Sparke Helmore

The Australian Desk

London Edition


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that delivers results.
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that’s where we are.

Introduction

Welcome to the inaugural edition of the **Australia Desk (London Edition)**. Published twice a year, this update provides insights into the trends and themes shaping the Australian insurance market, together with the latest news from Sparke Helmore's national team.

We commenced 2026 with a series of visits to London, reinforcing our commitment to maintaining strong relationships with insurers and brokers and ensuring we remain closely connected to the issues that matter most to you. These face-to-face engagements also enable us to help keep you informed about Australian specific risks and regulatory expectations.

In April, Marie Clare Elder and Kerri Thomas travelled to London to meet with clients and contacts with a particular focus on discussing the latest developments in the Health sector and the regulatory pressures influencing insurers, brokers and healthcare providers. This was followed in May by a visit from Mark Gray-Spencer, who spent time with London aviation clients discussing emerging risks, claims trends and the evolving liability landscape for carriers, airports and aviation service providers.

David Kerwin and Dino Liistro will be in London in late July and are looking forward to meeting with Financial Lines clients. They will discuss how corporations and financial institutions are navigating an evolving regulatory environment, increasing class action exposures, and the continued evolution of D&O risks. With insurance market conditions remaining relatively soft, insurers are closely monitoring these developments and their potential impact on the risk landscape.

In this edition we report on developments across key market sectors, including Aviation, Maritime, D&O, Professional Indemnity, Property & Construction and Casualty. We explore emerging trends in claims and litigation, notable decisions and their implications, and shifts in claimant behaviour. We also examine jurisdiction specific developments and the broader themes we expect London insurers, brokers and underwriters to be watching closely.

Aviation

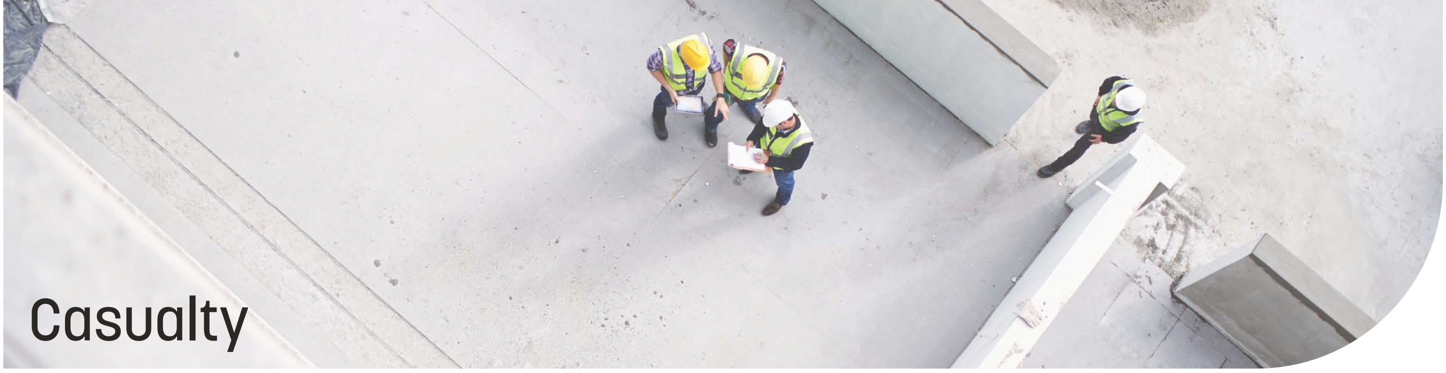
In recent years, there appears to have been a **noticeable increase in the number of pure psychiatric harm (or 'nervous shock') claims** commenced by various categories of plaintiffs in response to aircraft accidents, reflecting a broader trend across the Australian personal injury claims landscape.

In response, the aviation operators are increasingly seeking cover for pure psychiatric harm injuries, prompting insurers by expand the scope of cover provided by their products.

Australian common law recognises that a defendant owes a duty of care to take reasonable steps to avoid causing psychiatric harm. This duty extends to people who are directly involved in, or witness, an accident resulting from the negligence of a party. It also extends to those who are directly involved in, or witness, the immediate aftermath of such an accident or are in a close relationship (typically a close family member relationship) with a deceased person involved in the accident. Further, in Queensland, there is case law confirming that a wrongdoer owes this duty of care to emergency first responders attending the scene of a car crash (*Caffrey v AAI Ltd* [2019] QCA 293).

Although passengers, and arguably direct witnesses and first responders, are precluded from claiming for pure psychiatric harm against a carrier by reason of Australia's *Civil Aviation (Carriers' Liability) Act 1959* (Cth) (**CACL Act**), we have seen an increase in pure psychiatric harm claims commenced by family members of passengers, accident witnesses or bystanders, and first responders against carriers and non-carrier insureds, such as maintenance providers.

For insureds who are not 'carriers' under the CACL Act, there can be a 'gap' in cover for pure psychiatric harm common law claims commenced by passengers, their family members, first responders and witnesses of an accident. This gap may arise where the subject policy responds only to personal injury claims arising from 'bodily injury', a term that typically excludes pure psychiatric injury. This might occur, for example, when an aircraft operator on a private flight has to conduct an emergency landing following a bird strike and a passenger subsequently commences a personal injury claim against the operator seeking compensation for PTSD (unaccompanied by any physical injury).



