

Carter Newell LAWYERS

Professional Liability Guide



2nd edition

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**Doyle's Guide to the Australian Legal Profession*

NB: Due to the extensive nature of this publication and the pace of reforms and judicial consideration there may be an absence of reference to a recent case or some references to legislation and its provisions which are no longer current, yet proclaimed, amended or repealed. This publication attempts to draw out the most significant points in the relevant legislation. Whilst all care has been taken to ensure that the most up to date information has been included, not all cases or aspects of the legislation have been considered. The material contained in this publication is in the nature of general comment only, and neither purports nor is intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering and, if necessary, taking appropriate professional advice upon his or her own particular circumstance.

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2nd Edition

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TABLE OF CONTENTS

Preface	ix
Table of Cases	x
Table of Legislation	xix
List of Abbreviations	xxi
CHAPTER 1 – DUTIES	1
Contract	1
Express terms	1
Implied terms	5
Implied retainers	8
Tort (negligence)	9
Duty to clients	9
Duty to third parties	11
Pure economic loss	12
Breach	14
Causation	16
Statute	20
Misleading or deceptive conduct	20
False or misleading representations	26
CHAPTER 2 – CONTRACTUAL INDEMNITIES AND LIMITATIONS	28
Contractual indemnities	28
What is a contractual indemnity?	28
Types of indemnities	28
Interpreting indemnity clauses	29
Contractual limitations	31
CHAPTER 3 – DEFENCES	33
Contributory negligence	33
Proportionate liability	34
Apportionable claims	34
Concurrent wrongdoer	35
Exclusions	36
Consequences of being a ‘concurrent wrongdoer’	37
Determining liability	37
Application to contractual breaches	40
Effect of settlement by one concurrent wrongdoer	41
Extension beyond the courts	42
Peer professional opinion	43
Conduit defence	47

TABLE OF CONTENTS

Advocate’s immunity	48
CHAPTER 4 – QUANTUM	51
Damages on a ‘no transaction’ basis	52
Damages on an ‘alternative transaction’ basis	53
Which assessment is appropriate?.....	55
Impact of the effect of a decline in the market on quantum	56
Damages for misleading or deceptive conduct	56
Damages for loss of valuable opportunity	57
CHAPTER 5 – WHAT IS A PROFESSIONAL/PROFESSIONAL DUTY?	59
Development of the meaning of ‘professional’	59
<i>FAI v Gold Coast City Council</i>	59
A broader approach: <i>GIO v Newcastle City Council</i>	60
<i>Suncorp Metway v Landridge</i>	61
‘Breach of professional duty’ versus ‘Liability in connection with professional business’	64
Exclusion clauses.....	67
CHAPTER 6 – CLAIM, CIRCUMSTANCE AND NOTIFICATION	71
What is a claim?.....	71
What is a circumstance?	73
What is a notification of a claim or circumstance?.....	73
Obligation to notify	74
Adequacy of the notification.....	76
Failure to notify of a claim or circumstance.....	77
CHAPTER 7 – CAUSAL PHRASES	83
What are causal phrases?	83
What does ‘proximate cause of loss’ mean?	83
‘Caused by’ and the impact of ‘directly’ and ‘indirectly’.....	85
‘Arising out of’.....	86
‘Arising from’.....	87
‘Resulting from’ and ‘as a result of’	88
‘Attributable to’	88
‘Occasioned by or happening through’	89
‘In respect of’	90
‘In relation to’	91
‘In connection with’	91

TABLE OF CONTENTS

CHAPTER 8 – NON-DISCLOSURE AND MISREPRESENTATION	93
Non-disclosure	93
Who is an insured for disclosure purposes?	93
Who is not an insured for disclosure purposes?	94
When will a ‘matter’ be ‘known’ to an insured?.....	94
Is the ‘matter’ relevant to the decision of the insurer whether or not to accept the risk?	95
When will an insured know a ‘matter’ is ‘relevant’ to the insurer’s decision?.....	95
When will a reasonable person in the circumstances be expected to know a matter is relevant to the insurer’s decision?	96
Matters that do not need to be disclosed	96
Notice of the duty of disclosure to the insured.....	97
Misrepresentations.....	97
Consequences of failing to comply with the duty of disclosure.....	97
CHAPTER 9 – EXCLUSIONS	99
Prior known claims/circumstances	99
Insured versus insured (related parties) exclusion	100
Conduct.....	101
Criminal/unlawful conduct.....	101
Dishonest, reckless, or fraudulent conduct.....	102
Fines and penalties	102
Contractual/assumed liability	103
Other exclusions.....	103
CHAPTER 10 – DEFENCE COSTS.....	104
The advancement of defence costs	104
CHAPTER 11 – AGGREGATION CLAUSES.....	111
General principles	111
Specific policy wordings.....	112
Originating cause.....	112
Event or occurrences.....	112
Series of events or occurrences.....	113
Related series of acts or omissions.....	113
Similar acts or omissions in a series of related matters or transactions	114
Similar act or omission	114
In a series of related matters or transactions	114

TABLE OF CONTENTS

CHAPTER 12 – ALLOCATION OF LOSS	116
CHAPTER 13 – DUAL INSURANCE	117
What is dual insurance?	117
Common insured	119
Same risk	119
Both insurers must be liable	120
Making and defending claims for contribution	121
Calculating contribution	122
CHAPTER 14 – OTHER INSURANCE	124
CHAPTER 15 – PRIOR WRITTEN CONSENT	126
Section 54 of the ICA	126
Declinature of cover or ‘prudent uninsured’	128
Section 41 of the ICA	130
CHAPTER 16 – SUBROGATION	132
The doctrine of subrogation	132
Sources of the right of subrogation	132
Subrogated rights	132
Prejudice by the insured	133
Distribution of the proceeds of a subrogated recovery action	133
Limitations on an insurer’s right of subrogation.....	134
Contractual arrangements between an insured and a third party	134
Waiver of subrogation.....	134
Provisions of the Insurance Contracts Act 1984 (Cth)	134
Practical considerations	135
CHAPTER 17 – COMMON INTEREST PRIVILEGE	136
Legal professional privilege and waiver	136
Establishing a common interest	136
Determining whether privilege has been waived	138
Step 1: Is the document privileged?.....	138
Step 2: Was the relationship between the parties sufficiently close that the transmission of the documents should not be held to amount to an implied waiver of the privilege?	138
Step 3: Is it reasonable in the circumstances to conclude that there was an implied waiver of privilege?	138
Methods of maintaining privilege	139

TABLE OF CONTENTS

CHAPTER 18 – THIRD-PARTY BENEFICIARIES	140
Common law	140
Section 48 of the ICA.....	140
Who is a third-party beneficiary?.....	141
Obligations of a third-party beneficiary	141
Defences available to the insurer.....	141
Other provisions relating to third-party beneficiaries.....	142

PREFACE

This guide has been prepared to assist underwriters, claims managers, brokers and their professional clients and advisers to assess the potential exposure to claims that fall within the scope of professional indemnity insurance.

As a result of new cases that impact the law applicable to professionals in Australia, this guide has been updated to address the most significant recent changes.

In the first part of the guide, we have again examined the evolving nature of the duties and liability exposure faced by professionals at common law and under statute. The most contentious and litigated areas continue to include pure economic loss, advocate's immunity and proportionate liability.

