

CURRICULUM VITAE

NAME: Kevin Francis Holyoak

QUALIFICATION: LLB (QIT 1987)

POSITION: Barrister at Law

CAREER HISTORY:

Admitted as a solicitor in 1988. Admitted to the Bar in 1991. Awarded the James Archibald Douglas Prize at the Bar Practice Course for most outstanding candidate.

AREAS OF SPECIALITY:

All aspects of insurance law and related areas of common law, equity and statute, commercial law, trade practices law.

PAPERS AND ARTICLES:

Various papers and seminars including:

1998

1. Subrogation – The Pitfalls of Recovery Actions (2.9.98)
2. APLA Conference - Stress Claims – Are they still Viable
3. Disclosure – How has the Recent ‘ESSO Decision’ Changed the Disclosure Rules – Sole Purpose Test v. Dominant Purpose

2001

4. As Time Goes By: an Update on Section 31 of the *Limitation of Actions Act 1974* (15.3.01)

2002

5. Claims Between Defendants and Insurers Involving the *WorkCover Queensland Act 1996* (10.9.02)
6. IPP Report – Limitation Periods and “Long-Stop” Limitation (2.10.02)

7. Advanced Personal Injuries Seminar - Indemnity Issues in Respect of Public Liability Policies (23.11.02)

2003

8. Suncorp Metway Insurance Limited - Legal Panel Forum - *Personal Injuries Proceedings Act 2002* – Impact on CTP (27.2.03)
9. AILA/CLE Insurance Law Intensive 2003 - *Johnson Tiles Pty Ltd v. ESSO Australia Pty Ltd* [2003] VSC27 – Pure Economic Loss – Will the Availability of “Commonplace” Insurance Defeat a Claim? (13.5.03)
10. APLA Personal Injuries Intensive - *Civil Liability Act 2003* – Proportionate Liability (21.5.03)

2004

11. Lexis Nexis 2004 Personal Injury Queensland - Identifying and Overcoming the Challenges of PIPA and Assessing Potential Amendments to the Act (18.4.04)
12. AILA Civil Liability Workshop Part 1 (Commercial Loss) (July 2004)
13. Bar Association of Queensland – Commercial Insurance Law CPD (18.8.04)

2005

14. Australian Lawyers Alliance (ALA) (formerly APLA) Conference – Statutory Scheme Case Review (5.2.05)
15. Suncorp Internal Lawyers Conference – What is a “road” for the purposes of the *Motor Accident Insurance Act 1994*? (31.5.05)
16. AILA Civil Liability Workshop Part 2 (Personal Injury) (7.7.05)
17. ALA National Conference – Don’t Get Stressed: *Koehler v. Cerebos (Aust) Limited* (20.10.2005)

18. ALA Queensland State Conference – The Good and the Bad (18.02.06)
19. AILA Insurance Law Conference – Proportionate Liability – What does it apply to, when is it available, how is it activated – practical implications (25.5.06)

2008

20. Bar Association of Queensland. I was invited to, and presented, a paper at the Annual State Conference of the Bar Association of Queensland in February 2008 entitled “Sections 11 and 12 of the *Civil Liability Act 2003* – causation”.

I was asked to re-present this paper again at a Bar Association ALE chaired by Dorney QC (as His Honour then was).

I also contributed an article to the Bar Association Journal “*Hearsay*” entitled “*The Incredible Shrinking Immunity*”, examining the scope and limitations of the advocate’s immunity.

21. Queensland Law Society. At the invitation of the Specialist Accreditation (Personal Injuries) Course of the Queensland Law Society, I was asked to, and did present argument in a moot, adjudicated by His Honour McGill SC DCJ in relation to the obligations of disclosure and provision of information under the *Personal Injuries Proceedings Act 2002*,
22. AILA (Australian Insurance Law Association). I was invited to, and presented a paper at the National AILA conference held at Hamilton Island, addressing colleagues from around Australia. The paper dealt with the legal and underwriting issues of “long tail claims” under insurance policies.
23. ALA (Australian Lawyers Alliance). I presented a paper to the Australian Lawyers Alliance on the reasoning and implication of the Court of Appeal’s decision in *Watkins v. Queensland*¹.

¹ (2008) 1 Qd R 564.