Casualty

The **litigious landscape** in Australia continues to change and evolve. Perhaps one of the most notable trends we are seeing across all states and territories is the **substantial increase in psychological and third-party nervous shock claims.**

These claims are increasingly complex and woven into almost every matter including public liability, medical negligence, personal injury, workers' compensation claims or transport accidents. The difficulty in assessing psychological claims stems often from the reliance on the injured persons reported symptoms. Most alarming for insurers, however, is how significantly the courts are assessing these types of claims.

As is well known, the fundamental principle of Australian tort law is the principle of '*restitutio in integrum*' – restoration of the plaintiff's original condition as far as money or legal means permit. The most notable decision reaffirming this historic principle is the High Court's recent decision in *Stewart v Metro North Hospital and Health Service* [2025] HCA 34.

This case is a reminder to insurers of their **increased risk exposure in personal injury claims involving future care.**

Further, this decision has seemingly reminded the lower courts of the *restitutio in integrum* principle, most recently in the decision of His Honour Justice Smith in *Greenall v Amaca Pty Ltd* [2026] QSC 16, which restated the principle that damages should put the plaintiff in the position they would have been but for the injury 'so far as money can do'.

Despite there being a single common law in Australia, awards of general damages have traditionally varied from state to state, being lower on average in some states than others. This decision will likely result in plaintiffs seeking more uniform awards of damages across the country; as well as across various types of claims (including defamation matters where damages awards are often higher), which may result in an overall upward trend in general damages awards.

Following the Royal Commission into Institutional Responses to Child Sexual Abuse, there has been substantial legislative reforms in this area across all Australia states and territories; **there is no longer a limitation period for child sexual abuse claims.**

Consequently, there has been a surge in clams being made. Following the significant High Court Decision in *Bird v DPP* (2024) 419 ALR 55S, several jurisdictions have enacted legislative reforms the intention of which is to expand the principles of vicarious liability and thereby broadening the scope of potential liability for insurers. Further, the High Court's recent decision in *AA v The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle* [2026] HCA 2 has further widened the circumstances in which institutions may be held legally liable and has otherwise confirmed that a breach of non-delegable duty of care is not just confined to negligence. In light of these decisions and the impending legislative reforms, we anticipate a marked shift in the risk and litigation landscape across all Australian jurisdictions and a continued influx of claims being made in this area.

Commonly in Australia, jury trials are seen as the norm and assist the Court to understand community standards and perception of the value of pain and suffering. However, Australia, and in particular, Victoria, is commonly being seen as a 'plaintiff friendly' jurisdiction, and sizeable awards are being awarded by jury trials.

Notably, **juries are seemingly reluctant to award significant reductions in contributory negligence.**

In the case of *Sakibul Haque v Alan Mance Motors Pty Ltd* [2025] VCC 1767, the Plaintiff was employed as a car salesman. He became injured after he himself placed carpet car mats on the ground and tripped over them. At trial, the jury found that the Plaintiff was only 5% responsible for his own injuries, while the Defendant took the greater share of the liability in failing to implement and/or enforce a safe and proper system of work, as well as failing to train the Plaintiff. The Defendant attempted to make an application to the Court for a judgment dismissing the jury's verdict, which was ultimately dismissed noting that a jury's verdict can only be disregarded in the clearest of cases.

Directors and Officers

The first half of 2026 has seen several developments of significance to the D&O market, particularly in shareholder class actions.

New shareholder class action filings have dropped off in the last 12 months, compared with previous years.

However, two recent decisions may lead to renewed interest from class action participants and funders. In May 2026, the Full Court of the Federal Court granted the class's appeal in *Crowley v Worley Limited* [2026] FCAFC 78 and in June 2026, the Federal Court gave the first trial judgment in favour of a class applicant in *Southernwood v Brambles Limited* (No 4) [2026] FCA 691. The decisions in these cases - both relating to earnings guidance given by the listed defendants - found for the class on key aspects of causation, which has traditionally been seen as the most difficult aspect of such claims for plaintiffs.

The industry is currently awaiting the High Court's decision in another long-running shareholder action, *Zonia v Commonwealth Bank of Australia*, which was heard in June 2026. The decision is expected to have broad-reaching implications.

The Full Court's decision in *Worley* has also been appealed to the High Court.

In the **regulatory space**, we have seen a continued uptick in actions being commenced by the Australian Securities & Investments Commission (**ASIC**).

Several ASIC actions have also concluded this year, including actions against directors and officers; most have resolved in favour of the regulator.

In a recent high profile matter, *ASIC v Bekier* [2026] FCA 196, ASIC had mixed success against the directors. The matter was commenced by ASIC following the fallout of the 2022 Review of The Star Casino and a 2024 Independent Inquiry.

On 6 March 2026, Lee J published the Court's liability judgment and held that the CEO/Managing Director and General Counsel/Company Secretary had both breached their duties. In a later penalty judgment (handed down in June 2026), the Court imposed pecuniary penalties and disqualified both officers from managing companies for six and seven years, respectively. However, the Court held that the non-executive directors did not breach their duties, largely because key information was withheld from them by management. Although, in his Honour's penalty judgment, Lee J was at pains to point out this did not amount to endorsement of the Board's governance culture or practices.

Lee J's liability judgment also touched on the difficulties faced by the Boards in managing the voluminous information provided to them. His Honour noted the increasingly common use of artificial intelligence (**AI**), observing that if AI is used appropriately it could assist directors in the general discharge of their duties including to manage board papers, which in some instances span many hundreds of pages. However, Lee J cautioned that if a summary is produced by AI that fails to capture important information, then the directors will bear the risk associated with relying on incomplete or incorrect information.

The upcoming issue of **SparkeWatch**, our annual report on class action and D&O trends, will analyse the implications of these developments and break down recent filing and settlement data.