The second part of the guide focuses on the scope and pitfalls of professional indemnity insurance, which still has at its heart the *Insurance Contracts Act 1984* (Cth). That legislation continues to give rise to extensive litigation and evolving judicial interpretations of claims made and notified policies and their exclusions.

As the scope of the duties owed by professionals and the availability of cover are so complex and important, it is certain that more changes will emerge and it will become necessary to prepare a further edition of this guide in the coming years. We will therefore continue to closely monitor developments that impact the common law and legislation.

The analysis of key cases in this significantly expanded and updated edition will afford a greater understanding of the approach taken by the courts to claims and policy wordings and will be a useful guide to assist your underwriting practices or claims management.

We welcome any questions or feedback you may have, as we value the opportunity to discuss these issues.

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TABLE OF CASES

<i>470 St Kilda Road v Robinson</i> (2013) 308 ALR 411; [2013] FCA 1420	68
<i>ABN AMRO Bank NV v Bathurst Regional Council</i> (2014) 309 ALR 445; [2014] FCAFC 65	141
<i>ACCC v Dukemaster Pty Ltd</i> [2009] FCA 682	21, 26
<i>ACCC v Gary Peer and Associates Pty Ltd</i> (2005) 142 FCR 506; [2005] FCA 404	26
<i>Adeels Palace Pty Ltd v Moubarak; Adeels Palace Pty Ltd v Bou Najem</i> (2009) 239 CLR 420; [2009] HCA 48	15
<i>Advance (NSW) Insurance Agencies Pty Ltd v Matthews</i> (1989) 166 CLR 606; [1989] HCA 22	93
<i>AIG Europe v OC320301 (formerly the International Law Partnership LLP)</i> [2015] EWHC 2398	114
<i>AIG Europe Ltd v OC320301 LLP</i> [2016] EWCA Civ 367	114
<i>AIG Europe Ltd v Woodman & Ors</i> [2017] UKSC 18	114
<i>Albion Insurance Co Ltd v GIO (NSW)</i> (1969) 121 CLR 342; [1969] HCA 55	117, 119
<i>Alcoa Portland Aluminium Pty Ltd v Husson</i> (2007) 18 VR 112; [2007] VSCA 209	38
<i>Alexander & Ors v Cambridge Credit Corporation Ltd & Anor</i> (1987) 9 NSWLR 310	84
<i>Allianz Australia Insurance Ltd v Certain Underwriters at Lloyd's of London</i> [2019] NSWCA 271	118
<i>American Home Insurance Company v Kirby</i> [2003] NSWCA 395	76
<i>Amlin Corporate Member Ltd v Austcorp Project No 20 Pty Ltd</i> (2014) 311 ALR 222; [2014] FCAFC 78 ..	72
<i>Andar Transport Pty Ltd v Brambles Ltd</i> (2004) 217 CLR 424; [2004] HCA 28	28
<i>Ankar Pty Ltd v National Westminster Finance (Australia) Ltd</i> (1987) 162 CLR 549; [1987] HCA 15	29
<i>Antico v CE Health Casualty and General Insurance Ltd</i> (1996) 38 NSWLR 68	76, 126
<i>Antico v Heath Fielding Australia Pty Ltd</i> (1997) 188 CLR 652; [1997] HCA 35	126
<i>Aquagenics Pty Ltd v Break O-Day Council</i> (2010) 20 Tas R 239; [2010] TASFC 3	42
<i>Aquagenics Pty Ltd v Break O'Day Council (No 2)</i> [2009] TASSC 89	42
<i>Artistic Builders Pty Ltd v Nash</i> [2010] NSWSC 1442	3
<i>Arturi v Zupps Motors Pty Ltd</i> (1980) 33 ALR 243; [1980] FCA 194	8
<i>Asahi Holdings Australia Pty Ltd v Pacific Equity Partners Pty Ltd (No. 2)</i> (2014) 312 ALR 403; [2014] FCA 481	137
<i>Astley v Austrust</i> (1999) 197 CLR 1; [1999] HCA 6	6
<i>Attwells v Jackson Lalic Lawyers Pty Ltd</i> (2016) 259 CLR 1; [2016] HCA 16	49
<i>Av8 Air Charter Pty Ltd v Sydney Helicopters Pty Ltd</i> [2014] NSWCA 46	38
<i>Avant Insurance Ltd v Burnie</i> [2021] NSWCA 272	81
<i>AWB Ltd v Cole (No 5)</i> (2006) 155 FCR 30; [2006] FCA 1234	137
<i>Ayoub & Anor v Lombard Insurance Co (Aust) Pty Ltd</i> (1989) 97 FLR 284	95
<i>Axa Reinsurance v Field</i> [1996] 1 WLR 1026	112
<i>Badenach v Calvert</i> (2016) 257 CLR 440; [2016] HCA 18	11, 19
<i>Bacon v McBride</i> (1984) 51 BCLR 228	105
<i>Bank of Queensland Ltd v Chartis Australia Insurance Ltd</i> [2012] QSC 319	106, 108
<i>Bank of Queensland Ltd v Chartis Australia Insurance Ltd</i> [2013] QCA 183	106, 110
<i>Barnes v QBE Insurance (International) Limited</i> [2011] NZHC 285	75
<i>Bartier Perry Pty Ltd v Paltos</i> [2021] NSWCA 158	22
<i>Bass v Perpetual Trustee Company Limited</i> (1999) 198 CLR 334; [1999] HCA 9	108
<i>Bateman v Slatyer</i> (1987) 71 ALR 553; [1987] FCA 81	21, 23
<i>Boulderstone Hornibrook Engineering Pty Limited v Gordian Runoff Limited</i> [2006] NSWSC 223	88
<i>Bayer Australia Ltd v Kemcon Pty Ltd</i> (1991) 6 ANZ Insurance Cases ¶161-026	86
<i>Beach Petroleum NL v Kennedy</i> (1999) 48 NSWLR 1; [1999] NSWCA 408	4
<i>Bergman v Haertsch</i> [2000] NSWSC 528	6
<i>BHP Billiton (Olympic Dam) Corporation Pty Ltd v Steuler Industrierwerke GmbH (No 2)</i> [2011] VSC 659	54
<i>BP Petroleum Development Ltd v Esso Petroleum Co Ltd</i> [1987] SLT 345	120