2009

24. Queensland Law Society. In March 2009, I co-presented a paper (with Ms. Julie Cameron from Corrs Chambers Westgarth) at the Queensland Law Society Symposium in relation to the complications of cross border insurance schemes and jurisdictional issues in relation to interstate work accidents.
25. ALA (Australian Lawyers Alliance). In February 2009 I presented a paper to the State Conference of the ALA entitled “Everything you wanted to know about pleadings but were too afraid to ask” which dealt in detail with the rules in pleadings.

I also delivered a paper later that year to the ALA entitled “Where to from *Hare*: Disclosure and compliance under the PIPA” which dealt with the District Court decision in *Hare v. Mount Isa City Council*² (in which I appeared) and *Hare v. Mount Isa Mines Ltd*³.”
26. Legal teaching. I participated as an instructor at the Bar Practice Course, chaired by Peter Lyons J.

2010

27. AILA. In May of this year I delivered a paper to the Queensland State Conference of the Australian Insurance Law Association entitled “*When Goods Times Go Bad*” at the liability of hoteliers and purveyors of alcohol in light of several recent High Court cases, including *Adeels Palace Pty Ltd v. Maubarak*⁴ and *Cal (No. 14) Pty Ltd v. Motor Accidents Insurance Board*⁵.
28. ALA. I presented a paper to an ALA conference this year entitled “Breach and Causation and the role of the *Workplace Health and Safety Act 1995*” which examined the amendments made by the *Workers Compensation and Rehabilitation and Other Legislation Amendment Bill 2010* and the consequences of the abolition of *Bourk v. Powerserve Pty Ltd*⁶.

² [2009] QDC 39.

³ [2009] QCA 91.

⁴ (2009) 239 CLR 420.

⁵ (2009) 239 CLR 390.

⁶ [2008] QCA 225.

29. Women in Insurance Law. I provided a paper to this organisation which is an educational body, predominately for women practising in the area of insurance law (but open to men also) entitled “Reforming the Reforms” which dealt at length with the multiple amendments made to the *Civil Liability Act* by the *Civil Liability and Other Legislation Amendment Act 2010* and also the amendments made by the *Workers Compensation and Rehabilitation and Other Legislation Amendment Act 2010*.

2011

30. Legalwise Seminars. 29 March 2011 - “WorkCover amendments under the microscope”. This paper explored the scope of the amendments made to the WorkCover legislation which took effect from 1 July 2010 and which introduced significant changes mirrored on the *Civil Liability Act 2003*.
31. Bar Association of Queensland “CPD Insurance Law”. 1 June 201 – “Insurance Law Intensive – Non-disclosure under the *Insurance Contracts Act 1984* – an update”. This paper dealt with the complications existing for insurers in relying upon non-disclosure under sections 21 and 28 of the *Insurance Contracts Act 1984*.
32. Australian Lawyers Alliance. 9 August 2011 – “WorkCover amendments one year on”. This paper considered the effect of the amendments which took effect on 1 July 2010.
33. AILA. 8 December 2011 - “Living with the law in Allen” – Examined the consequences for disclosure of the decision in *State of Queensland v. Allen* [2011] QCA 311.

2012

34. AILA. 28 March 2012 - “The Incredible Shrinking Privilege”. This paper discussed the elements of advice privilege and litigation privilege in light of the decision of Boddice J in *Mahoney v. Salt* [2012] QSC 43.
35. Australian Lawyers Alliance - “Shifting the Blame – Non-delegable duty of care”.

2013

36. AILA – “On the threshold of Change: What the WorkCover amendments mean for other Insurers”
37. 2013 WorkCover Changes: The impact for non-employers
38. Proportionate Liability: An Update

2014

39. Personal Injury Law Conference - “An Emerging Area of Practice of Personal Injury Lawyers: Total and Permanent Disability”.
40. Contractual Indemnity Case Fight: *Erect Safe Scaffolding (Australia) Pty Ltd v. Sutton* (2008) 72 NSWLR 1.
41. Psychiatric Claims and the *Workers Compensation and Rehabilitation Act 2003*: Have Hard Claims Been Made Even Harder?
42. BAQ Commercial Insurance Seminar - “Damage” and “Occurrence” in Insurance

