# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Smith v Amaca Pty Ltd & Ors* (*No 2)* [2026] QSC 259 |
| PARTIES: | **ROBIN SMITH**<br>(plaintiff)<br>**v**<br>**AMACA PTY LTD (FORMERLY JAMES HARDIE & COY PTY LTD) (ACN 000 035 512)**<br>(first defendant)<br><br>**NORTH QUEENSLAND BULK PORTS CORPORATION LTD (ACN 136 880 218)**<br>(second defendant)<br><br>**WORKCOVER QUEENSLAND (ABN 40 577 162 756)**<br>(third defendant) |
| FILE NO/S: | 570/2024 |
| DIVISION: | Civil |
| PROCEEDING: | Trial |
| ORIGINATING COURT: | Supreme Court at Rockhampton |
| DELIVERED ON: | 28 October 2026 |
| DELIVERED AT: | Supreme Court at Rockhampton |
| HEARING DATE: | 9 October 2026 |
| JUDGE: | Crow J |

ORDER:

1. **Judgment for the plaintiff against the first defendant in the sum of $1,896,200.85.**
2. **Judgment for the plaintiff against the second defendant in the sum of $1,221,973.04.**
3. **Judgment for the plaintiff against the third defendant in the sum of $449,672.71.**
4. **Pursuant to s 6(c) of the *Law Reform Act* 1995 (Qld) (LRA), the first defendant (Amaca Pty Ltd) is entitled to recover:**
   - **(a) 18.75 percent of the damages assessed against the first defendant from the second defendant.**
   - **(b) 6.25 percent of the damages assessed against the first defendant from the third defendant.**
5. **Pursuant to s 6(c) of the LRA, the second defendant (North Queensland Bulk Ports Corporation Ltd) is**

**entitled to recover 75 percent of the damages assessed against the second defendant from the first defendant.**

6. **Pursuant to s 6(c) of the LRA, the third defendant (WorkCover Queensland) is entitled to receive 75 percent of the damages assessed against the third defendant from the first defendant.**

7. **The first defendant pay 75 percent of the plaintiff's costs on the standard basis up to and including 24 October 2025 and the first defendant pay 75 percent of the plaintiff's costs calculated on an indemnity basis after 24 October 2025.**

8. **The second defendant pay 18.75 percent of the plaintiff's costs on the standard basis up to and including 24 October 2025 and the second defendant pay 18.75 percent of the plaintiff's costs calculated on an indemnity basis after 24 October 2025.**

9. **The third defendant pay 6.25 percent of the plaintiff's costs on the standard basis up to and including 24 October 2025 and the third defendant pay 6.25 percent of the plaintiff's costs calculated on an indemnity basis after 24 October 2025.**

10. **The first defendant pay the second and third defendants' costs on the standard basis from 27 February 2025.**

CATCHWORDS: TORTS – NEGLIGENCE – where the plaintiff was employed as a plumber – where there was a supply of goods from a manufacturer to the employers of the plaintiff – where the plaintiff suffers an occupational lung disease – where the occupational lung disease is asbestosis – whether there was a breach of the manufacturer's duty of care to the plaintiff – whether there was a breach of the employer's duty of care to the plaintiff

DAMAGES — ASSESSMENT OF DAMAGES IN TORT – PERSONAL INJURY – GENERALLY – where plaintiff suffers from asbestosis — where the plaintiff is currently classified in the moderate dependency stage – where the plaintiff requires at home personal care – where the plaintiff will eventually be in the high dependency stage and will require assistance with at home medical and nursing – where the plaintiff will eventually be in the palliative care stage and require 24-hour care and assistance for self-care and daily living tasks – where there is a loss of life expectancy – where the plaintiff seeks damages for general pain, suffering and loss of amenities of life – whether damages should be awarded for loss of life expectancy, general pain, suffering and loss of amenities of life