TABLE OF CASES

<i>Brighton Australia Pty Ltd v Multiplex Constructions Pty Ltd</i> [2018] VSC 246.....	32
<i>British Traders' Insurance Co v Monson</i> (1964) 111 CLR 86; [1964] HCA 24	133
<i>Broadhurst v Millman</i> [1976] VR 208	38
<i>Broadlands Properties Ltd & Anor v Guardian Assurance Co Ltd</i> [1983] NZHC 185.....	130
<i>Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288</i> (2014) 254 CLR 185; [2014] HCA 36...	13
<i>Bryan v Maloney</i> (1995) 182 CLR 609; [1995] HCA 17.....	12
<i>Burke v LFOT Pty Ltd</i> (2002) 209 CLR 282; [2002] HCA 17.....	9, 117
<i>Burke v LFOT Pty Ltd</i> (2000) 178 ALR 161; [2000] FCA 1155.....	9
<i>Burns v MMI-CMI Insurance Ltd</i> (1995) 8 ANZ Ins. Cases 61–287.....	95
<i>Butcher v Lachlan Elder Realty Pty Ltd</i> (2004) 218 CLR 592; [2004] HCA 60.....	24, 47
<i>Butler v Egg and Egg Pulp Marketing Board</i> (1966) 114 CLR 185; [1966] HCA 38	51
<i>CA and MEC Mclnally Nominees Pty Ltd v HTW Valuers (Brisbane) Pty Ltd</i> [2009] 2 Qd R 1; [2001] QSC 388	78, 80
<i>Caledonia North Sea Ltd v British Telecommunications plc</i> [2002] 1 Lloyd's Rep 553; [2002] UKHL 4 ...	120
<i>Caltex Oil (Australia) Pty Ltd v The Dredge 'Willemstad'</i> (1976) 136 CLR 529; [1976] HCA 65.....	12
<i>Canada Rice Mills Ltd v Union Mariner and General Insurance Co</i> [1941] AC 55; [1940] UKPC 56	85
<i>Carmody v Priestly & Morris Perth Pty Ltd</i> (2005) 30 WAR 318; [2005] WASC 120.....	6
<i>Cassa Bedding Pty Ltd v Insurance Australia Ltd</i> [2022] QSC 1	102
<i>Cassidy v Leslie</i> [2010] NSWSC 742	72
<i>Cavenham Pty Ltd v Robert Bax & Associates</i> [2011] QSC 348	10
<i>CE Health Casualty & General Insurance Ltd v Grey</i> (1993) 32 NSWLR 25	94
<i>CE Heath Casualty & General Insurance Ltd & AMP General Insurance Ltd v Pyramid Building Society (in liq)</i> [1997] 2 VR 256.....	71
<i>Central Highlands Regional Council v Geju Pty Ltd</i> [2018] 3 Qd R 550; [2018] QCA 38	38
<i>CGU Insurance Ltd v AMP Financial Planning Pty Ltd</i> (2007) 235 CLR 1; [2007] HCA 36	129
<i>CGU Insurance Limited v Corrections Corporation of Australia Staff Superannuation Pty Ltd</i> [2008] FCAFC 173.....	77
<i>CGU Insurance Limited v Porthouse</i> (2008) 235 CLR 103; [2008] HCA 30.....	73, 99
<i>Chemetics International Ltd v Commercial Union Assurance Co. of Canada</i> (1984) 11 DLR (4th) 754	59
<i>Child and Adolescent Health Service v Mabor by next friend Kelei</i> (2019) 55 WAR 208; [2019] WASCA 151	45
<i>Chubb Insurance Company of Australia Limited v Robinson</i> (2016) 239 FCR 300; [2016] FCAFC 17	69
<i>VL Credits Pty Ltd v Switzerland General Insurance Co Ltd</i> [1990] VR 938.....	141
<i>Commercial Union Insurance Company Limited v Willetts Radio & TV Limited</i> (1985) 3 ANZ Insurance Cases ¶160-677	129, 131
<i>Cooper v Farmers' Mutual Insurance Society</i> [2001] OTC 652	104
<i>Co-operative Bulk Handling v Jennings Industries Ltd</i> (1996) 17 WAR 257.....	119
<i>Commonwealth v Amann Aviation Pty Ltd</i> (1991) 174 CLR 64; [1991] HCA 54.....	52
<i>Commonwealth Bank of Australia v Baltica Insurance Co Ltd</i> (1992) 28 NSWLR 579.....	142
<i>Countrywide Assured Group plc v Marshall</i> [2003] 1 All ER 237	112
<i>Cummings v Rundle</i> (1993) 41 FCR 559; [1993] FCA 190	23
<i>D'Orta-Ekenaike v Victoria Legal Aid</i> (2005) 223 CLR 1; [2005] HCA 12.....	49
<i>Dalgety & Co Ltd v AMP Society</i> (1908) VLR 481	97
<i>Darlington Futures Limited v Delco Australia Pty Ltd</i> (1986) 161 CLR 500; [1986] HCA 82.....	31
<i>Deans v Maryborough Christian Education Foundation Ltd</i> [2019] QCA 75	16
<i>Demagogue Pty Ltd v Ramensky & Anor</i> (1992) 39 FCR 31; [1992] FCA 851.....	25
<i>De Pasquale Bros Pty Ltd v Cavanagh Biggs & Partners</i> [2000] 2 Qd R 461; [1999] QSC 171	6
<i>Dickinson v Motor Vehicle Insurance Trust</i> (1987) 163 CLR 500; [1987] HCA 49	83, 86

TABLE OF CASES

<i>Distillers Co Bio-Chemicals (Aust) Pty Ltd v Ajax Insurance Co Ltd</i> (1974) 130 CLR 1; [1974] HCA 3	88, 113, 129
<i>Dobler v Kenneth Halverson; Dobler v Kurt Halverson (by his tutor)</i> (2007) 70 NSWLR 151; [2007] NSWCA 335	46
<i>Donellan v Watson</i> (1990) 21 NSWLR 335	50
<i>Doppstadt Australia Pty Ltd v Lovick & Son Developments Pty Ltd</i> [2014] NSWCA 158	55
<i>Drayton v Martin</i> (1996) 67 FCR 1; [1996] FCA 389	66, 72, 91, 131
<i>Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd</i> [1915] AC 847; [1915] UKHL 1	140
<i>Duchess of Argyll v Beuselinck</i> [1972] 2 Lloyds Rep 172	7
<i>Dwyer v Long</i> (1992) 58 SASR 102	72
<i>Einfeld v HIH Casualty and General Insurance Ltd</i> (1999) 166 ALR 714; [1999] NSWSC 867	80
<i>Elders Trustee and Executor Co Ltd v E G Reeves Pty Ltd</i> (1987) 78 ALR 193; [1987] FCA 603	21
<i>Ellington v Heinrich Constructions Pty Ltd</i> [2004] QCA 475	29
<i>East End Real Estate v CE Heath Casualty & General Insurance Ltd</i> (1991) 25 NSWLR 400	78, 80
<i>Eastern Suburbs Leagues Club Ltd v Royal & Sun Alliance Insurance Australia Ltd</i> [2003] QSC 413	89
<i>Esanda Finance Corp Ltd v Peat Marwick Hungerfords</i> (1997) 188 CLR 241; [1997] HCA 8	12, 14
<i>Esanda v Colonial Mutual</i> (1993) 217 ALR 180; [1993] VicSC 576	119
<i>Esso Australia Resources Ltd v Commissioner of Taxation of the Commonwealth of Australia</i> (1999) 201 CLR 49; [1999] HCA 67	136
<i>Esso Petroleum Co Ltd v Hall Russell & Co Ltd (The Esso Bernicia)</i> [1989] AC 643	132
<i>Estate of Watson v Conolly</i> [2012] NSWSC 741	141
<i>Evans v Sirius Insurance Co Ltd</i> [1986] VicSC 475	96
<i>FAI General Insurance Co Ltd v Australian Hospital Care Pty Ltd</i> (1999) 153 FLR 448; [1999] QCA 243	74
<i>FAI General Insurance Company Ltd v Australian Hospital Care Pty Ltd</i> (2001) 204 CLR 641; [2001] HCA 38	78, 80
<i>FAI General Insurance Co Ltd v Gold Coast City Council</i> [1995] 2 Qd R 341; [1992] QCA 443	1, 59, 68
<i>FAI General Insurance Co Limited v Hendry Rae & Court</i> (1993) 10 WAR 322	75, 98
<i>FAI General Insurance Co Ltd v McSweeney</i> [1998] FCA 1789	75
<i>Farrow Mortgage Services Pty Ltd v Webb</i> (1996) 39 NSWLR 601; [1996] NSWSC 259	136, 139
<i>Ferrcom Pty Ltd v Commercial Union Assurance Co of Australia Ltd</i> (1993) 176 CLR 332; [1993] HCA 5	127
<i>French v Sestili</i> (2007) 98 SASR 28; [2007] SASC 241	91
<i>Fitzpatrick v Job t/as Jobs Engineering</i> [2007] WASCA 63	67
<i>Fox v Everingham and Howard</i> (1983) 50 ALR 337; [1983] FCA 277	3, 5
<i>Foxtel Management Pty Ltd v Australian Video Retailers Association Ltd</i> (2004) 214 ALR 554; [2004] FCA 1613	27
<i>Gardam v George Wills & Co Ltd [No 1]</i> (1988) 82 ALR 415; [1988] FCA 289	47
<i>Gates v City Mutual Life Assurance Society Ltd</i> (1986) 160 CLR 1; [1986] HCA 3	22, 51
<i>GEJ & MA Geldard Pty Ltd v Mobbs & Ors (No 2)</i> [2012] 1 Qd R 120; [2011] QSC 33	36
<i>Geju Pty Ltd v Central Highlands Regional Council</i> [2016] QSC 279	38
<i>General Omnibus Company Ltd v London General Assurance Company Ltd</i> [1936] IR 596	129, 131
<i>Gett v Tabet</i> (2009) 254 ALR 504; [2009] NSWCA 76	18
<i>Giannarelli v Wraith</i> (1988) 165 CLR 543; [1988] HCA 52	48
<i>Gillespie Brothers & Co Ltd v Roy Bowles Transport Ltd</i> [1973] QB 400	29
<i>GIO General Ltd t/as GIO Australia v Newcastle City Council</i> (1996) 38 NSWLR 558; [1996] NSWSC 322	60
<i>Global Sportsman Pty Ltd v Mirror Newspapers Ltd</i> (1984) 2 FCR 82; [1984] FCA 167	21
<i>Godfrey Spowers (Victoria) Pty Ltd v Lincoln Scott Australia Pty Ltd</i> (2008) 21 VR 84; [2008] VSCA 208	41

