



### **Insurers – watch your backs!**

While I know it to be true, it's nice to be reminded once in a while that insurers aren't above the law.

On 28 November 2018 McCallum J handed down her judgment in the Supreme Court case of *Employers Mutual Limited v Heise* [2018] NSWSC 1842.

The case revolved around Ms Heise, a former NSW police officer who had been discharged on medical grounds. In April 2017, Ms Heise lodged a workers compensation claim with Employers Mutual Limited ("EML") claiming permanent impairment for psychological injury. Despite various correspondence from the Solicitor representing Ms Heise to EML – including correspondence by letter, email and phone on at least nine occasions between April 2017 and July 2018, some fifteen months later, EML did not make a determination of Ms Heise's claim.

On 25 July 2018 the Solicitor for Ms Heise commenced a private criminal prosecution against EML alleging that they were in breach of s283(1) of the *Workers Injury Management and Workers Compensation Act 1998 (NSW)* ("WIMA") which states "*a person who fails to determine a claim as and when required by this Part is guilty of an offence unless the person has a reasonable excuse for the failure.*" On 30 October 2018 the Local Court issued a Court Attendance Notice on EML in relation to the alleged breach.

As McCallum J eloquently noted in her judgment "*with a measure of expedition which must have seemed unfamiliar to Ms Heise, Employers Mutual Limited approached the duty judge, Fagan J, last Tuesday, 20 November 2018*" filing a Summons seeking the Court Attendance Notice issued against them be quashed and declared void, invalid and of no effect.

McCallum J held that the Summons of EML should be dismissed and the Court Attendance Notice against EML should stand. She stated Ms Heise, as well as the State Insurance Regulatory Authority ("SIRA") had a right to commence private criminal proceedings against EML. This right came from s245(5) of the *WIMA* which provides "*proceedings for an offence against this Act, the 1987 Act or the regulations under those Acts may be instituted by (but not only by) the Authority.*"

McCallum J's decision provides authority for the proposition that SIRA does not hold a monopoly regarding the prosecution of offences against insurers. It strengthens the position of workers' which can only be seen as a positive development in the workers compensation landscape.