2015

43. Law Society Symposium 2015 - Total and Permanent Disability: Traps for Personal Injury Lawyers

CASES

In 2010, apart from special leave applications, I appeared in two matters which were fully argued and decided in the High Court of Australia:-

- (a) *WorkCover Queensland v. Amaca Pty Ltd* (2010) 241 CLR 420. I appeared for WorkCover, the successful appellant, throughout this proceeding. In the High Court I appeared with the Solicitor General, Mr Sofronoff QC SG. The issues in the case were complex and involved the interaction between WorkCover’s right of recovery of the statutory benefit paid to workers by way of action, in its own name, against tortfeasor concern pursuant to section 207B of the *Workers Compensation and Rehabilitation Act 2003* and its interaction with section 66 of the *Succession Act 1981* (Qld) when the worker has died. In short, WorkCover was successful in establishing the provisions of section 66 of the *Succession Act 1981* did not limit the amount which WorkCover was able to recover under its charge, notwithstanding the death of a worker.
- (b) *Selected Seeds Pty Ltd v. QBEMM Pty Ltd* (2010) 85 ALJR 1; (2010) 271 ALR 484; [2010] HCA 37. This matter involved the construction of an exclusion clause

appearing in an endorsement to a commercial policy of insurance. The exclusion is what is referred to as an “efficacy clause” which commonly appears as an endorsement in commercial policies of insurance. I appeared at the trial at first instance before P McMurdo J: [2009] QSC 70. I then appeared for the Appellant, with Mr G A Thompson SC: [2009] QCA 286. Finally, after special leave was granted, I appeared with Mr Thompson SC in the High Court of Australia for the Respondent. The appeal was allowed. The Court held that the efficacy clause was to be confined so that it did not apply where positive harm was caused rather than an intended purpose failing to be achieved.

I have been retained and acted in a number of large pieces of litigation, a number of which had high profiles, including:-

- (a) I acted for one of the Defendants in the professional negligence claim by the former Chief Magistrate, Dianne Fingleton. The matter is now settled.
- (b) I act for the local authority in the Mount Isa Lead claims: *Hare v. Mount Isa City Council*. The matter has settled against the Local Authority.
- (c) I acted for the US Manufacturers of night vision goggles in a number of claims arising out of the “Black Hawk air disaster”. The matter has settled.

I also appeared as counsel in some inquiries of relevant significance:-

- (a) I appeared for Air Services Australia, the national designer of air navigation charts, in the coronial inquest into the Lockhart River air crash.
- (b) I appeared for the home owners in the coronial inquest in to the balcony collapse involving the “Churchie” function at Clayfield. I continue to act in the litigation.
- (c) I appeared for, and advised, Suncorp Metway Insurance Limited in the Queensland Floods Commission of Inquiry in 2011.

I was junior counsel in the successful defence of proceedings brought by the former Police Commissioner, Terrence Lewis, in *Lewis v. Hillhouse*⁷, in addition to the matter concerning the former Chief Magistrate.

I have appeared in the following reported decisions as junior or sole counsel:-

1. *Kings' College v. Allianz Insurance Australia Limited* [2004] 1 Qd R 394
2. *Nicholls v. Brisbane Slipways and Engineering Pty Ltd* [2003] QSC 193
3. *Lewis v. Hillhouse and Others* [2004] QSC 311
4. *Bonser v. Melnaxis*⁸
5. *A R Griffith & Sons Pty Ltd v. Richards*⁹
6. *De Innocentis v. Brisbane City Council*¹⁰
7. *Howard v. State of Queensland*¹¹
8. *Karanfilov v. Inghams Enterprises Pty Ltd (No. 1)*¹²
9. *Hawthorne v. Thiess Contractors Pty Ltd*¹³
10. *Aydar v. Pashen*¹⁴
11. *Lisle v. Brice*¹⁵
12. *Morrison-Gardiner v. Car Choice Pty Ltd*¹⁶, often at first instance and then on appeal, and many others¹⁷.
13. I have been involved in a number of special leave applications in the High Court, the most recent being *Piper v. Nominal Defendant*¹⁸.
14. *Brew v. Followmont Transport (No.1)*¹⁹.
15. *Brew v. Followmont Transport (No. 2)*²⁰.

⁷ [2005] QCA 316.

⁸ [2002] 1 Qd R 1 – see also *Kingsley v. Williams* [2002] 1 Qd R 179.