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| | DAMAGES - ASSESSMENT OF DAMAGES IN TORT - PERSONAL INJURY – PARTICULAR CASES – where the first, second and third defendants brought cross claims in contribution proceedings – where the first defendant was the manufacturer and the second and third parties were employers – assessment of relative culpability and relative causal contribution |
| COUNSEL: | SJ Deaves KC and MJ Smith for the plaintiff<br>DA Priestley SC and L Newton for the first defendant<br>JM Hewson and M Heyworth for the second and third defendants |
| SOLICITORS: | Slater & Gordon for the plaintiff<br>Mills Oakley for the first defendant<br>BT Lawyers for second and third defendants |

[1] The background to this matter is set out in the prior judgment[1] which called for submissions on the form of the appropriate orders and costs. In that judgment the plaintiff succeeded against all three defendants with a damages assessment of $1,896,200.85. As against the first defendant, Amaca, it is agreed that judgment ought to be given for the plaintiff against it in the sum of $1,896,200.85.

[2] As to the quantum of the judgment against the second and third defendants, indemnified by WorkCover Queensland, two matters arise. The first is that the gross judgment sum needs to be reduced by the total amount of compensation payments by WorkCover in the sum of $224,555.10 pursuant to s 270 of the *Workers' Compensation and Rehabilitation Act* 2003 (WCRA), which reduces the judgment sum to $1,671,645.75.

[3] The second matter is that the plaintiff and the second and third defendants agreed to a binding concession that in respect of any sums found liable against the second and third defendants, that they would be apportioned in the judgment in accordance with the causal contribution as determined by the exposure at each workplace. That is the subject of paragraph [59] of the primary judgment. Paragraph [59] records that the third defendant who is liable for the exposure at JR Wyllie & Sons and Racecourse Mill would bear 26.9 percent of the liability and the second defendant Port Authority would bear the remaining 73.1 percent. Accordingly in respect of the damages to be assessed against the WorkCover entities being the second and third defendants that

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1 *Smith v Amaca Pty Ltd & Ors* [2026] QSC 240.

have the benefit of the s 270 WCRA reduction, 73.1 percent of the net sum of $1,671,645.75 is the judgment sum to be entered against the second defendant, that is, $1,221,973.04 and 26.9 percent of the net judgment sum, a sum of $449,672.71 is to be entered in judgment against the third defendant.

[4] The orders to be made pursuant to s 6(c) of the *Law Reform Act* 1995 (Qld) between the defendants are not in dispute and are set out below.

[5] Costs are in dispute between the parties. The plaintiff submits he is entitled to indemnity costs. The first defendant submits the plaintiff is entitled to standard costs and the second and third defendants submit the costs regime of the WCRA limits the costs order to regulation costs prior to the date of the mandatory final offer of 27 February 2025 and indemnity costs thereafter.

[6] On behalf of the plaintiff, the offer relied upon is the plaintiff's Chapter 9 Part 5 offer dated 24 October 2025. It is an offer made to multiple defendants which complies with r 363(2)(a) of the *Uniform Civil Procedure Rules* 1999 (Qld) (UCPR) in that the offer is made to all defendants. As the form of the offer was made according to Chapter 9 Part 5 to all defendants, and it was an offer that was not accepted by the defendants, and the plaintiff has obtained an order no less favourable than the offer, the provisions of r 360(1) are satisfied.

[7] Under r 360(2), the onus is then upon the defendants to show that another order is appropriate other than an order that the defendants pay the plaintiffs costs on a standard basis up to the day of and including service of the offer and calculated on an indemnity basis thereafter.

[8] On behalf of the defendants, it is argued that the late amendments to the plaintiff's claim and the significant increase in the plaintiff's claim were circumstances which justify departure from the usual rule under r 360(2). Whilst it is true that the plaintiff's claim was amended late, the amendments were made with respect to limited exposure at Baker's Creek Meatworks.

[9] As to the increase in quantum, the UCPR offer was less than half of the originally claimed sum and much less than the award which has been obtained. In my view, the defendant has not shown that another costs order is appropriate in the circumstances. The usual costs order under r 360(2) ought be made.

[10] On behalf of the second and third defendants, it is argued that the costs provisions of the WCRA will apply. If that were the case, as the plaintiff has a significant injury he would receive regulation costs to the date of the mandatory final offer on 27 February 2025 and indemnity costs thereafter. I have concluded that s 36A of the WCRA did apply to the plaintiff's claim for compensation, but did not apply to the plaintiff's claim for damages. The second and third defendants' further amended defences do rely only upon the provisions of the WCRA and not any former legislation.