Health

Over the past year, several significant trends have reshaped the Australian claims landscape, particularly in the areas of psychiatric injury, future care damages and coronial related exposures. These developments are influencing both the frequency and severity of claims and creating new challenges for insurers and reinsurers as courts, regulators and healthcare systems respond to shifting expectations and emerging risks.

Psychiatric injury (nervous shock) has become one of the most active and rapidly developing categories of claims, with both frequency, severity and number of claimants per claim continuing to rise.

The claimant pool has expanded to include extended family members and friends, bystanders and first responders. High value awards in abuse litigation appear to be shaping expectations and quantum arguments more broadly, contributing to increasingly sophisticated causation theories and more detailed expert psychiatric evidence. These dynamics are driving the need for earlier psychosocial risk assessment and more targeted strategies to challenge scope of duty and causation.

Our overseas insurer clients and domestic health services clients remain interested in whether the decisions from the England and Wales Court of Appeal (Civil Division) in *Paul & Ors v The Royal Wolverhampton NHS Trust* [2022] EWCA Civ 12 and *MIM v Sheffield Teaching Hospitals NHS Foundation Trust* [2026] EWHC 562 will have any impact in Australia and, if so, whether they may lead to reform of Australian tort law.

In *Wolverhampton*, the Court of Appeal held that *'for a secondary victim to be sufficiently proximate to claim for psychiatric injury against the defendant whose clinical negligence caused the primary victim injury, the horrific event cannot be a separate event removed in time from the negligence.'* In other words, the breach was not sufficiently proximate to the injury. *Wolverhampton* also found that where the psychiatric injury was not caused by an 'accident' - but rather a result of a pre-existing injury or diseases - damages were not recoverable.

In *MIM*, the Court reiterated that a clinical crisis (in this case, the husband witnessing his wife and newborn son in peril at birth) did not constitute an 'accident' and that the failure to expedite delivery, while negligent, did not give rise to a cause of action by the husband for psychiatric injury.

The position in Australia is quite different, and broadly the courts will allow claims for nervous shock for family and close relatives where there has been negligent treatment of their deceased loved one. It does not matter that the negligence may have occurred at a time well before the ultimate death, or that the relative did not witness the negligence, or even the death. Over the last few years plaintiffs' solicitors have been pushing the boundaries with nervous shock claims, and we are seeing cases with multiple plaintiffs (some being distant relatives) and even some claims by children as young as a few months old. The question in those cases is whether there was a duty of care at all, as one might argue it is not reasonably foreseeable that an infant child would suffer a nervous shock injury upon the death, say, of a sibling or parent.

Interestingly, we note that Ireland has approached nervous shock claims differently to the UK. In *Kelly v Hennessy* [1995] 3 IR 253, the Plaintiff's husband and two daughters were severely injured in a car accident. The Plaintiff did not witness the incident but learned about it over the phone. She was successful in her claim for nervous shock with the Court finding that there were five conditions to establishing a claim, all of which were made out.

They were:

1. a recognised psychiatric illness
2. a 'shock induced' illness (note not limited to 'accident')
3. the injury was caused by the Defendant's negligence
4. the injury has arisen by reason of an actual or apprehended physical injury to the loved one, and
5. the Defendant must have owed the Plaintiff a duty of care.

This is more aligned with the Australian approach.

And just recently, Ireland has affirmed this position with the case of *Kinsella v Carter* [2026] IEHC 319 where the High Court found that a catastrophic event - such as a medication overdose, as happened in this case - can constitute an 'accident', and that a medical practitioner can be held to owe a duty to immediate relatives who witness the aftermath of such an event (in this case, the wife was not present).

There is considerable debate in Australia about whether any action should be taken and, if so, what form it should take. However, any legislative changes to the law would require tort law reform, as many states and territories have a statutory embedded cause of action for nervous shock claims.

Another significant development in the health sector relates to **future care costs** following the High Court's decision in *Stewart v Metro North Hospital and Health Service* [2025] HCA 34.

In rejecting a cost–benefit analysis and reaffirming the compensatory principle that damages should, as far as money can achieve, restore the plaintiff to their pre injury position, the Court has created scope for significantly larger care awards where in home or private care can be shown to be reasonably required. Plaintiff firms are expected to rely heavily on *Stewart* to support expanded claims for home modifications, family provided care and private nursing arrangements. Defendants now face a heightened evidentiary burden, as they must demonstrate that a plaintiff's preferred care model is objectively unreasonable—cost comparisons alone will not suffice.

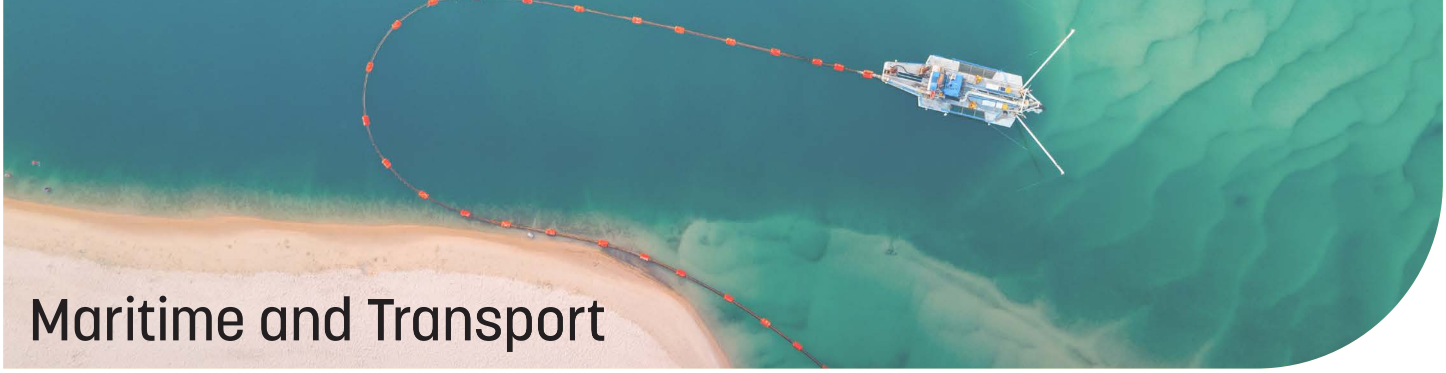
This development is likely to increase the severity of large loss claims, particularly in catastrophic injury matters where future care constitutes a significant component of the quantum.

