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Articles

[When is a fraudulent claim not a fraudulent claim? — When it's accompanied by a fraudulent device or collateral lie](#)

— *Jenny Thornton*

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At common law, if an insured made a fraudulent claim, the insurer was entitled to not only repudiate the claim, even if part or all of it was a valid claim, but also to avoid the contract ab initio. This fraudulent claim rule could bring about anomalous situations. This is because there can be various categories of fraudulent claims. At one end of the spectrum the whole of the claim may have been fabricated. At the other end of the spectrum there may be a genuine claim, but the insured has dishonestly embellished or sought to support the claim with false evidence, known as fraudulent devices. In Australia, the Insurance Contracts Act 1984 (Cth) ('ICA') precludes the insurer from avoiding the contract in response to a fraudulent claim but fails to define what is a fraudulent claim. The current position in Australia is that a valid claim, supported by fraudulent devices, is a fraudulent claim, entitling the insurer to deny the entirety of the claim. However, the position in the United Kingdom ('UK') since 2016 has been that an otherwise valid claim, supported by fraudulent devices, does not entitle the insurer to deny the valid claim. This issue has not been considered by any appellate court in Australia since 2001 and we wait to see whether the courts of Australia will adopt the approach that has been taken in the UK.

[Compulsory liability insurance for drones in Australia—](#)

Julie-Anne Tarr, Maurice Thompson and Anthony Tarr

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Development of a comprehensive national policy that will allow Australia to benefit from the considerable opportunities provided by drones and other emerging aviation technologies is complex and is the subject of a recent Policy Paper issued in Australia. Emerging disruptive technologies such as autonomous vehicles and drones create serious challenges as regulators must endeavor to assess sometimes novel and indeterminate risks and introduce a regulatory framework that is commensurate with that risk. The regulatory intervention ideally needs to tread a path that does not stifle innovation and is not so 'heavy handed' as to unnecessarily impact the considerable opportunities provided by emerging aviation technologies.

Increasing deployment of drones in industrial and commercial contexts and particularly their foreshadowed usage in urban transport and delivery in high density population areas brings into sharp focus various risks and associated liability issues.

Globally there are differences in opinion or approach in relation to compulsory third-party liability insurance for drones. This is not surprising. Inevitably there will be significant variations in drone

regulations and insurance requirements from country to country as regulatory authorities struggle to adapt current and prospective laws to new technology and to national social, economic and political priorities.

This article considers current approaches taken to this issue in several jurisdictions and examines the arguments for and against with particular reference to the recent Policy Paper. It is argued that a national policy that omits a considered and effective implementation of compulsory liability insurance is ignoring a vital dimension in managing the risks and impacts associated with the use and deployment of drones and other emerging aviation technologies.

In the particular case of drones, it is suggested that an adaptation, with appropriate modifications, of relevant compulsory third-party motor vehicle schemes with associated nominal defendant arrangements or of other accident compensation arrangements could provide a tried and extensively tested pathway to resolving problems flowing from unregistered and/or uninsured drones.

Insurance policy exclusions for ‘flood’: *LMT Surgical* the high water mark after *Landel*?

— *Patrick Mead*

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An insurer bears the onus in establishing that a particular claim falls within an exclusion clause.

In relation to exclusions of damage caused by flood, as was observed by Jackson J in *LMT Surgical Pty Ltd v Allianz Australia Insurance Ltd*, the scope of the cover or exclusion of damage caused by flood, depends on the specific language deployed in the particular policy on the subject matter and is not determined by cases decided upon the meaning of other clauses in policies which deploy other language or by broad statements as to purpose or object.

Does my Western Australian Employer Indemnity Policy cover my contractual liability to indemnify another?

— *Mark Greenland*

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Employers often give contractual indemnities to other parties, such as principals and lessors. Liability insurance policies generally exclude contractual liability. The standard form, Western Australian Employer Indemnity Policy does not expressly exclude contractual liability. Employers occasionally call on their employers’ indemnity insurer to cover these third party contractual indemnity liabilities. This article discusses the conflicting lines of authority on this question and ventures some observations on how a lawyer might manage such a case. This monograph concerns a typical three level hierarchy with a principal (or some other third person), an employer and a ‘worker’. These levels are of course connected by contracts. The particular issue involves a contractual indemnity from the employer to the principal/third person. Usually, the worker has been injured at work. The injury is found to be due to the negligence of the principal/third person and possibly also the employer. The question is whether the employers’ indemnity policy will cover the employer for its liability to the principal/third person under the contractual indemnity.