

# Future Proof '25

Insurance and risk insights  
across Asia-Pacific

May 2025

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# Introduction

The future of insurance and risk in Asia-Pacific is here, and rapidly evolving. Are you ready?

In a world marked by rapid technological advancement, innovation, evolving regulatory demands and increasing complexity across multiple risk sectors, Future Proof '25 examines the diverse forces reshaping insurance and business landscapes. This report highlights emerging trends and critical challenges that insurers and businesses must anticipate and navigate to remain resilient and competitive.

In this report, we go beyond the headlines to explore major shifts in general liability, professional and financial risks and cyber as well as the emerging challenges in property, energy, and infrastructure. We dive into critical pressure points in risk management, workplace safety, and health – alongside the intensifying demands of Environmental, Social, and Governance (**ESG**) compliance and sustainability.

New energy technologies, evolving litigation risks, and a rapidly shifting regulatory landscape are redefining the rules of engagement. Staying ahead requires more than just awareness – it demands action.

If these challenges are on your radar, let's talk about what's next.

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# 5 Key insurance trends to watch



## Key legislative changes for insurers

The Financial Accountability Regime (**FAR**), which started in March 2025, will increase personal liability for senior executives in insurance, making governance and risk management a top priority. Failing to meet these standards could mean personal fines and reputational damage.

From 1 July 2025, CPS 230 will require insurers to prove their operational resilience, making third-party risk management a key compliance challenge. Those unprepared may face regulatory penalties and higher operational costs.

Meanwhile, new climate disclosure laws will require insurers to provide further transparency on their exposure to climate risks despite the political and regulatory uncertainty prevailing globally.



## Insurance claims performance under scrutiny

With ASIC cracking down on claims handling fairness in 2025, insurers must prove they are meeting community and regulatory expectations. Failure to comply could mean not just enforcement action but also serious reputational risks, resulting in eroding customer trust and market share.

As regulators push for greater responsiveness and transparency, businesses that invest in streamlined processes and heightened regulatory compliance will be in a stronger position to maintain consumer confidence and avoid enforcement issues moving forward.



## Tech-driven transformation in insurance

The drive for automation, AI, and predictive analytics in insurance isn't just about efficiency – it's about survival. Insurers that fail to integrate these technologies risk losing ground to competitors who create a competitive advantage in product development, underwriting efficiencies and claims management.

Service providers, including law firms and third-party administrators, are also under pressure to modernise. Those who fail to adopt digital solutions and AI-driven insights will struggle to meet client expectations in an increasingly data-driven industry.



## Evolving cyber insurance landscape

With rising cyber threats and stricter regulations, businesses must further prioritise the management of cyber risk through enhanced corporate governance and investment in expertise and robust cybersecurity.

For insurers, adapting cyber policies to cover evolving threats like AI-driven attacks will be crucial to maintaining relevance and profitability in this fast-changing market.



## Climate risk and the future for insurance

Insurers are operating in an increasingly complex political, social and regulatory environment when it comes to climate risk and broader ESG issues.

Questions about the affordability and accessibility of insurance in an environment where climate-related losses are expected to increase in severity and frequency poses a major challenge for insurers. Striking a balance between commercial imperatives and broader social considerations, as well as positively contributing to the broader discussion about alternatives and solutions, will be essential.

# Artificial Intelligence (AI) and insurance: A shifting landscape

AI isn't just transforming industries – it's reshaping risk. As AI evolves at speed, insurers are confronting new challenges, from data sovereignty and privacy to security, sustainability, and governance.

We cut through the complexity to explore how AI is redefining insurance. From shifting regulatory frameworks to the rise of large-scale AI infrastructure projects like Stargate and DeepSeek's advanced reasoning models, the landscape is changing fast.

The challenge? Balancing innovation with security, transparency, and ethical accountability.

For insurers, the stakes are high. Adapting to evolving regulations, mitigating ESG-related risks, and reinforcing governance structures will be critical to maintaining trust in an AI-driven world.

At Wotton Kearney, we're not just watching these shifts – we're leading them. Through WK labs, we're driving AI-powered solutions in digital enablement, eDiscovery, cyber forensics and more.