⁹ [2000] 1 Qd R 116.

¹⁰ [2000] 2 Qd R 349.

¹¹ [2001] 2 Qd R 154.

¹² [2001] 2 Qd R 273.

¹³ [2002] 2 Qd R 157.

¹⁴ [2003] 1 Qd R 601; see also the companion case of *Birmingham v. Priest* [2003] 1 Qd R 601.

¹⁵ [2002] 2 Qd R 168 – a case involving causation and remoteness of suicide as a result of a tort.

¹⁶ [2004] QSC 124; [2004] QCA 480.

¹⁷ As an example I was recently involved in a trio of cases which establish the ambit of the CTP policy in workplace situations: *Brew v. WorkCover Queensland* [2004] 1 Qd R 62; *Purt v. State of Queensland* [2004] 1 Qd R 663 and *Palmer v. Harker Transport* [2003] QCA 513.

¹⁸ *Piper v. Nominal Defendant* [2004] HCA Trans 446 – special leave granted from [2004] 2 QD R 85 in which I appeared with K. N. Wilson SC. The High Court appeal settled. See also the other cases on this point I was involved in: *Perdis v. Nominal Defendant* [2004] 2 Qd R 224; *Miller v. Nominal Defendant* [2005] 1 Qd R 135.

¹⁹ [2005] 2 Qd R 354.

²⁰ [2005] 2 Qd R 482.

16. *Interpacific Resorts Australia Pty Ltd v. Austar Entertainment*²¹.
17. *Calvert v. Mayne Nickless (No. 1)*²².
18. *Calvert v. Mayne Nickless (No. 2)*²³.
19. *Morrison v. Hudson*²⁴.
20. *Edmunds v. D Dunn Industries Pty Ltd (No. 1)*²⁵.
21. *Royston v. McCallum*²⁶.
22. *Poyner v. Queensland Rail*²⁷.
23. *Brown v. Stewart*²⁸.
24. *Edmunds v. D Dunn Industries Pty Ltd (No. 2)*²⁹.
25. *Ravenscroft v. Nominal Defendant*³⁰.
26. *Shrimp v. Landmark Operations Ltd*³¹.
27. *Handover v. Consolidated Meat Group Pty Ltd*³².
28. *RACQ Insurance Ltd v. Watkins*³³.
29. *Suncorp Metway Insurance Ltd v. Sichter* [2011] 2 Qd R 89.

Without being comprehensive, in areas of statutory insurance and personal injuries, I have also appeared in the following additional important, but unreported:-

1. *Ward v. Wiltshire Australia Pty Ltd*³⁴.
2. *Bourk v. Powerserve Pty Ltd*³⁵ and at first instance where the important cross border insurance point was also determined; *Bourk v. Powerserve Pty Ltd*³⁶. Special leave was refused in *Powerserve Pty Ltd v. Bourk*³⁷. The result in this case was eventually overcome by the *Workers Compensation and Rehabilitation Act and Other Legislation*

²¹ [2005] 2 Qd R 23.

²² [2006] 1 Qd R 106.

²³ [2006] 1 Qd R 141.

²⁴ [2006] 2 Qd R 465.

²⁵ [2007] 1 Qd R 418.

²⁶ [2007] 1 Qd R 361.

²⁷ [2007] 1 Qd R 353.

²⁸ [2007] 1 Qd R 205.

²⁹ [2007] 2 Qd R 128.

³⁰ [2008] 2 Qd R 32.

³¹ (2007) 163 FCR 510.

³² [2009] 2 Qd R 133.

³³ [2010] 2 Qd R 552.

³⁴ [2008] QCA 093.

³⁵ [2008] QCA 225.

³⁶ [2008] QSC 029.

³⁷ [2009] HCA SL 58.

Amendment Act 2010 by the introduction of section 37A of the *Workplace Health and Safety Act 1995*.

3. *French v. QBE Insurance (Aust) Ltd* [2011] QSC 105.
4. *Allen v. State of Queensland* [2010] QSC 442 and in the appeal [2011] QCA 311.
5. *WorkCover Queensland v. Amaca (No. 2)* [2011] QSC 358 and in the success appeal [2012] 2 Qd R 194, which broke new grounds in permitting the assignment of a chose in action for personal injuries.