TABLE OF CASES

<i>Google Inc v Australian Competition and Consumer Commission</i> (2013) 249 CLR 435; [2013] HCA 1	48
<i>Government Insurance Office (NSW) v Council of the City of Penrith</i> (1999) 102 LGERA 102; [1999] NSWCA 42	61, 68
<i>Government Insurance Office (NSW) v Crowley</i> [1975] 2 NSWLR 78	121
<i>Gorczyński v W & FT Osmo Pty Ltd</i> (2009) 258 ALR 189; [2009] NSWSC 693	142
<i>Gorczyński v W & FT Osmo Pty Ltd</i> (2010) 77 NSWLR 62; [2010] NSWCA 163	142
<i>Gosford City Council v GIO General Ltd</i> [2002] NSWSC 511	80
<i>Gosford City Council v GIO General Ltd</i> (2003) 56 NSWLR 542; [2003] NSWCA 34	81
<i>Government Insurance Office (NSW) v R J Green & Lloyd Pty Ltd</i> (1966) 114 CLR 437; [1966] HCA 6	84, 87
<i>Grande Enterprises Ltd v Pramoko</i> [2014] WASC 294	23
<i>Gregory Spencer Ward t/as Ward's Stock Transport v Watson</i> [2021] WASCA 44	38
<i>GRE Insurance Ltd v QBE Insurance Ltd</i> [1985] VR 83	120
<i>Grinham v Tabro Meats Pty Ltd</i> [2012] VSC 491	43
<i>Gunns Forest Products Ltd v North Insurances Ltd & Ors</i> [2006] VSCA 105	90
<i>Hadgelias Holdings and Waight v Seirlis</i> [2014] QCA 325	36
<i>Hannaford (t/as Torrens Valley Orchards) v Australian Farmlink Pty Ltd</i> [2008] FCA 1591	21
<i>HAP2 Pty Ltd v Bankier</i> (2020) 93 MVR 256; [2020] QCA 152	18
<i>Hastie Group Ltd (in liq) v Moore (t/as Deloitte Touche Tohmatsu)</i> (2016) 339 ALR 635; [2016] NSWCA 305	136
<i>Hatfield v Health Insurance Commission</i> (1987) 15 FCR 487; [1987] FCA 462	91
<i>Hawkins v Clayton</i> (1988) 164 CLR 539; [1988] HCA 15	10, 12
<i>Haydon v Lo & Lo (a Firm)</i> [1997] 1 WLR 198; [1997] UKPC 2	112
<i>Hedley Byrne & Co Ltd v Heller & Partners Ltd</i> [1964] 2 All ER 575; [1963] UKHL 4	11
<i>Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd</i> (1988) 39 FCR 546; [1988] FCA 42	22, 25
<i>Her Majesty's Attorney-General suing in respect of the Ministry of Agriculture and Forestry v AON New Zealand Limited</i> [2008] NZHC 479	73, 75, 99
<i>Heydon v NRMA Ltd</i> (2000) 51 NSWLR 1; [2000] NSWCA 374	7, 10
<i>Hi-Fert Pty Ltd v Kiukiang Maritime Carriers Inc (No 5)</i> (1998) 90 FCR 1; [1998] FCA 1485	87
<i>HIH Casualty & General Insurance Australia Ltd v DellaVedova</i> [1999] FCA 456	74, 77
<i>HIH Casualty & General Insurance Ltd v FAI General Insurance Co Ltd</i> [1997] FCA 272	66, 80
<i>HIH Claims Support Limited v Insurance Australia Limited</i> (2011) 244 CLR 72; [2011] HCA 31	120
<i>Hill v Van Erp</i> (1997) 188 CLR 159; [1997] HCA 9	14
<i>HLB Kidsons v Lloyd's Underwriters Subscribing To Lloyd's Policy No 621/PK1D00101 & Ors</i> [2008] EWCA Civ 1206	76
<i>Hobbs Haulage Pty Ltd v Zupps Southside Pty Ltd & Anor</i> [2013] QSC 319	36
<i>Hope v Hunter and New England Area Health Service</i> (2009) 10 DCLR (NSW) 63; [2009] NSWDC 307 ...	46
<i>Horsell International Pty Ltd v Divetwo Pty Ltd</i> [2013] NSWCA 368	91
<i>Howarth & Anor v Miotti & Anor</i> [2009] QSC 96	4
<i>Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd</i> (2013) 247 CLR 613; [2013] HCA 10	35, 39
<i>Hyder v McGrath Sales Pty Ltd</i> [2018] NSWCA 223	47
<i>Iannello v BAE Automation and Electrical Services Pty Ltd</i> [2008] VSC 544	38
<i>Insurance Commission of Western Australia v Container Handlers Pty Ltd</i> (2004) 218 CLR 89; [2004] HCA 24	83
<i>Integrated Computer Services Pty Ltd v Digital Equipment Corporation (Australia) Pty Ltd</i> (1988) 5 BPR 11,110.....	9
<i>In the matter of Austral Bronze Pty Ltd</i> [2020] NSWSC 1491	136
<i>JC Houghton & Co v Nothard, Lowe & Willis Ltd</i> [1928] AC 1	93