Coronial and systemic developments are also influencing risk profiles.

Jurisdictions such as NSW continue to experience significant backlogs, with delays of three to five years from death to hearing and further delays before findings are delivered. Common themes include deaths following contact with mental health services, suicides after police welfare checks, failures in aged care, delayed diagnosis of sepsis, triage errors, poor inter agency communication, failed discharge planning, multi system failures and domestic and family violence. These recurring patterns are increasingly reflected in civil claims, regulatory scrutiny and organisational risk assessments.

Technology driven risks are emerging in parallel.

The rapid adoption of AI in healthcare is introducing new consent, privacy, transparency and professional obligation challenges. As AI becomes embedded in diagnostics, risk prediction and clinical decision support systems, questions of liability, data quality, bias and explainability are becoming more prominent, with the potential to generate novel claim types and complex causation disputes. Collectively, these trends point to a future in which reinsurers must prepare for higher value psychiatric and future care claims, more complex liability arguments and evolving technological and regulatory exposures that demand proactive risk management and robust evidentiary strategies.



Maritime and Transport

As a land 'girt by sea', abundant in minerals and reliant on overseas manufacturing, Australia is the fifth largest user of shipping services globally. This means that while geographically distant from much of the world, Australia is not isolated from international turmoil (such that marine insurers with an interest in the jurisdiction are by no means immune from the ramifications that flow).

However, the setting of Australia's most significant maritime case in many years[1] is the port town of Devonport, Tasmania (home to just 26,000 people); a veritable David, if you will, when faced with the bulk cement carrier, *MV Goliath*.

On 28 January 2022, the Goliath, owned by CSL Australia Pty Ltd (**CSL**), was involved an allision into two tugs and a wharf, causing the tugs to sink and release dangerous hydrocarbons into the environment. A major clean up and salvage operation ensued for the Tasmanian Ports Corporation (**TasPorts**) at a cost of $22 million ($17 million related to wreck removal costs incurred by TasPorts).

The question that ultimately went before the High Court of Australia[2] was whether **claims for wreck removal expenses** fell exclusively within the ambit of Art 2(1)(d) of the *Convention on the Limitation of Liability for Maritime Claims 1976* (a provision that Australia has opted out of, pursuant to its right of reservation under Art 18(1)), or whether these claims may also fall within the plain and ordinary meaning of the terms of Art 2(1)(a), which is a more general provision covering loss of or damage to property.

The High Court ultimately found that while ordinarily claims for wreck removal may be capable of being limited under both Art 2(1)(d) and Art 2(1)(a), where a state has exercised a right of reservation under Art 18(1), wreck removal claims will be entirely excluded. That is to say that claims for wreck removal are not limitable in Australia. In reaching that decision, the High Court had regard to recent major decisions from England & Wales and Hong Kong, respectively: *The Flaminia*[3] and *The Star Centurion*[4].

The case is of particular significance noting that **Australia's position with respect the Nairobi Convention on Wreck Removal remains uncertain**.

1 *CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd* [2026] HCA 15

2 Australia's superior court from which no appeal is possible and a place where few maritime claims have traversed in recent years

3 [2025] 3 All ER 703

4 (2023) 26 HKCFAR 297

It also shows that Australian courts will interpret international conventions with reference to internationally understood legal principles, which assists in providing certainty to shipping interests.

Another recent case of interest is *Mitsui O.S.K Lines Ltd v The Ship: Yangze 22 (No 2)*[5],where Justice Derrington held that the Federal Court of Australia was an inappropriate forum to hear proceedings arising out of a collision between the *Yangze 22* and the *Vega Dream*, which occurred on 30 December 2024 in the Beicao Fairway near the Port of Shanghai. Notably, at the time of commencement of the Australin proceedings, three related proceedings were already on foot in the courts of Shanghai.

In seeking the stay, it was for the Owners of the *Yangze 22* to demonstrate that Australia was so '*inappropriate a forum for the determination of these proceedings … that their continuation will be oppressive and vexatious to it*.'

While the Plaintiff pointed to the perceived juridical advantages of proceeding in Australia (including higher liability limits and the existence of security in their favour), Justice Derrington observed that these factors were not of themselves determinative, and noted Lord Goff' position in the *Spiliada*, that '*regard must be had to the interests of all parties and the ends of justice*.'

It was Her Honour's view that the '*risk of inconsistent findings as to liability, apportionment, and quantum should both this Court and the Shanghai Maritime Court proceed to determine liability for the collision is obvious*.'[6] This decision clarified that Australian courts will not permit matters being litigated under their jurisdiction when a more appropriate jurisdiction is already proceeding with the matter.

Outside of the courts, current **geopolitical upheaval** is commanding attention.

