** ACN 008 453 325 (second respondent)
FILE NO/S:	Appeal No 8563 of 2020 DC No 437 of 2019
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane – [2020] QDC 154 (Richards DCJ)
DELIVERED ON:	5 February 2021
DELIVERED AT:	Brisbane
HEARING DATE:	29 October 2020
JUDGES:	Morrison and Philippides JJA and Crow J
ORDERS:	**1. Grant leave to appeal.** **2. Allow the appeal.** **3. Paragraph 15 of the Further Amended Defence of the Second Respondent as the Second Defendant is struck out.** **4. Paragraph 16 of the Further Amended Defence of the First Respondent as the First Defendant is struck out.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – FROM INTERLOCUTORY DECISION – LEAVE TO APPEAL – where the applicants brought an application in the District Court of Queensland to, *inter alia*, have allegations of law in the respondents' amended pleadings struck out – where the primary judge did not make a determination on that issue – where the applicants seek leave to appeal under s 118 of the *District Court of Queensland Act* 1967 (Qld) – whether an important question of law is raised – whether leave to appeal should be granted

WORKERS' COMPENSATION – INTERPRETATION – GENERAL RULES OF CONSTRUCTION OF INSTRUMENTS – GENERAL MATTERS – where the applicant, WorkCover Queensland, paid statutory compensation to an injured employee – where the injured employee undertook work in both Queensland and New South Wales – where the applicant commenced proceedings against two employers pursuant to s 207B of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) to recover the statutory compensation paid – where the respondents filed amended pleadings which made an allegation of law that, due to s 113(1) of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld), no right of recovery exists in respect to injuries sustained or contributed to by any employment in New South Wales – where the applicant seeks to have the relevant pleadings struck out on the basis that the allegation of law made by the respondents is incorrect – whether s 113(1) of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) disentitles the applicant from a right of recovery for compensation paid in relation to injuries sustained or contributed to during employment in New South Wales under s 207B of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld)

District Court of Queensland Act 1967 (Qld), s 118
Workers' Compensation and Rehabilitation Act 2003 (Qld), s 113, s 207B

Bird v The Commonwealth (1988) 165 CLR 1; [1988] HCA 23, cited
Harradine v Cockatoo Dockyard (2008) 5 DDCR 396; [2008] NSWDDT 8, cited
State of Queensland v Seltsam Pty Limited (2019) 2 QR 495; [2019] QCA 248, followed
Talifero v Asbestos Injuries Compensation Fund Ltd as Trustee for Asbestos Injuries Compensation Fund (2018) 98 NSWLR 1107; [2018] NSWCA 227, cited

COUNSEL: K F Holyoak for the applicant
G W Diehm QC, with T Moisidis, for the respondents

SOLICITORS: BT Lawyers for the applicant
Zambra Legal for the respondents

[1] **MORRISON JA:** I have read the reasons of Crow J and agree with those reasons and the orders his Honour proposes.

[2] **PHILIPPIDES JA:** I agree with the orders proposed by Crow J for the reasons given by his Honour.

[3] **CROW J:** Wallaby Grip Ltd ("WGL") manufactured insulation products in New South Wales prior to 20 September 1966 (the day which it ceased operations). Wallaby Grip (B.A.E.) Pty Ltd (in liquidation) ("BAE") manufactured insulation

products in New South Wales from 1 October 1966 until 31 December 1979. The insulation products manufactured by WGL and BAE contained asbestos and were supplied and distributed within Queensland and New South Wales.

[4] Mr Coveos was employed by Ajax Fasteners in Sydney as a fitter and turner approximately between 1962 and 1969 ("the NSW employment"). Mr Coveos was also employed by Bradford Kendal in Queensland as a boilermaker from 1987 to 1989 ("the QLD employment"). Mr Coveos has developed malignant mesothelioma, a fact admitted by WGL and BAE in their defences.[1]

[5] The further amended defences ("FAD") of the respondents put in issue the causation of the malignant mesothelioma.[2] WGL and BAE do admit that Mr Coveos, as a worker, lodged an application for compensation with WorkCover Queensland pursuant to the *Workers' Compensation and Rehabilitation Act* 2003 seeking compensation for the injury. The defendants admit that Mr Coveos was paid compensation on 14 April 2014.