TABLE OF CASES

<i>Jaensch v Coffey</i> (1984) 155 CLR 549; [1984] HCA 52	13
<i>Jamieson v Westpac Banking Corporation</i> (2014) 283 FLR 286; [2014] QSC 32	17
<i>JAS v Gross</i> (1998) 231 AR 228	106
<i>Jiang v BCDS International P/L t/as Serendipity Miss Beauty ACN 603 133 911</i> [2019] NSWDC 578	18
<i>Jimenez v Watson</i> [2021] NSWCA 55	49
<i>John Connell Holdings Pty Ltd v Mercantile Mutual Holdings Limited</i> [1998] QSC 116	76
<i>John Connell Holdings Pty Ltd v Mercantile Mutual Holdings</i> [1999] QCA 429	76
<i>John G Glass Real Estate Pty Ltd v Karawi Constructions Pty Ltd</i> [1994] ANZ ConvR 294; [1993] FCA 431	48
<i>John Wyeth v Cigna</i> [2001] Lloyd's Rep IR 420	116
<i>Junemill Ltd (in liq) v FAI Insurance Co Ltd</i> [1999] 2 Qd R 136; [1997] QCA 261	72
<i>Kajima UK Engineering Limited v The Underwriter Insurance Co Ltd</i> [2008] 1 All ER 855; [2008] EWHC 83 (TCC)	76
<i>Kantfield Pty Ltd v Lockwood</i> [2003] VSC 420	72
<i>Keefe v Marks</i> (1989) 16 NSWLR 713	49
<i>Kendirjian v Lepore</i> (2017) 259 CLR 275; [2017] HCA 13	50
<i>Kerr v Lawyers Professional Indemnity Company</i> (1995) 25 OR (3D) 804	105
<i>King v McKean & Park (A Firm)</i> [2002] VSC 350	71
<i>Kotku Bread Pty Ltd v Vero Insurance Ltd & Anor</i> [2012] QSC 109	95
<i>Kumar v Sydney Western Realty Pty Ltd & Anor (No 2)</i> [2021] NSWDC 446	23
<i>Kyriackou v ACE Insurance Limited</i> [2013] VSCA 150	63
<i>Lane Cove Council v Michael Davies & Associates</i> [2012] NSWSC 727	32
<i>Lasermax Engineering Pty Ltd v QBE Insurance (Australia) Ltd</i> [2005] NSWCA 66	84
<i>Laughlin v Sharron High Voltage Incorporated</i> (1993) 12 OR (3D) 101	105
<i>Liberty International Underwriters v The Salisbury Group Pty Ltd (in liq) & Ors</i> (2014) 13 ASTLR 206; [2014] QSC 240	100
<i>Liberty Mutual Insurance Co, Australia Branch v SunWater Ltd (No 2)</i> [2021] NSWSC 1582	67
<i>Littler v Price</i> (2005) 1 Qd R 275; [2004] QCA 383	2, 5
<i>Livingstone v Rawyards Coal Co.</i> (1880) 5 App. Cas. 25	51
<i>Lloyds TSB General Insurance Holdings v Lloyd Bank Group Insurance Company Ltd</i> [2003] 4 All ER 43; [2003] UKHL 48	113
<i>Loumbos v Gray as a named partner of ClarkeKann (ABN 92 990 809 254)</i> [2021] NSWSC 1579	12
<i>Lovick and Son Developments Pty Ltd and Anor v Doppstadt Australia Pty Ltd and Anor (No 2)</i> [2012] NSWSC 1579	55
<i>Lumley General Insurance Ltd v Vintix Pty Ltd</i> (1991) 24 NSWLR 652	84, 87
<i>Macfie v State Government Insurance Office (Qld)</i> [1984] QSC 182	96
<i>Macrae v Stevens</i> [1996] Aust Tort Reports 81-405; [1996] NSWSC 500	50
<i>Mann v Carnell</i> (1999) 201 CLR 1; [1999] HCA 66	136
<i>Marcel Beller Ltd v Haydon</i> [1978] QB 694	101
<i>March v E & M H Stramare Pty Ltd</i> (1991) 171 CLR 506; [1991] HCA 12	7, 16, 84
<i>Major Engineering Pty Ltd v CGU Insurance Limited</i> (2011) 282 ALR 363; [2011] VSCA 226	109
<i>Makaroff v Nepean Blue Mountains Local Health District</i> [2021] NSWCA 107	45
<i>Malamit Pty Ltd v WFI Insurance Ltd</i> [2017] NSWCA 162	69
<i>Malcolm Douglas Carr trading as Forshaws Neill v Swart and Ors; Lawcover Pty Limited v Swart and Anor</i> [2007] NSWCA 337	65
<i>Manren Ltd v Royal and Sun Alliance Insurance Australia Ltd</i> [2003] VSCA 59	67
<i>Marshall v Prescott</i> [2013] NSWCA 152	136
<i>Mazza v Webb</i> [2011] QSC 163	44

TABLE OF CASES

<i>McCann v Switzerland Insurance Australia Ltd</i> (2000) 203 CLR 579; [2000] HCA 65	87
<i>McCarthy v St Paul International Insurance Co Ltd</i> (2007) 157 FCR 402; [2007] FCAFC 28	106, 109, 111, 116
<i>McGrath v Australian Natural Care Products Pty Ltd</i> (2008) 165 FCR 230; [2008] FCAFC 2	24
<i>McLennan v Insurance Australia Ltd</i> (2014) 313 ALR 173; [2014] NSWCA 300	99
<i>McManus & Ors v European Risk Insurance Company</i> [2013] EWHC 18 (Ch)	76
<i>Meacock v Bryant & Co</i> [1942] 2 All ER 661	132
<i>Meandarra Aerial Spraying Pty Ltd & Anor v GEJ Geldard Pty Ltd</i> [2013] 1 Qd R 319; [2012] QCA 315	16, 36, 42
<i>Meerkin & Apel v Rossett Pty Ltd</i> [1998] 4 VR 54	9
<i>Mercantile Mutual Insurance (Aust) v Rowprint Services (Victoria) Pty Ltd</i> [1998] VSCA 147	89
<i>Metzke and Allen v Sali</i> [2010] VSCA 267	39
<i>Midland Bank Trust Co Ltd v Hett Stubbs & Kemp</i> [1979] Ch 384	1, 4, 6
<i>Miller and Associates Insurance Broking Pty Ltd v BMW Australia Finance Limited</i> (2010) 241 CLR 357; [2010] HCA 31	22, 25
<i>Mitor Investments Pty Ltd v General Accident Fire and Life Assurance Corporation Limited & Australian Insurance Brokers (WA) Pty Ltd</i> [1984] WAR 365; [1984] WASC 81	86
<i>Moltoni Corporation Pty Ltd v QBE Insurance Ltd</i> (2001) 205 CLR 149; [2001] HCA 73	127
<i>Mules v Ferguson</i> [2014] QSC 51	16, 44
<i>Mules v Ferguson</i> [2015] QCA 5	16, 44
<i>Munnings v Australian Government Solicitor</i> (1994) 118 ALR 385; [1993] HCA 66	49
<i>Murphy v Overton Investments Pty Ltd</i> (2004) 216 CLR 388; [2004] HCA 3	21
<i>National & General Insurance Co Ltd v Chick</i> [1984] 2 NSWLR 86.....	84
<i>National Vulcan Engineering Insurance Group Ltd v Pentax Pty Ltd</i> (2004) 20 BCL 398; [2004] NSWCA 218 ..	90
<i>New South Wales v Mikhael</i> [2012] NSWCA 338	15
<i>Newcastle City Council v GIO General Ltd</i> (1997) 191 CLR 85; [1997] HCA 53	80
<i>Nichols v American Home Assurance Company Limited</i> (1990) 1 SCR 801	105
<i>Nicholas v Wesfarmers Curragh Pty Ltd</i> [2010] QSC 447	125
<i>Nikolaou v Papasavas, Phillips & Co</i> (1989) 166 CLR 394; [1989] HCA 11	57
<i>Oaktwig Pty Ltd v Glenhaven Property Holdings Pty Ltd</i> [2007] NSWSC 1533	6
<i>Orakpo v Manson Investments Ltd</i> [1977] 3 All ER 1	132
<i>Orchard Holdings Pty Ltd v Paxhill Pty Ltd</i> [2012] WASC 271	38
<i>Osei v PK Simpson & Co Pty Ltd and Carney</i> [2021] NSWDC 74	40
<i>Osei v PK Simpson & Co Pty Ltd</i> (2022) 106 NSWLR 458; [2022] NSWCA 13	40
<i>Our Town FM Pty Ltd v Australian Broadcasting Tribunal</i> (1987) 16 FCR 465	91
<i>Owners of Strata Plan No 30791 v Southern Cross Constructions (ACT) Pty Ltd (in liq) (No 2)</i> [2021] NSWCA 35	42
<i>Owners SP 62930 v Kell and Rigby Pty Ltd</i> [2009] NSWSC 1342	31
<i>Pacific Dunlop Ltd v Swinbank</i> [1998] VSC 154	112
<i>Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd</i> (1982) 149 CLR 191; [1982] HCA 44	21
<i>PC Case Gear Pty Ltd v Instrat Insurance Brokers Pty Ltd (in liq)</i> (2020) 379 ALR 732; [2020] FCA 137 ...	96
<i>Pegrum v Fatharly</i> (1996) 14 WAR 92.....	9
<i>Perlman v Perlman</i> (1984) 155 CLR 474; [1984] HCA 4	91
<i>Permanent Trustee Australia Ltd v FAI General Insurance Company Ltd (in liq)</i> (2003) 214 CLR 514; [2003] HCA 25	94
<i>Perre v Apand Pty Ltd</i> (1999) 198 CLR 180; [1999] HCA 36	14
<i>Pioneer Road Services v QBE Insurance Ltd</i> [2002] NSWSC 137	61, 64
<i>PMT Partners Pty Ltd v Australian National Parks & Wildlife Service</i> (1995) 184 CLR 301; [1995] HCA 36	91