[11] Pursuant to s 235(2) of the WCRA the provisions are Ch 5 are substantive law. As the provisions are not procedural, it seems to me the costs provisions of the WCRA cannot apply. In these circumstances it seems to me that the usual r 360(2) ought to apply. The first defendant submits the costs ought to be apportioned fifty percent to the first defendant and fifty percent to the second and third defendants. On behalf of the second and third defendants, it is submitted the costs ought to be apportioned consistent with the findings of the contribution proceedings, that is 75 percent to the first defendant, 18.75 to the second defendant and 6.25 percent to the third defendant.

[12] In my view, the submissions of the second and third defendants ought to be accepted as it is fair that costs are apportioned according to each defendants' responsibility for the damages. In addition, the second defendant did, in essence, not dispute liability. The more difficult factual issues of product identification in in-situ liability were raised by the first defendant.

[13] The second and third defendants seek an indemnity costs order against the first defendant on the basis of an offer to contribute that it made on 27 February 2025 to contribute 40 percent of any damages assessed. Plainly the second and third defendants have well bettered their offer of 27 February 2025.

[14] The second and third defendants submit pursuant to s 316A(3) of the WCRA they are entitled to indemnity costs from 27 February 2025. Alternatively it is submitted that if the WCRA does not apply, then they are entitled to the same order under the general law of Calderbank offers as discussed in *Colgate Palmolive Co v Cussons Pty Ltd* (1993) 46 FCR 225. As discussed above, I have concluded that the provisions of the WCRA do not apply to the plaintiff's damages claim, and the provisions of Ch 5 are substantive law. In my view, the second and third defendants cannot rely upon s 316A(3) of the WCRA as founding an entitlement to indemnity costs.

[15] Although at common law the classes of cases in which indemnity costs may be ordered are not closed, they are usually confined to several classes of cases. They may be awarded where it is shown that there is some evidence of unreasonable conduct, albeit not needing to rise to the level of vexation. Other classes of conduct which may warrant indemnity costs order include making allegations of fraud knowing them to be false, making irrelevant allegations of fraud or misconduct that causes loss of time to the court or other parties, the fact the proceedings were commenced at or continued for some ulterior motive or wilful disregard of known facts or clear established law, or the making of allegations which ought never have been made or undue prolongation of a case by groundless contentions or the imprudent refusal of an offer to compromise. It is the latter category which the second and third defendants rely upon.

[16] As the primary judgment attempts to demonstrate, there is a range of levels of apportionment over many cases, and all of which are fact specific. Although the second and third defendants have bettered their offer to settle contribution by accepting 40 percent responsibility and have been found on the facts responsible for 25 percent of the liability for damages, it seems to me that I ought not accept that simple fact categorises the first defendant's failure as an imprudent refusal. The prudence or otherwise of a party can only be judged by information in its knowledge at the time that the offer was left open.

[17] It is not clear whether the in situ identification issues were an issue at the time of the offer. More importantly, the levels of causal contribution as quantified by Mr Kottek were not finalised until the trial commenced. I would therefore conclude that the first defendant has not been shown to be imprudent in refusing the 40/60 offer on 27 February 2025 so as to justify an award of indemnity costs. It does seem reasonable, however, to me that as the second and third defendants have succeeded upon their issue of contribution that the first defendant ought to pay the second and third defendants' costs of the contribution proceedings on the standard basis. It seems to me therefore the appropriate order is that the first defendant pay the second and third defendants' costs on the standard basis from the date of the offer 27 February 2025.

[18] Accordingly I make the following orders:

1. Judgment for the plaintiff against the first defendant in the sum of $1,896,200.85.

2. Judgment for the plaintiff against the second defendant in the sum of $1,221,973.04.

3. Judgment for the plaintiff against the third defendant in the sum of $449,672.71.

4. Pursuant to s 6(c) of the *Law Reform Act* 1995 (Qld) (LRA), the first defendant (Amaca Pty Ltd) is entitled to recover:

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