[6] Having paid Mr Coveos compensation, WorkCover Queensland brought an action in the District Court seeking indemnification from the respondents based upon WorkCover Queensland's statutory cause of action created by s 207B(7) of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) ("*WCRA*").

[7] The statement of claim and amended statement of claim (ASOC) comply with the *Uniform Civil Procedure Rules* 1999 (Qld) ("*UCPR*") by containing a statement of all material facts as brief as the nature of the case permits.[3]

[8] Paragraph 15 of the ASOC states:

> "In the premises the Plaintiff is entitled, pursuant to section 207B(8) of the WCRA, to be indemnified by the First Defendant and Second Defendant for the sum of [the amount] being the compensation paid by the Plaintiff to the Worker in respect of the Injury."

[9] Paragraph 15 of ASOC is an allegation of law and accordingly it identifies the specific provision under the Act in which the claim is made.[4]

[10] Paragraph 16 of the FAD of WGL, which is in the same terms as paragraph 15 of the FAD of BAE, provides:

> "16. As to paragraph 15 of the amended statement of claim, WGL:
>
> (a) denies that the plaintiff is entitled pursuant to section 270B~~(8)~~ [sic] of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) ("the WCRA") to be indemnified by WGL, based on the following: ~~matters pleaded 1(c) and 5 this defence:~~

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1 This admission was subsequently "withdrawn" by the respondents in their Further Amended Defences ("FAD"), seemingly in breach of r 188 of the *UCPR*. The purported withdrawal remains in issue between the parties.

2 FAD of WGL, paragraph 6, 7, 8 and 9; FAD of BAE, paragraphs 6, 7, 8, and 9.

3 *UCPR* r 149(1)(a) and (e); ASOC, paragraphs 1-14.

4 *UCPR* r 149(1)(e).

(i) the plaintiff alleges that its entitlement to bring proceedings for the recovery of compensation paid to Mr Coveos is based in s 207B(8) of the WCRA;

(ii) section 207B(1) of the WCRA states that the section applies to an injury sustained by a worker in circumstances creating, inter alia, an entitlement to compensation ~~and a legal liability in the worker's employer to pay for damages for the injury~~;

(iii) section 113(1) of the WCRA states that compensation is only payable in relation to employment that is connected with this State, being Queensland;

(iv) section 113(3) of the WCRA states that the worker's employment is connected with the State in which the worker:

1. usually works in that employment; or,

2. if no State or no one (1) State is identified, the State in which the worker is usually based for the purposes of the employment; or,[sic]

3. if no State or no one (1) State is identified, the State in which the employer's principal place of business is located in Australia;

(v) section 113(5) of the WCRA states that if no State can be identified by the previous methods, then the worker's employment is connected with this State, being Queensland, if the worker is in this State when the injury is sustained.

(b) Based on the matters pleaded in paragraph 16(a) of this defence and the matters pleaded by the plaintiff in the amended statement of claim (facts which are denied or not admitted), WGL says:

(i) from 1962 to 1969, New South Wales was the State in which Mr Coveos usually worked during his employment with Ajax Fasteners;

(ii) in the first alternative, from 1962 to 1969, New South Wales was the State in which Mr Coveos was usually based for the purposes of his employment with Ajax Fasteners;

(iii) in the second alternative, from 1962 to 1969, New South Wales was the State in which Ajax Fasteners operated its principal place of business;

(iv) therefore section 113(5) of the WCRA does not apply to the injury allegedly sustained by Mr Coveos.