TABLE OF CASES

<i>Podrebersek v Australian Iron and Steel Pty Ltd</i> (1985) 59 ALR 529; [1985] HCA 34	33, 38
<i>Port Jackson Stevedoring Pty Ltd v Salmond & Spraggon (Aust) Pty Ltd</i> (1978) 139 CLR 231; [1978] HCA 8	31
<i>Pramoko v Grande Enterprises Ltd</i> (2015) 108 ACSR 469; [2015] WASCA 157	23
<i>Prepaid Services Pty Ltd v Atradius Credit Insurance NV</i> (2013) 302 ALR 732; [2013] NSWCA 252 ...	94, 96
<i>Principal Properties Pty Ltd v Brisbane Broncos Leagues Club Ltd</i> [2018] 2 Qd R 584; [2017] QCA 254	19
<i>Pritchard (t/as Pritchard Law Group) v DJZ Constructions Pty Ltd</i> [2012] NSWCA 413	40
<i>Protec Pacific Pty Ltd v Steuler Services GmbH & Co KG</i> [2014] VSCA 338	53
<i>Pullen v Gutteridge Haskins and Davey Pty Ltd</i> [1993] 1 VR 27	7, 10
<i>QBE Insurance v Lumley General Insurance</i> (2009) 24 VR 326; [2009] VSCA 124	118
<i>QBE Insurance Limited v Nguyen</i> (2008) 100 SASR 560; [2008] SASC 138	88
<i>QBE Insurance Ltd v MGM Plumbing Pty Ltd</i> [2003] QSC 27	113
<i>QBE Underwriting Ltd as Managing Agent for Lloyds Syndicate 386 v Southern Colliery Maintenance Pty Ltd</i> (2018) 97 NSWLR 459; [2018] NSWCA 55	95
<i>Quintano v B W Rose Pty Ltd</i> [2008] NSWSC 793	87
<i>RAA-GIO Insurance Ltd v O'Halloran</i> (2007) 98 SASR 123; [2007] SASC 245	86
<i>RAIA Insurance Brokers Ltd v FAI General Insurance Co Ltd</i> (1993) 41 FCR 164; [1993] FCA 127	21
<i>Rakic v Johns Lyng Insurance Building Solutions (Victoria) Pty Ltd (Trustee)</i> [2016] FCA 430	56
<i>Rees v Sinclair</i> [1974] 1 NZLR 180	49
<i>Reinhold v New South Wales Lotteries Corporation</i> [2008] NSWSC 5	39
<i>Reinhold v New South Wales Lotteries Corporation (No 2)</i> (2008) 82 NSWLR 762; [2008] NSWSC 187	39
<i>Re Matcove Pty Ltd</i> [2020] NSWSC 625	10
<i>Reneham v Leeuwin Ocean Adventure Foundation & Anor</i> (2006) 17 NTLR 83; [2006] NTSC 4	8
<i>Rexodan International Limited v Commercial Union Assurance Co plc</i> [1999] Lloyd's Rep IR 495; [1997] EWCA Civ 2680	91
<i>Rich v CGU Insurance Limited</i> (2005) 214 ALR 370; [2005] HCA 16	102
<i>Rich v Harrington</i> (2007) 245 ALR 106; [2007] FCA 1987	138
<i>Robert Bax & Associates v Cavenham Pty Ltd</i> [2013] 1 Qd R 476; [2012] QCA 177	4, 10
<i>Robinson v Harman</i> (1848) 154 ER 363	51
<i>Rogers v Whittaker</i> (1992) 175 CLR 479; [1992] HCA 58	10
<i>Rothschild & Sons v St Paul International Insurance Company</i> [2004] NSWSC 359	105
<i>Royal Exchange Assce v Kingsley</i> [1923] AC 235; [1923] UKPC 1	88
<i>Safeway Stores Ltd v Twigger</i> [2010] All ER (D) 245; [2010] EWCA Civ 1472	103
<i>Saif Ali v Sydney Mitchell & Co</i> [1980] AC 198; [1978] UKHL 6	50
<i>Sali & Ors v Metzke & Allen</i> [2009] VSC 48	2, 7, 38
<i>Samways v WorkCover Queensland & Ors</i> [2010] QSC 127	29
<i>San Sebastian Pty Ltd & Anor v Minister Administering the Environmental Planning and Assessment Act 1979 & Anor</i> (1986) 162 CLR 340; [1986] HCA 68	12
<i>Santos Ltd v American Home Assurance Co</i> (1986) 4 ANZ Insurance Cases ¶160-795	132
<i>Schipp v Cameron</i> [1999] NSWSC 997	112
<i>Sealion Shipping Ltd v Valiant Insurance Co</i> [2012] 1 Lloyd's Rep 252; [2012] EWHC 50 (Comm)	112
<i>Selected Seeds Pty Ltd v QBEMM Pty Ltd and Anor</i> [2009] QCA 286	91
<i>Selected Seeds Pty Ltd v QBEMM Pty Ltd</i> (2010) 242 CLR 336; [2010] HCA 37	69
<i>Selig v Wealthsure Pty Ltd</i> (2013) 94 ACSR 308; [2013] FCA 348	7, 52
<i>Selig v Wealthsure Pty Ltd</i> (2015) 255 CLR 661; [2015] HCA 18	20, 35
<i>Sellars v Adelaide Petroleum NL</i> (1994) 179 CLR 332; [1994] HCA 4	19, 54, 57
<i>Settlement Group Pty Ltd v Purcell Partners (a firm)</i> [2013] VSCA 370	17
<i>Silbermann v CGU Insurance Limited</i> (2003) 57 NSWLR 469; [2003] NSWCA 203	102, 105