Notably, increasing costs of fuel and freight are primary concerns for stakeholders throughout the supply chain, and these concerns have been acknowledged publicly by the Insurance Council of Australia, and state and federal governments. Noting the importance of the freight industry and its contributions to Australia, forthcoming measures to combat these challenges include the Transport Resilience and Capacity Kickstart pilot program, which is looking to encourage efficiency through an increased volume of ship and rail freight. In shoring up Australia's fuel reserves, the recent Federal Budget also included proposals for fuel security and the development of cleaner fuels.

In this same vein, on 29 May 2026, the Australian Government took its first significant step towards implementing the maritime strategic fleet, by announcing the *ANL Kokoda* as the first of three vessels in the pilot program.[7] Minister for Infrastructure, Transport, Regional Development and Local Government, Catherine King noted that '*recent global events have emphasised the importance of Australia having a resilient domestic maritime sector*.'

We otherwise note that Australian Maritime Safety Authority (**AMSA**) has made changes to the *Marine Order 25 (Equipment – life-saving)* 2026, which came into effect on 1 June 2026. These changes reflect the newly adopted resolutions of the Maritime Safety Committee, amending Chapter III of the *International Safety of Life at Sea Convention* and changes to the *International Life-saving Appliance Code*. This Marine Order provides for the carriage and testing of life-saving equipment and the recovery of persons from the water.[8]

5 [2026] FCA 476.

6 *Mitsui O.S.K. Lines Ltd v The Ship: Yangze 22* (No 2) [2026] FCA 476 [50].

7 The pilot program forms part of the recommendations made by the Strategic Fleet Taskforce in November 2023, towards a strategic fleet of 12 privately owned and operated Australian-flagged vessels to be available for requisition in times of national need.

8 *Marine Order 25 (Equipment — life-saving) 2026 s* 2.

Professional Indemnity

The professional indemnity insurance landscape in Australia is being shaped by some recent case law development around causation issues as well as a continuation of expanding statutory duties, evolving regulatory reform, as well as emerging litigation risks and increased regulatory enforcement activity.

Recent judicial decisions have closely examined **issues of causation** and highlighted the importance of properly pleading any counterfactual in professional negligence claims, to allow a court to determine issues of causation:

- *R Lawyers v Mr Daily* [2025] HCA 41— concerning a professional negligence claim against solicitors who had prepared a binding financial agreement, which was held to be void for uncertainty in a family law dispute between the respondent and his former wife.
- *Danbol Pty Ltd v ACN 007 198 343 Pty Ltd* [2026] VSC 305— concerning a professional negligence claim against insurance brokers as a result of them failing to communicate or otherwise accept on the Plaintiff's behalf offers to extend or renew the Industrial Special Risks (**ISR**) policy for the Plaintiff's commercial property, which was damaged by fire that was caused or contributed by the chemicals unlawfully stored at the property by the Plaintiff's tenant.

In the construction sector, legislative reforms such as the **extension of statutory duties** under New South Wales' *Design and Building Practitioners Act 2020* (NSW) (**DBPA**) and the High Court's decision in *Pafburn Pty Limited v The Owners – Strata Plan No 84674* [2024] HCA 49 which held that claims for breach of the statutory duty of care under the DBPA cannot be apportioned under Part 4 of the *Civil Liability Act 2002* (NSW), have the potential to increase consultants' (such as engineers and architects) exposure to liability given the lack of protection under Part 4 of the CLA.

Similarly, the recent decision in *Owners Corporation 1 Plan No PS 640567Y v Shangri-La Construction Pty Ltd* [2026] VSC 117 highlights that statutory liabilities imposed on directors of companies conducting professional businesses (in this case liabilities imposed under s 137F of the *Building Act 1993* (Vic)) may not be covered under a professional liability policy.

Emerging technology risks are creating new legal and coverage issues for professionals and their insurers.

The use of AI, particularly generative AI tools, in professional advice and service delivery has the potential to increase the frequency and severity of losses due to AI misuse or errors, with it likely for the courts to be left to determine whether responsibility lies with the developer or user of an AI tool.

Regulatory enforcement activity remains a significant driver of claims.

ASIC is intensifying **enforcement action**, focusing on financial reporting misconduct, complaints handling and misleading pricing, and is increasingly willing to take matters to court.

A further regulatory development is the implementation of the Tranche 2 reforms to Australia's Anti-Money Laundering/Counter-Terrorism Financing (**AML/CTF**) laws, which will apply from 1 July 2026 to 'gatekeeper professions' such as lawyers, real estate agents, conveyancers and accountants that provide 'Designated Services'.

In addition to increased **regulatory scrutiny**, these reforms have the potential to increase professional liability exposures arising from failures in client due diligence, suspicious matter reporting and AML governance frameworks.

Separately, professional indemnity insurance in the financial services sector and for small business is under review.

The Treasury has been conducting a post-implementation review of the Compensation Scheme of Last Resort (**CSLR**) and has engaged in a consultation process as to the effectiveness of **professional indemnity insurance** in the financial services sector in relation to supporting the ongoing sustainability of the CSLR.

The consultation process is seeking to consider and identify opportunities to enhance the existing design and structure of professional indemnity insurance to better support the effective and sustainable operation of the CSLR, including whether to adopt more prescriptive requirements in relation to professional indemnity insurance for financial services licensees.

In addition, a government inquiry is underway in relation to small business insurance, examining the affordability, availability and suitability of professional indemnity insurance (amongst other lines of insurance) products for Australian small businesses and the adequacy of the current regulatory framework in addressing modern insurance challenges. While in its early stages, a formal report will be released in October 2026, which may have implications for underwriting practices, policy design and regulatory expectations for the professional indemnity market.