(c) Based upon paragraphs 16(a) and 16(b) of this defence, WGL says:

(i) Mr Coveos' employment between 1962 and 1969, or at any time in the alleged New South Wales employment, was not connected with the State of Queensland as required by section 113 of the WCRA but was only connected with the State of New South Wales;

(ii) therefore pursuant to section 113 of the WCRA, compensation was not payable in respect of any injury arising from his employment between 1962 and 1969 in the State of New South Wales;

(iii) as compensation was not payable under section 113 of the WCRA, section 207B does not apply as there ~~is~~ was no entitlement to compensation as required by s 207B(1) of the WCRA with respect to the New South Wales employment;

(iv) the plaintiff is, therefore, not entitled to commence proceedings against WGL under section 207B(8) of the WCRA in relation to the New South Wales period of employment between 1962 and 1969 as compensation ~~is~~ was not payable and was in fact not paid by the plaintiff to Mr Coveos in relation to ~~that period of~~ the New South Wales employment.

(d) further that the application for compensation made by Mr Coveos and accepted by the plaintiff was solely for injury caused in the Queensland employment.

(e) In the premises, the compensation paid was for injury in the Queensland employment and not the New South Wales employment."

[11] It may be observed that the FADs of the respondents raise only matters of law in denial of paragraph 15 of the ASOC. The factual matters referred to in paragraph 16(b) and (c) of the FAD raise facts as to the place in which Mr Coveos carried out his employment which is entirely consistent with the plaintiff's allegation in paragraph 3 of the ASOC, such that no issues of fact arise.

[12] Paragraph 16 of the FAD of WGL and paragraph 15 of the FAD of BAE raise a discrete issue of law. That is, whether by virtue of s 113(1) of the *WCRA*, s 207B only affords a right of recovery for compensation paid for employment in Queensland and not for any contribution made to the injury during any employment in NSW.

[13] The applicant joins issue on this matter of law having identified the NSW employment between 1962 and 1969 and the QLD employment between 1987 and 1989.

[14] On 3 February 2020, WorkCover Queensland filed an application in the District Court seeking to strike out paragraph 16 of WGL's FAD and paragraph 15 of BAE's FAD, arguing that the defendants were incorrect in their assertion of law that s 207B of the Act was not satisfied in respect of Mr Coveos NSW employment.

[15] The primary judge did not determine that question of law concluding:[5]

> "[35] …Those questions of law should not be decided until the matter has been properly ventilated at trial. In those circumstances, it is in my view, appropriate to leave the determination of this matter until there can be some final determination of the facts at trial."

[16] The applicant seeks leave to appeal that decision pursuant to s 118 of the *District Court of Queensland Act* 1967 (Qld).

Leave to Appeal

[17] As set out below, the current proposed appeal raises an important question of law. Therefore, there is requisite reasons to the grant leave to appeal under s 118(3).[6]

Point of Law

[18] The important point of law is whether s 207B affords a right of recovery only for compensation paid for Queensland employment and not for NSW employment or any contribution made to the injury by asbestos exposure in NSW employment.

[19] As discussed below, the respondent's argument that s 113 of the *WCRA* disentitles WorkCover Queensland from recovery in respect of injuries suffered by Mr Coveos as a result of NSW employment conflates the "circumstances" of the statutory cause of action created by s 207B and the tort of negligence in respect of the NSW employment.

[20] The nature of the statutory cause of action established by s 207B of the *WCRA* was summarised by Morrison JA in *State of Queensland v Seltsam Pty Limited*,[7] where Morrison JA (with whom Fraser JA and McMurdo JA agreed) said:[8]

> "[16] Seltsam rightly accepted that the following principles reflect the established law in respect of the nature of the right given to WorkCover under s 207B WCRA:
>
> (a) the policy of a provision such as s 207B is to ensure that 'an employer who paid statutory compensation to an injured employee or, in the case of his death, to his dependants, where the injury or death, though occurring in the course of employment, was caused by the

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5 *Workcover Queensland v Wallaby Group Limited & Anor* [2020] QDC 154 at [35].

6 See *ACI Operations v Bawden* [2002] QCA 286 at [50] per McPherson JA with whom Williams JA and Holmes J (as her Honour then was) agreed.

7 [2019] QCA 248.

