



INSURANCE LAW CASE UPDATE 2025

COMMERCIAL LAW CPD DAY

RACV CITY CLUB 20 MARCH 2025

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Topics

- AI and Insurance: new and emerging risks
- Directors risk update
- *Aged Care Act 2024*: new insurance implications
- Construction claims
- Pre-existing conditions exclusions: unfair contract terms?
- Institutional historical abuse claims – prior notification
- Natural disasters: uninsurable, unaffordable or both?

AI and Insurance: new and emerging risks

- ASIC report: “Beware the gap: Governance arrangements in the face of AI innovation”
- Risks
- Claims
- First party losses
- Role of insurance

Directors risk update

- D&O insurance demand spikes amid rise in upheld claims
- Increased regulatory scrutiny, growing litigation risks, and shifting market dynamics
- Legislation, environmental, social, and governance (ESG) issues, and macroeconomic uncertainty
- Uptick in regulatory focus on misconduct relating to reporting on environmental sustainability
- Technological and operational resilience (including cyber resilience)
- Despite pricing variations, demand for D&O insurance is rising globally

Aged Care Act 2024

- Stricter governance requirements, heightened oversight, increased liability exposures
- Directors & Officers/Management Liability
- Statutory Liability
- Professional Indemnity/Medical Malpractice
- Public Liability
- Workers Compensation Recovery Actions
- Associated providers:
 - Policy Access
 - Subrogation Rights
 - Increased Premiums and Excesses
 - Policy Ambiguity

Construction Claims

- *Zurich Australian Insurance Limited v CIMIC Group Limited & Ors* [2024] NSWCA 229 – disclosure obligations.
- *AAI Ltd v The Owners - Strata Plan No 91806* [2025] FCAFC 6 – ACP claim; joinder of insurer; disclaimer of liability; substantial injustice.
- *Chubb Insurance Australia Limited v WSP Structures Pty Ltd* [2024] FCAFC 123 – extended definition of ‘insured’ and ‘insured’s business’.

Pre-existing conditions exclusions

Australian Securities and Investments Commission v HCF Life Insurance Company Pty Limited [2024] FCA 1240

- Whether HCF could deny indemnity if a policyholder failed to disclose a pre-existing condition prior to entering the contract and a medical practitioner subsequently formed an opinion that signs or symptoms of their condition existed prior to entering the contract.
- HCF breached s 12DF of the ASIC Act.
- Not unfair contract terms for s 12BF.

Institutional historical abuse claims – prior notification

Allianz Australia Insurance Limited v Uniting Church in Australia Property Trust (NSW) [2025] FCAFC 8

- When does an insured has relevant knowledge for notification purposes.
- Importance of prior notifications as soon as reasonably practicable: ss 40(3) ICA.
- Validity of a prior known circumstance exclusion.
- Whether disclosed facts and circumstances which may give rise to a claim?
- Whether the knowledge of the Knox headmaster was also that of the Church?
- Whether s 54 remedied the Church's failure to notify?
- Whether Exclusion 7(c) was void viz s 33 or s 52?

Natural disasters: uninsurable, unaffordable, or both?

- Cost of extreme weather is growing across the nation.
- California wildfires.
- Global insured losses from natural catastrophes exceeded \$100 billion for the fourth consecutive year in 2023.
- Pressures on insurance affordability in risk-exposed areas of Australia.
- Nearly 521,000 Australian homes predicted to be uninsurable by 2030.
- Hazards Insurance Partnership.
- Insurance Affordability and Natural Hazards Risk Reduction Taskforce.

Select Committee on the Impact of Climate Risk on Insurance Premiums and Availability

- [1] Publicly accessible national disaster risk map.
- [2] Detailed explanations of premium costs.
- [3] ACCC to monitor and publish premium prices.
- [4] Phase out general insurance taxes.
- [5] Expand the Cyclone Reinsurance Pool.
- [6] Increase federal investment in resilience measures.
- [7] Review land use and planning policies.
- [8] Levy on coal and gas extraction companies.