Property and Construction

In 2026, the Australian legal landscape for property and construction continues to be shaped by disputes arising from defects, cladding risks, insurance coverage, and contractual performance. Recent decisions illustrate how courts are refining the allocation of risk and applying established principles to increasingly complex building and liability issues.

Property Damage

In a long-running dispute between the Star Casino in Sydney and its builder, Buildcorp Interiors (*The Star Entertainment Sydney Properties Pty Ltd v Buildcorp Group Pty Lt*d [2026] NSWSC 27), the NSW Supreme Court considered whether the installation of aluminium composite panels (**ACPs**) or combustible cladding on the external façade constituted 'Property Damage' in a public liability policy. The Court reaffirmed that Property Damage requires '*a physical alteration or change, not necessarily permanent or irreparable, which impairs the value or usefulness of the thing said to have been damaged*' (per *Ranicar v Frigmobile Pty Ltd* [1983] Tas R 113).

In deciding that there was Property Damage, the Court found that the building had acquired a combustible façade, which reduced its fire-resistance and value. Further, when the façade was removed, it would leave screw holes and gaps and cause damage to adjacent building elements.

Cladding

A number of recent Australian decisions have continued to shape the legal landscape in relation to combustible cladding, particularly in the context of insurance and product liability.

In *Owners Corporation 1 Plan No. PS 640567Y v Shangri-La Construction Pty Ltd* [2026] VSC 117 the Victorian Supreme Court addressed a major dispute regarding the use of **defective EPS cladding** on a multi-unit residential building.

The key issue was whether strict statutory liability imposed on a director under s137F(3) of the *Building Act 1993* (Vic) was covered under two professional indemnity policies held by the builder. The Court held that no claim giving rise to civil liability had been made and notified during the relevant policy periods, and the statutory liability did not exist at the time of an earlier notification. Further, as the liability was imposed strictly by statute, it did not trigger cover as a civil liability incurred in the conduct of a professional business.

Similarly, in *The Owners – Strata Plan No 87231 v 3A Composites GmbH (No 10)* [2026] FCA 351, the Federal Court dismissed a landmark class action against manufacturers of allegedly defective, combustible Alucobond PE and Alucobond Plus panels. The applicants claimed the products were not of merchantable quality pursuant to s 74D of the *Trade Practices Act 1974* (Cth) and s 54 of the *Australian Consumer Law*. The Court rejected the contention that the panels were inherently unfit or of an 'unacceptable quality' when manufactured. Expert evidence demonstrated that the products could be used safely in such a manner as to comply with the Building Code of Australia requirements.

This was ultimately fatal to the claim. The Court also held that merchantability and acceptable quality are assessed by reference to lawful use, not hypothetical unlawful use. Further, the relevant class of consumers comprised qualified professionals, which supported the finding that there was no relevant failure by the manufacturer to provide adequate warnings.

In *The University of Sydney v Multiplex Constructions Pty Ltd (No 4)* [2026] NSWSC 91, the NSW Supreme Court considered alleged defects in the façade panels. During the proceedings, the University sought to introduce new claims concerning combustible insulation and defects in the suspended ceiling. The Court allowed the amendments, finding that the University moved with reasonable despatch after becoming aware of the defect to and that no substantial prejudice would be suffered by the granting of leave.

Nuisance

The High Court's decision in *Hunt Leather Pty Ltd v Transport for NSW* [2025] HCA53 (December 2025) has clarified the framework for **private insurance claims**.

First, the plaintiff must establish substantial interference with the ordinary enjoyment of land. Second, if that threshold is met, the onus shifts to the defendant to justify its conduct by demonstrating that the use was 'common and ordinary' in the locality and that it was carried out in a manner that reasonably minimised the extent of interference. This represents an important clarification of nuisance law, reaffirming it as an effects-based, property-focused tort.

Subsequent cases highlight the practical application of this framework. In *Enkelmann v Stewart* [2026] QCA 67, liability was imposed despite the Defendant's levee constituting an ordinary farming activity, because it was not 'conveniently done' and failed to minimise downstream impacts. In *Owners – Strata Plan No 1954 v Ashdown Home Units Pty Ltd* [2026] NSWSC 298, the Court granted anticipatory injunctive relief where a real risk of interference was established.

Similarly, in *Allen v Yarra Valley Railway Inc* [2026] VSC 175, pleadings were reformulated to align with the High Court's approach. Even in cases where claims fail, such as *Clifffall Pty Ltd v Wollongong City Council* [2026] NSWSC 84, nuisance disputes are now analysed through the lens of interference with land rights, reflecting this broader doctrinal shift.

Perils exclusions / ISR

The **operation of perils exclusion in ISR policies** was considered in *Glass Recovery Services Pty Ltd (recs and mgrs apptd) (in liq) v Certain Underwriters at Lloyd's* [2026] VSC 314.

The Victorian Supreme Court upheld the insurer's declinature of a claim arising from the removal and destruction of glass stockpiles by the Environmental Protection Authority (**EPA**) at the insured's premises. The stockpiles became contaminated and developed 'hotspots' and the insured was issued with a show cause notice by the EPA, which, it failed to comply with. Glass Recovery Services liquidator later brought a claim under an ISR policy for the physical loss of the stockpiles, EPA clean-up costs, damage to other property at the premises and consequential loss.