8 *State of Queensland v Seltsam Pty Limited* [2019] QCA 248 at [16]-[17].

wrongful act or omission of another person, was to be entitled to be indemnified against the payment of that compensation by that other person';

(b) the claim to enforce the entitlement to indemnity is not a claim in tort, rather it is a cause of action created by statute for indemnity against the person liable to pay damages to another;

(c) the liability of such a s 207B defendant is a 'notional liability at common law ... for pecuniary and non-pecuniary loss ... having regard to limitations on the liability of the wrongdoer *to the person* who has received compensation';

(d) the entitlement under s 207B(7) of the WCRA is not a claim for damages, but a cause of action created by statute for indemnity against a person liable to pay damages to another; the wrongdoer's liability is an ingredient of the statutory right;

(e) the statutory right of indemnity conferred by s 207B(7) upon the insurer who has paid the compensation (WorkCover) is not to be equated with the cause of action which the worker would have had against the wrongdoer; s 207B(7) creates a cause of action separate to that vested in the worker;

(f) this is so, notwithstanding the fact that it is an ingredient of the statutory right that the person from whom the indemnity is sought was liable to pay damages to the worker; the action is merely brought to recover the statutory indemnity, and although proof of neglect or default in the s 207B action is necessary in order to claim the indemnity, the action is not brought in respect of that neglect or default;

(g) the right to indemnity is not based upon the default of the person alleged to be liable; '[h]e derives his right to make a claim against the defendants, not because of their act or a default, but because the Act ... has imposed a liability upon them to indemnify him if he has had to pay compensation to his injured workman by reason of that neglect or default ...';

(h) a claim under s 207B(7) is not one for, or including, damages in respect of personal injury;

(i) the relevant time of the assessment of the wrongdoer's liability, as an ingredient of the statutory right, is the time of the occurrence of the compensable injury, but the statutory right 'does not require the continuance of persistence of the liability';

(j) s 207B(7)(a) is an 'acknowledgment of the independence of the cause of action vested in the insurer by that provision from that of the person to whom the

insurer has paid compensation, in this case the worker. It is the independence of this cause of action from that of the worker that ... allowed the insurer to pursue an indemnity following the death of the worker. It is also why a right of indemnity exists even when the cause of action of the worker is time-barred under the relevant statute of limitations'; and

(k) the cause of action under s 207B(7) does not accrue until the payment of compensation is made, but then accrues on each occasion that a payment of compensation is made.

[17] WorkCover's claim against Seltsam under s 207B(7) is not tortious in character, nor is it a claim for damages or a subrogation claim. It is not a claim derivative of any claim of the worker. Rather, as was submitted by the State, a claim under s 207B(7) is a *sui generis* cause of action for a statutory indemnity, inhering in WorkCover and to be pursued in its name, in which the common law liability of the person to the worker is a statutory element, but it is not in respect of the acts or omissions in that liability."

(Footnotes omitted; Original emphasis.)

[21] The respondent's argument focuses upon s 207B(1) of the *WCRA*, which provides:

"**207B Insurer's charge on damages for compensation paid**

(1) This section applies to—

(a) an injury sustained by a worker in circumstances creating—

(i) an entitlement to compensation; and

(ii) a legal liability in the worker's employer, or other person, to pay damages for the injury, independently of this Act; and

(b) damages that an employer is not indemnified against under this Act."

[22] The respondent's principal argument is that the "creating circumstances" referred to in s 207B(1)(a) must be the same circumstances that create the entitlement to compensation under s 207B(1)(a)(i) and the legal liability referred to in s 207B(1)(a)(ii). Plainly, if the circumstances need be the same, the respondent is correct in its contention that by virtue of s 113 of the *WCRA*, the NSW employment cannot entitle an injured worker to compensation under the *WCRA*. The difficulty with the respondent's argument is that it requires an interpretation of the Act in which the reader of s 207B inserts the word "same" prior to the word "circumstances" in s 207B(1)(a).

[23] Section 207B(4) provides:

"(4) An employer or other person from whom the damages are recoverable must pay the insurer the amount of the first charge

> or, if the damages are not more than the amount of the first charge, the whole of the damages."

