Key trends shaping the Australian casualty space: what to expect in 2025

Summary Report, March 2025

25 YEARS IN ASIA PACIFIC

Kennedys

Introduction

The liability landscape in Australia is rapidly evolving.

As Class Action trends shift and claims inflation continues to rise, insurers, brokers, and businesses face ongoing challenges in traditional risk areas like worker-to-worker claims, whilst also navigating emerging exposures like climate litigation and expanding scope of cover in liability policies.

To explore these developments, we recently had the pleasure of hosting clients in our Sydney and Melbourne offices for an in-depth discussion on the key trends shaping the Australian casualty space and their impact on the industry. The panel discussion provided valuable insights into market conditions, litigation risks, and underwriting challenges that are reshaping the liability landscape.

This document summarises the key themes and takeaways from the panel discussions, highlighting the issues insurers, brokers, and businesses need to be aware of in the year ahead.

If you have any questions on the information provided or to discuss further, please reach out to our team.

The Kennedys Liability Team

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Issues in the spotlight

The shift in class actions

Class action trends in Australia are changing. While securities-related claims once dominated, the focus has now shifted towards product liability, employment, and consumer actions.

Key drivers of the shift:

- Litigation funders are diversifying their focus, seeking new areas to litigate.
- High-profile product claims have gained momentum.

A growing culture of accountability has emerged post-COVID, with individuals more willing to pursue legal action against corporations and governments.

Looking ahead, environmental, and infrastructure-related class actions are on the rise, with cases such as the Sydney Light Rail nuisance class action potentially paving the way for nuisance claims. Climate-related litigation is also gaining traction. In the liability space, this poses implications such as unintended coverage risks where liability policies are increasingly being tested for climate-related claims. The question then arises as to whether there is potential for development of new insurance products tailored to climate risks, similar to how cyber insurance evolved.

Insurance policy challenges - unintended cover and expanding liability

Recent legal decisions have highlighted unintended consequences in policy coverage, with courts broadening liability beyond original policy intent. This underscores the importance of precise policy wordings and the need for proactive risk management strategies.

Examples of expanding liability risks:

- Opal Tower case – Courts ruled an engineering firm could access a contractor's liability policy, despite professional indemnity being the intended cover.
- Pollution exclusions being challenged – Courts in the U.S. have ruled that greenhouse gas emissions could be considered an "accident" under liability policies.

Softening market conditions – a sustainable shift?

The insurance market is softening, with increased capacity leading to greater competition. Insurers are responding with broader coverage, multi-line policies, and more flexible pricing.

Key challenges in a softening market:

- Ensuring long-term sustainability and avoiding the aggressive under-pricing mistakes of past cycles.
- Clients seeking to reverse "exclusion creep" and restore coverage lost in previous hard market conditions.
- Increased competition among insurers, with new entrants looking to establish market share.

While the softening market presents opportunities for insureds, the need for careful risk assessment and policy wording scrutiny remains critical.

Issues in the spotlight

Claims inflation: rising costs and increasing complexity

Claims inflation continues to be a major concern across the liability landscape. Factors driving higher settlement costs and increased claim durations include:

- An increase in the number of plaintiff law firms in Australia, and higher compensation expectations from plaintiffs.
- Growth in psychiatric injury claims, now present in nearly every personal injury matter.
- Delayed medical treatments and supply chain disruptions, leading to prolonged recovery periods and increased claims costs.
- From a global perspective, the rise of litigation funding and mass tort actions has contributed to increased social inflation.

Increased litigation and escalating defence costs are making pricing, policy wording, and risk selection more critical than ever.

Worker-to-worker claims: an ongoing challenge

Worker-to-worker claims remain a significant and increasing challenge. Late claim reporting, fraudulent claims, and liability shifting between head contractors and subcontractors continue to complicate claims management.

Key trends and issues:

- Increased number of claims and higher damages awards being made, or settlements being sought.
- Increased litigation involving labour hire arrangements and disputes over who is liable in workplace injuries.
- Higher deductibles and more restrictive coverage being introduced to mitigate insurer exposure.

Worker-to-worker claims show no signs of slowing, making it essential for insurers, brokers, and businesses to remain proactive in risk management.

> Australia is climbing up the ranks of the most litigious countries in the world for personal injury. Damages are increasing and the volume of cases being filed has increased significantly since the pandemic.

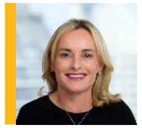
Chris Finn
Partner, Kennedys

> Companies can manage worker-to-worker claims exposure by improving safety, good record keeping, and diligent accident investigation processes.

Ganga Narayanan
Partner, Kennedys

Key liability team contacts

Sydney



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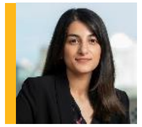

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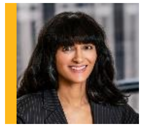

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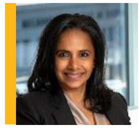

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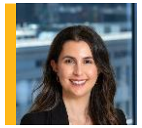

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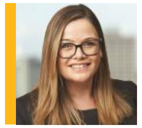

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