In a 'straightforward' application of the *Wayne Tank* principle, the Court found that one proximate cause of the loss, namely the contamination of the stockpiles with organic material causing the 'hotspots', was excluded hence it did not matter that another proximate cause (the actions of the EPA in destroying the stockpiles), was not excluded. There was no indemnity available. The Court went on to consider several perils exclusions, including an exclusion for '*confiscation…by or under the order of (a public authority)*' as well as perils exclusions for loss '*occasioned by or happening through… contamination or pollution*', and for loss '*happening through … spontaneous combustion … (or) spontaneous fermentation or heating*'. On the application of each of these exclusions, the Court found that the insurer would have been entitled to decline cover in any event.

Breach / damages

Recent cases have also provided important guidance on **contractual breach and the assessment of damages in construction disputes.**

In *Singh v Ozzie Homes Building & Construction Pty Ltd* [2026] VSCA 25, the Victorian Court of Appeal overturned a County Court finding that the 'lock up' stage of a building contract had been achieved. The Court confirmed that a divisible, stage-based contract does not permit part performance to trigger a right to payment on the basis that completion is 'close enough'. Here, the builder had invoiced for the lock-up stage despite failing to install a front door. The Court held that plywood was not a 'door', as a door requires a movable barrier capable of being opened and closed.

Although some defects may not preclude stage completion, particularly where the contract contemplates later rectification, that was not the case here. The builder's subsequent suspension of works therefore constituted a breach, and its quantum meruit claim failed. Having wrongfully terminated the contract without achieving the relevant milestone, it was not unjust for the owners to retain the benefit of incomplete works for which no contractual entitlement to payment had arisen. The decision underscores the importance of strict compliance with contractual milestones.

In *Stanley v EWH Constructions West Pty Ltd* [2025] VSC 699, the Victorian Supreme Court addressed the limits of **rectification damages**.

Upholding a Victorian Civil and Administrative Tribunal decision, the Court confirmed that while the prima facie measure of damages for defective work is the cost of rectification, demolition and rebuilding will not be awarded where it is excessive and disproportionate to the benefit obtained.

The case involved a house constructed with a garage floor 130mm below the specified level, which prevented the owners from using the garage as intended to store a caravan. Although this constituted a breach, the Court held that the cost of demolition and rebuilding (at least $650,000) was unreasonable. Rectification must be both necessary to achieve contractual conformity and reasonable in the circumstances. Instead, the Court awarded damages for loss of amenity reflecting the lifestyle impact of requiring off-site caravan storage.

Recently released publications that might be of interest to you

Sparke Helmore publishes a number of publications, articles and insights throughout the year and a selection of the recent ones you might be interested in are below. You can subscribe to receive a number of these publications through our Preference Manager tool – click here to sign up.

Sparkes' Casualty Hub

Issue 2 - July 2026

View here

Public liability and personal injury exposures continue to evolve, with shifting behaviours, new environments and reshaping community expectations how incidents occur and how responsibility is assessed.

In that landscape, staying across trends in case outcomes is essential to understanding where risks are emerging and how courts are responding. Our newly launched Casualty Hub brings together insights that help you track these developments, anticipate change and support confident, well-informed decision-making across your portfolio.

(Re)Insurance and Regulation Focus

Week commencing 29 June 2026

View here

APRA has sharpened its focus on resilience and governance, issuing an open letter urging banks, insurers and superannuation funds to strengthen preparedness for geopolitical shocks, including sanctions, trade disruptions, cyber threats and disinformation. While no new requirements have been introduced, APRA has signalled closer supervision and targeted readiness assessments for higher-risk entities.

APRA has also progressed its governance reforms, releasing an updated draft CPS 510 for consultation. The proposed changes strengthen board governance, conflicts management and fit-and-proper requirements, while simplifying compliance by aligning standards and removing reporting duplication under the Financial Accountability Regime.

In other regulatory developments, APRA finalised changes to the capital treatment of longevity products, effective 1 July 2026, to better support retirement income products and reflect long-term liabilities. APRA and ASIC also announced FAR simplification measures that are expected to significantly reduce reporting obligations, while APRA launched an upgraded website to improve access to prudential guidance and regulatory resources.

Sparkebeat - Health Law Update

Issue 15

View here

The past six months have seen significant shifts across Australia's health and regulatory landscape, with heightened scrutiny of emergency response performance, new Ombudsman data on patient safety pressures, strengthened infection control ambitions, Ahpra's progress on sexual misconduct transparency, and emerging risks ranging from AI related claim pitfalls to long tail litigation and the safe integration of AI into medical devices.

When a director's $3.7m cladding bill falls through the cracks of his PI cover

15 May 2026

If you insure construction industry participants, broker their cover, or are a director of a building company, the Supreme Court of Victoria has handed down a relevant decision involving a design and construct contractor.

View here

Victorian Court of Appeal clarifies stage completion, wrongful suspension, and quantum meruit in domestic building contracts

14 May 2026

The Victorian Court of Appeal has delivered an important decision for the residential construction sector.

View here

Interpreting milestone approval preconditions: *ASD Corporation Australia Pty Ltd v Babicka*

The Victorian Court of Appeal has refused leave to appeal in *ASD Corporation Australia Pty Ltd v Babicka* [2026] VSCA 27, upholding Garde J's decision to quash three adjudication determinations made under the *Building and Construction Industry Security of Payment Act 2002* (Vic).

View here

Directors are back in the hot seat on climate risk

Following the International Court of Justice advisory opinion on States' climate related obligations and the resulting consequences for company directors, this article outlines the key implications for directors in mining and other high emitting sectors and the potential impacts for D&O insurers. It highlights the growing likelihood of regulatory and litigious climate related action and the possibility that these non-binding opinions may influence how courts assess corporate conduct.