[24] The measure of first charge or quantum of the statutory cause of action created by s 207B is the extent of damages recoverable under the tort. Thus, a third party tortfeasor can never be liable under the statutory cause of action for more than properly assessed damages under the tort. The assessment of damages differs in cases where the injury is properly regarded as an indivisible injury,[9] such as mesothelioma, as every defendant who made a material contribution to the injury is "liable to compensate for the whole".[10]

[25] As set out in *Seltsam*,[11] the statutory cause of action requires WorkCover Queensland to prove the elements of the tort which has been committed and the damages which have flowed from the breach of duty by the other person. The *WCRA* makes it plain that the intent of the statute, as remedial legislation,[12] is to provide a fair "no fault" scheme for recovery of compensation, by the worker, in respect of injuries sustained in the course of the worker's employment.[13] As may be observed by ss 31, 32, 36A and 237(1) and (5) of the Act, it is recognised that injuries do not always occur in a similar factual circumstances. The *WCRA* refers to latent onset injuries which may include: repetitive strain injuries; vibration injuries; industrial deafness;[14] dust diseases such as asbestosis, silicosis, mesothelioma, pneumoconiosis;[15] and other insidious diseases or injuries, or aggravations of such injuries, diseases or conditions.

[26] Section 31 provides:

> "**31 Meaning of *event***
>
> (1) An ***event*** is anything that results in injury, including a latent onset injury, to a worker.
>
> (2) An ***event*** includes continuous or repeated exposure to substantially the *same* conditions that results in an injury to a worker.
>
> (3) A worker may sustain 1 or multiple injuries as a result of an event whether the injury happens or injuries happen immediately or over a period.
>
> (4) If multiple injuries result from an event, they are taken to have happened in 1 event."
>
> (Emphasis added.)

[27] Section 32 provides:

> "**32 Meaning of *injury***

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9 *Talifero v Asbestos Injuries Compensation Fund Ltd as Trustee for Asbestos Injuries Compensation Fund* [2018] NSWCA 227 at [77] citing *Sienkiewicz v Grief (UK) Ltd* [2011] 2 AC 229.

10 *Harradine v Cockatoo Dockyard* (2008) 5 DDCR 396 at [17].

11 *State of Queensland v Seltsam Pty Limited* [2019] QCA 248.

12 *Bird v The Commonwealth* (1988) 165 CLR 1 at 6.

13 *Workers' Compensation and Rehabilitation Act* 2003 (Qld) s 5.

14 *Workers' Compensation and Rehabilitation Act* 2003 (Qld) Part 3 Division 3.

15 *Workers' Compensation and Rehabilitation Act* 2003 (Qld) Part 3 Division 5.

(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.

(2) However, employment need not be a contributing factor to the injury if section 34(2) or 35(2) applies.

(3) ***Injury*** includes the follow—

(a) a disease contracted in the course of employment, whether at or away from the place of employment, if the employment is a significant contributing factor to the disease;

(b) an aggravation of the following, if the aggravation arises out of, or in the course of, employment and the employment is a significant contributing factor to the aggravation—

(i) a personal injury;

(ii) a disease;

(iii) a medical condition, if the condition becomes a personal injury or disease because of the aggravation;

(c) loss of hearing resulting in industrial deafness if the employment is a significant contributing factor to causing the loss of hearing;

(d) death from injury arising out of, or in the course of, employment if the employment is a significant contributing factor to causing the injury;

(e) death from a disease mentioned in paragraph (a), if the employment is a significant contributing factor to the disease;

(f) death from an aggravation mentioned in paragraph (b), if the employment is a significant contributing factor to the aggravation.

(4) For subsection (3)(b), to remove any doubt, it is declared that an aggravation mentioned in the provision is an injury only to the extent of the effects of the aggravation.

(5) Despite subsections (1) and (3), ***injury*** does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—

(a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;

(b) the worker's expectation or perception of reasonable management action being taken against the worker;

(c) action by the Regulator or an insurer in connection with the worker's application for compensation."