TABLE OF CASES

<i>Smith & Anor v McCusker QC & Anor</i> [2000] WASCA 320	6
<i>Solicitors' Liability Fund v Gray & Winter</i> (1997) 147 ALR 154; [1997] FCA 652	64, 67
<i>South Australia v Johnson</i> (1982) 42 ALR 161	51
<i>South Western Sydney Local Health District v Gould</i> (2018) 97 NSWLR 513; [2018] NSWCA 69	46
<i>Sparks v Hobson; Gray v Hobson</i> (2018) 361 ALR 115; [2018] NSWCA 29	43
<i>Speno Rail Maintenance v Hamersley</i> (2000) 23 WAR 291; [2000] WASCA 408	119
<i>Speno Rail Maintenance Australia Pty Ltd v Metals & Minerals Insurance Pte Ltd</i> (2009) 253 ALR 364; [2009] WASCA 31	91
<i>Spotless Group Ltd v Premier Building and Consulting Group Pty Ltd</i> (2006) 16 VR 1; [2006] VSCA 201	138
<i>State Government Insurance Commission (SA) v Stevens Bros Pty Ltd</i> (1984) 154 CLR 552; [1984] HCA 32	87
<i>State Government Insurance Commission v Sinfein Pty Ltd</i> (1996) 15 WAR 434	84
<i>State Government Insurance Office (Qld) v Brisbane Stevedoring Pty Ltd</i> (1969) 123 CLR 228; [1969] HCA 59	133
<i>State Government Insurance Office (Qld) v Crittenden</i> (1966) 117 CLR 412; [1966] HCA 56	90
<i>Steele v Marshan</i> [2012] NSWCA 141	9
<i>Strong v Woolworths Ltd</i> (2012) 246 CLR 182; [2012] HCA 5	17, 20
<i>Strongman v Sincock</i> [1955] 2 QB 525	102
<i>Suncorp Metway Insurance Limited v Landridge Pty Ltd</i> (2005) 12 VR 290; [2005] VSCA 223	61, 63
<i>State of New South Wales v Tempo Services Ltd</i> [2004] NSWCA 4	91
<i>Sutherland Shire Council v Heyman</i> (1985) 157 CLR 424; [1985] HCA 41	12
<i>Swansson v Harrison & Ors</i> [2014] VSC 118	33
<i>Switzerland General Insurance Co Ltd v Lebah Products Pty Ltd</i> (1982) 2 ANZ Insurance Cases ¶60-498	89
<i>Switzerland Insurance Australia Ltd v McCann</i> [1999] NSWCA 310	85
<i>Sykes v Reserve Bank of Australia</i> (1998) 158 ALR 710; [1998] FCA 1405	24
<i>Symonds v Vass</i> (2009) 257 ALR 689; [2009] NSWCA 139	48
<i>Tabet v Mansour</i> [2007] NSWSC 36	18
<i>Tabet v Gett</i> (2010) 240 CLR 537; [2010] HCA 12	18
<i>Taco Company of Australia Inc v Taco Bell Pty Ltd</i> (1982) 42 ALR 177; [1982] FCA 170	21
<i>Tasmanian Sandstone Quarries Pty Ltd v Legalcom Pty Ltd</i> (2010) 270 LSJS 519; (2010) SASCF 6	3
<i>Ting v Blanche</i> (1993) 118 ALR 543; [1993] FCA 781	23
<i>Thorman v New Hampshire Insurance Co (UK) Ltd</i> [1988] 1 Lloyds' Rep 7	76, 111
<i>Toomey v Scolaro's Concrete Constructions Pty Ltd (in liq) (No 5)</i> [2002] VSC 48	67
<i>Townsend and Anor v Roussety and Co (WA) Pty Ltd and Anor</i> (2007) 33 WAR 321; [2007] WASCA 40	9
<i>Trident General Insurance Co Ltd v McNiece Bros Pty Ltd</i> (1988) 165 CLR 107; [1988] HCA 44	140
<i>Trustees Executors & Agency Co Ltd v Reilly</i> [1941] VLR 110	90
<i>UGL Rail Pty Ltd v Wilkinson Murray Pty Ltd</i> [2014] NSWSC 1959	16
<i>Ultramares Corporation v Touche</i> (1931) 174 NE 441	12
<i>Unity Insurance Brokers Pty Ltd v Rocco Pezzano Pty Ltd</i> (1998) 192 CLR 603; [1998] HCA 38	130
<i>V L Credits Pty Ltd v Switzerland General Insurance Co</i> [1990] VR 938	141
<i>Vero Insurance Ltd v Baycorp Advantage Ltd</i> (2005) 23 ACLC 199; [2004] NSWCA 390	116
<i>Vero Insurance Ltd v Witherow</i> (2004) 21 VAR 413; [2004] VSC 272	87
<i>Voli v Inglewood Shire Council</i> (1963) 110 CLR 74; [1963] HCA 15	7, 10
<i>Waimond Pty Ltd v Byrne</i> (1989) 18 NSWLR 642	10
<i>Walker v Greenmountain Food Processing Pty Ltd</i> [2020] QSC 329	15
<i>Wallaby Grip Ltd v QBE Insurance (Aust) Ltd</i> (2010) 240 CLR 444; [2010] HCA 9	99
<i>Wallace v Kam</i> (2013) 250 CLR 375; [2013] HCA 19	17