View here

Latest news from our team

It has been an exciting period of growth and momentum for our team. We added six new partners, whose depth of expertise strengthen our national capability.

Several talented lateral hire partners have joined us over the past 12 months. Our Specialty Lines team has welcomed Mark Gray-Spencer, Sophie Pennington and Patrick Tuohey while our Casualty team has welcomed Ryan Francis.

We also added outstanding home grown talent to our partnership, with Stephanie Barclay and Alexandra Kuczerawy becoming Partners from 1 July 2026.

You can read more about these new partners and their areas of expertise below.

Mark Gray-Spencer

Mark Gray-Spencer joined our Specialty Lines Insurance team in Sydney. He joined us from GSG Legal, a specialist aviation and aerospace firm where he was the sole owner and Managing Principal.

Under his leadership, GSG Legal became one of the most respected aviation and aerospace insurance practices in the Asia Pacific region. Mark is consistently recognised in Doyle's Guide as a leading lawyer in this field and has played an active role in the Aviation Law Association of Australia and New Zealand, including serving as its President.

Mark advises on a broad range of aviation and aerospace-related matters, including hull and passenger liability claims, regulatory matters, personal injury, property damages (including third party property damage on the ground), personal accident, cargo, war risks, policy coverage and policy wordings.

Sophie Pennington

Sophie Pennington, a highly regarded health law specialist, joined our Melbourne Speciality Lines team. Sophie has significant expertise in advising public hospitals through the Victorian Managed Insurance Authority, the Victorian Government's insurer and risk adviser, medical and other health practitioners through their medical defence organisations, private hospitals and specialty practices, including diagnostic imaging and pathology services, through their commercial insurers.

Sophie acts in defence of both litigated and unlitigated civil claims, coronial investigations and inquests and disciplinary proceedings. She regularly provides guidance to insurers on indemnity, contribution and apportionment, and issues of risk management across the health portfolio. Sophie has been recognised as a Leading Medical Negligence and Malpractice Lawyer (Defendant) in Doyle's Guide.

Upcoming London visits by members of our team

David Kerwin and Dino Liistro will be in London during July and August 2026 and are looking forward to catching up with clients and contacts during this visit.

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Patrick Tuohey

Patrick Tuohey joined our Melbourne Specialty Lines team. Patrick specialises in insurance law, predominantly in the professional indemnity space. He defends claims against a wide range of professionals, with a particular focus on claims against solicitors and barristers, as well as accountants, mortgage brokers, real estate agents, and those in the construction industry. Patrick's practice includes both large and small claim matters in all Victorian courts and tribunals, and in federal jurisdictions. He also provides coverage advice to insurer clients on a range of policies and insurance issues.

Patrick is consistently recognised for his expertise in Doyle's Guide – Preeminent category for Professional Indemnity Lawyers in Victoria – and also in Best Lawyers in the areas of insurance law, legal malpractice litigation, and professional malpractice litigation. He regularly publishes articles on his area of specialisation and presents at seminars and CPD sessions around risk management for professionals.

Ryan Francis

Ryan Francis joined our Sydney Casualty team in May 2026. Ryan specialises in product and public liability matters, including worker to worker injuries, with extensive experience across general lines of insurance and providing commercially-focused coverage advice. He is highly skilled in commercial litigation and has deep expertise in complex liability disputes across a range of sectors, primarily in construction, manufacturing and retail.

His work in these sectors includes acting for large manufacturing companies and national retailers in defending personal injury claims and managing allegations of product defects. Ryan also oversees a significant portfolio of matters for schools and faith-based organisations, advising on historical claims and a broad range of personal injury matters.

Ryan has been recognised in Best Lawyers in Australia for his expertise in Insurance Law and Litigation each year since 2019 and was recommended in Doyle's Guide for public liability defendant lawyers in 2025.

Stephanie Barclay

Stephanie Barclay joined the Sparke Helmore partnership on 1 July 2026. She has extensive experience across commercial litigation and dispute resolution, with a particular focus on professional indemnity and solicitors' negligence. Stephanie regularly assists clients with complex disputes involving allegations of professional error, breaches of duty and issues requiring detailed analysis of legal, procedural and evidentiary frameworks.

Stephanie advises insurers and insured professionals on a wide range of technical issues arising in PI and solicitors' negligence matters, including liability assessments, indemnity questions, policy interpretation, risk management considerations and the strategic handling of claims. Clients value working with Stephanie for her calm, pragmatic approach and her ability to distil complex issues into clear, practical guidance. She also has significant experience managing matters involving self represented and vexatious litigants, ensuring disputes progress efficiently and proportionately.

Alexandra Kuczerawy

Alexandra Kuczerawy joined the Sparke Helmore partnership on 1 July 2026. Alexandra is an experienced insurance lawyer with a broad litigation background, having acted for both claimants and insurers in Australia and overseas. Since her admission in 2012, Alexandra has practised exclusively in insurance law, representing national and international insurers in public liability, property damage, product liability and intentional tort matters, as well as coverage disputes. Alexandra has considerable litigation experience and has managed complex disputes for retailers, manufacturers, and builders. Alexandra also manages historical abuse claims for schools, religious institutions, government agencies and not for profit organisations.

Alexandra has completed secondments with a specialist underwriting agency and an international insurer, which has given her an in-depth understanding of the commercial interests and operational needs of insurers and their stakeholders. Alexandra works closely with her clients to ensure that her approach and management of claims aligns with their interests and values.

Our Specialty Lines and Casualty Partners


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