[28] Section 36A provides:

"**36A Date of injury**

(1) This section applies if a person—

(a) is diagnosed by a doctor after the commencement of this section as having a latent onset injury; and

(b) applies for compensation for the latent onset injury.

(2) The following questions are to be decided under the relevant compensation Act as in force when the injury was sustained—

(a) whether the person was a worker under the Act when the injury was sustained;

(b) whether the injury was an injury under the Act when it was sustained.

(2A) However, subsection (2)(b) does not apply if the latent onset injury is a specified disease and section 36D applies to the person.

(3) Section 131 applies to the application for compensation as if the entitlement to compensation arose on the day of the doctor's diagnosis.

(4) Subject to subsections (2) and (3), this Act applies in relation to the person's claim as if the date on which the injury was sustained is the date of the doctor's diagnosis.

(5) To remove any doubt, it is declared that nothing in subsection (4) limits section 236.

(6) Subsections (2) to (4) have effect despite section 603.

(7) In this section—

relevant compensation Act means this Act or a former Act."

[29] Section 237(1) and (5) of the Act 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

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

(iii) has a terminal condition;

(b) a dependant of the deceased worker, if the injury results in the worker's death and—

(i) compensation for the worker's death has been paid to, or for the benefit of, the dependant under chapter 3, part 11; or

(ii) a certificate has been issued by the insurer to the dependant under section 132B.

[…]

(5) To remove any doubt, it is declared that subsection (1) abolishes any entitlement of a person not mentioned in the subsection to seek damages for an injury sustained by a worker."

(Emphasis added.)

[30] The Act defines a "latent onset injury" as an "insidious disease".[16] The Macquarie Dictionary defines "insidious" as, *inter alia*, "operating or proceeding inconspicuously but with grave effect."[17]

[31] Section 237(1)(a)(ii)(A) of the *WCRA* includes a requirement that a notice of assessment be issued for at least one injury from the "same event", but s 31(2) of the *WCRA* makes it plain that the "same event" may in fact be "repeated exposure" over the course of many years, at many different places, so long as the conditions of the exposure are the "same".

[32] In circumstances where the *WCRA* expressly recognises latent onset injuries, aggravations and injuries caused by multiple events with vastly different factual scenarios or circumstances, perhaps occurring in different places and at different times, there is no warrant to read the word "circumstances" referred to in s 207B(1)(a) as in effect the "same circumstances". To do so would undermine the

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16 *WCRA* Schedule 6.

17 *Macquarie Dictionary* (online at 5 November 2020) 'insidious'.

"policy"[18] by curtailing the remedy made available to WorkCover Queensland; had Parliament intended that to be so, Parliament would have deployed the word "same" as it has elsewhere in the Act.

[33] I conclude that the plain words of s 207B require the respondent's argument to be rejected. As this court has said in *Seltsam*,[19] it is a matter of determining whether the elements of the statutory cause of action created by s 207B have been satisfied.

[34] In the present case, it is admitted that the requirements of s 207B(1)(a)(i) have been satisfied (in respect of the QLD employment). In respect of s 207B(1)(a)(ii), it is a matter for WorkCover Queensland as plaintiff to prove the legal liability in either defendant to pay damages for the injury independently of the *WCRA* and that is a matter in issue on the pleadings to be determined at trial. Section 207B is a remedial section[20] in a remedial statute and it is not necessary, nor a sound principle, to limit the statutory cause of action created by s 207B by confining it to require the circumstances to be the same in respect of subsections 207B(1)(a)(i) and (ii).

[35] Accordingly, paragraph 16 of the FAD of WGL and paragraph 15 of the FAD of BAE raise a question of law which ought to be determined against the respondent. The applicant ought to be granted leave to appeal and the appeal upheld.

[36] Paragraphs 15 of the FAD of the second respondent and 16 of the FAD of the first respondent ought to be struck out.

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18 *State of Queensland v Seltsam Pty Limited* [2019] QCA 248 at [16].
19 *State of Queensland v Seltsam Pty Limited* [2019] QCA 248.
20 *State of Queensland v Seltsam Pty Limited* [2019] QCA 248 at [16].