TABLE OF CASES

<i>Walton v National Employers Mutual General Insurance Association</i> (1973) 2 NSWLR 73.....	71, 86
<i>Watkins Syndicate 0457 at Lloyds v Pantaenius Australia Pty Ltd</i> (2016) 244 FCR 5; [2016] FCAFC 150	121
<i>Wayne Tank & Pump Co Ltd v Employers Liability Assurance Corp Ltd</i> [1974] QB 57	116
<i>Wealthcare Financial Planning Pty Ltd v Financial Industry Complaints Service Limited</i> (2009) 69 ASCR 418; [2009] VSC 7	43
<i>Wealthsure Pty Ltd v Selig</i> (2014) 221 FCR 1; [2014] FCAFC 64	52
<i>Weddell v Road Transport and General Insurance Co Ltd</i> [1932] 2 KB 563.....	119
<i>Weir Services Australia Pty Ltd v AXA Corporate Solutions Assurance</i> (2018) 359 ALR 314; [2018] NSWCA 100	62
<i>Wesfarmers Federation Insurance Ltd v Stephen Wells t/as Wells Plumbing</i> [2008] NSWCA 186	130
<i>Westina Corporation Pty Ltd v BGC Contracting Pty Ltd</i> (2009) 41 WAR 263; [2009] WASCA 213	28
<i>Westpac Banking Corporation v Jamieson</i> [2016] 1 Qd R 495; [2015] QCA 50	17, 53, 55
<i>Wilkie v Gordian Runoff Limited</i> (2005) 221 CLR 522; [2005] HCA 17	102, 108
<i>Williams v Fraser</i> [2021] NSWSC 416	18
<i>Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq)</i> (2012) 301 ALR 1; [2012] FCA 1028 ...	6, 46
<i>Woodside Petroleum Development Pty Ltd v H & R-E & W Pty Ltd</i> (1999) 20 WAR 380; [1999] WASCA 1024	134
<i>Woolcock Street Investments Pty Ltd v CDG Pty Ltd</i> (2004) 216 CLR 515; [2004] HCA 16	2, 12, 14
<i>Wyong Shire Council v Shirt</i> (1980) 146 CLR 40; [1980] HCA 12	13
<i>Wyzenbeek v Australasian Marine Imports Pty Ltd (in liq)</i> (2019) 272 FCR 373; [2019] FCAFC 167	54
<i>Yates v Mobile Marine Repairs Pty Ltd</i> [2007] NSWSC 1463	40
<i>Yorke v Lucas</i> (1985) 158 CLR 661; [1985] HCA 65	47
<i>Zurich Australian Insurance Ltd v Metals & Minerals Insurance Pte Ltd</i> (2007) 209 FLR 247; [2007] WASC 62	123
<i>Zurich Australian Insurance Limited v Metal and Minerals Insurance Pte Ltd</i> (2009) 240 CLR 391; [2009] HCA 50	124

TABLE OF LEGISLATION

COMMONWEALTH[Australian Securities and Investment Commission Act 2001 \(Cth\)](#)

s 12BAB	8
s 12DA	20
s 12DB	26
s 12EB	8
s 12ED	8
s 12GP	34, 35
s 12GR	37

[Competition and Consumer Act 2010 \(Cth\)](#)

s 87CB	34, 35
s 87CD	37
s 131	7
sch 2 Australian Consumer Law	
s 2	24
s 4	24
s 18	20, 24, 26
s 29	26
s 60	8
s 61	8
s 64	8
s 64A	8
s 236	56

[Corporations Act 2001 \(Cth\)](#)

s 1041E	26
s 1041H	20, 35
s 1041L	34, 35
s 1041N	37

[Evidence Act 1995 \(Cth\)](#)

s 122	136
-------	-----

[Insurance Contract Acts 1984 \(Cth\)](#)

s 11	141
s 13	130, 142
s 21	93
s 22	97
s 26	97
s 27	97
s 28	97
s 31	98
s 40	73, 77, 80, 104
s 41	130, 142
s 45	118, 124
s 48	94, 140
s 51	142
s 54	77, 104, 121, 126, 142
s 65	134
s 66	134
s 67	133

s 68	135
s 76	118, 121

[Insurance Contracts Amendment Act 2013 \(Cth\)](#)

s 11	141
------	-----

[Trade Practices Act 1974 \(Cth\)](#)

s 52	20, 25, 54
s 53	26
s 82	54, 57

QUEENSLAND[Civil Liability Act 2003 \(Qld\)](#)

s 7	34
s 9	15
s 11	16
s 22	44
s 23	33
s 24	33
s 28	34, 37
s 30	35
s 31	37
s 32	37
s 32A	37
s 32B	42
s 32D	36
s 32E	36

[Fair Trading Act 1989 \(Qld\)](#)

s 16	7
------	---

[Law Reform Act 1995 \(Qld\)](#)

s 10	33
------	----

NEW SOUTH WALES[Civil Liability Act 2002 \(NSW\)](#)

s 3A	34
s 5B	15, 43
s 5D	16
s 5O	43, 45
s 5R	33
s 5S	33
s 34	34, 37
s 34A	36
s 35	37
s 35A	37

[Civil Liability \(Third Party Claims Against Insurers\) Act 2017 \(NSW\)](#)

s 5	81
-----	----

[Fair Trading Act 1987 \(NSW\)](#)

s 28	7
------	---

[Law Reform \(Miscellaneous Provisions\) Act 1965 \(NSW\)](#)

s 6	142
s 9	33

VICTORIA[Australian Consumer Law and Fair Trading Act 2012 \(Vic\)](#)

s 8	7
-----	---

[Wrongs Act 1958 \(Vic\)](#)

s 24AF	34
s 24AH	35
s 24AM	36
s 26	33
s 48	15
s 51	16
s 57	43
s 58	43
s 59	43
s 60	43
s 62	33
s 63	33

AUSTRALIAN CAPITAL TERRITORY[Civil Law \(Wrongs\) Act 2002 \(ACT\)](#)

s 43	15
s 45	16
s 47	33
s 102	33
s 107B	34
s 107D	35
s 107E	36
s 107F	37
s 107G	37

[Fair Trading \(Australian Consumer Law\) Act 1992 \(ACT\)](#)

s 7	7
-----	---

TASMANIA[Australian Consumer Law \(Tasmania\) Act 2010 \(Tas\)](#)

s 6	7
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[Civil Liability Act 2002 \(Tas\)](#)

s 3A	34
s 11	15
s 13	16
s 21	43
s 22	43
s 23	33
s 43A	34

TABLE OF LEGISLATION

s 43B	37	SOUTH AUSTRALIA	WESTERN AUSTRALIA
s 43D	37		
<i>Wrongs Act 1954 (Tas)</i>		<i>Civil Liability Act 1936 (SA)</i>	<i>Civil Liability Act 2002 (WA)</i>
s 4	33	s 32	s 4A
NORTHERN TERRITORY		s 34	s 5AI
<i>Consumer Affairs and Fair Trading Act 1990 (NT)</i>		s 40	s 5AK
s 27	7	s 41	s 5AJA
<i>Law Reform (Miscellaneous Provisions) Act 1956 (NT)</i>		s 44	s 5AKA
s 16	33	s 50	s 5B
<i>Proportionate Liability Act 2005 (NT)</i>		<i>Fair Trading Act 1987 (SA)</i>	s 5C
s 3	34	s 14	s 5K
s 4	34	<i>Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA)</i>	s 5PA
s 6	35	s 3	s 5PB
s 7	36	s 7	<i>Fair Trading Act 2010 (WA)</i>
s 12	37	s 8	s 19
s 13	37	s 10	<i>Law Reform (Contributory Negligence and Tortfeasors Contribution) Act 1947 (WA)</i>
			s 4

LIST OF ABBREVIATIONS

ACL	<i>Australian Consumer Law</i>
ASIC Act	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
ASTLR	<i>Australian Succession & Trusts Law Reports</i>
Commonwealth Acts	<i>ASIC Act, the Corporations Act, and the CCA</i>
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
CLA (ACT)	<i>Civil Law (Wrongs) Act 2002 (ACT)</i>
CLA (NSW)	<i>Civil Liability Act 2002 (NSW)</i>
CLA (Qld)	<i>Civil Liability Act 2003 (Qld)</i>
CLA (SA)	<i>Civil Liability Act 1936 (SA)</i>
CLA (Tas)	<i>Civil Liability Act 2002 (Tas)</i>
CLA (WA)	<i>Civil Liability Act 2002 (WA)</i>
D&O	<i>Directors & Officers insurance policies</i>
FTA	<i>Fair Trading Act</i>
ICA	<i>Insurance Contracts Act 1984 (Cth)</i>
TPA	<i>Trade Practices Act 1974 (Cth)</i>

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