The future of AI in insurance is unfolding now. If these challenges are on your radar, let's talk.

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## DeepSeek and large language models: Sovereignty, privacy and security

DeepSeek models, known for their advanced human-like reasoning, introduce challenges surrounding data sovereignty, privacy, and transparency. Unlike traditional large language models like ChatGPT, which rely on logic and data, DeepSeek focuses on mimicking human intelligence, creating opacity in how decisions are made. This raises serious concerns about users' awareness of how their data is used or manipulated, particularly given that these models may not follow Western standards for transparency and ethical AI practices.

For the insurance sector, this lack of transparency poses risks in terms of regulatory breaches and public mistrust. Insurers need to adopt clear governance measures, including explainability frameworks, robust data protection policies, and regular audits, to mitigate these risks.

Additionally, companies must balance leveraging AI's capabilities with increasingly stringent privacy laws and data sovereignty concerns to maintain compliance and user trust.

**“As part of our executive survey, 67% of respondents from best-in-class insurers said their organisations were ready to leverage and maximise Gen AI capabilities”**

**World Life Insurance Report 2025,**  
Capgemini Research Institute

## Investing in infrastructure: Stargate, ethics and greenwashing

Massive investments into AI infrastructure, like the Stargate initiative, highlight the growing demand for advanced AI capabilities but also raise concerns over sustainability and greenwashing. Stargate, backed by major players like SoftBank, OpenAI, and Microsoft, is focused on strengthening AI leadership through large-scale data centres. As AI adoption surges, the environmental impact and ethical considerations of such investments come under scrutiny.

The insurance sector must be prepared to assess the authenticity of ESG claims to avoid greenwashing accusations. Additionally, insurers will need to address risks related to cyberattacks, operational disruptions, and infrastructure failures in these AI-driven projects.

Establishing transparent ESG policies, regular audits, and clear sustainability metrics will help businesses maintain credibility and mitigate potential liabilities.

## Scaling AI without sacrificing risk mitigation and security

As AI technologies scale, businesses face the challenge of balancing innovation with the need for robust security and regulatory compliance. The rapid adoption of AI across various industries amplifies concerns about data security, privacy violations, and operational risks, especially in regulated environments like insurance.

Insurers must ensure that AI-driven organisations meet stringent local and global regulations, such as data protection laws and cybersecurity frameworks. Emerging practices like encryption, penetration testing, and continuous monitoring are essential to securing AI systems and mitigating risks.

From an insurance perspective, offering coverage that addresses these unique risks will be critical, as businesses will need to prove their AI systems are secure and compliant. By integrating strong governance and documentation into AI workflows, insurers can help businesses scale AI safely while managing regulatory and security risks.

## Redefining how legal services are delivered in the insurance sector

As we enter a new era of digital innovation, Wotton Kearney is focused on transforming how we operate – making our services more efficient, secure, and client-focused.

In 2024, we became the first Australian law firm to adopt Cicero, a fully private generative AI tool built specifically for the Australian legal industry.

This technology is helping our lawyers deliver:

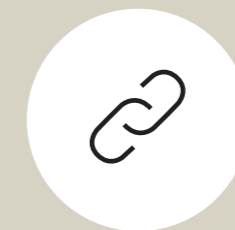
**Faster results:** Critical information can be identified more quickly and accurately, particularly on time-sensitive matters.

**Reliable outputs:** Low complexity use cases are carefully designed to minimise the risk of errors or hallucinations.

**Reduced risks:** Our approach ensures data privacy and security, supported by dedicated infrastructure with no third-party data sharing.

Importantly, this tool is designed to enhance the way we work – supporting smarter, more efficient outcomes, while still relying on the deep legal expertise and judgment our clients trust.

Click below to learn more about our innovation initiatives through WK labs.



# Corporate governance: New rules and new risks

Corporate governance risks are increasing, driven by new laws that demand stronger board oversight, the growing impact of cyber threats, and the rapid emergence of AI.

Boards are now expected to manage environmental and social risks, respond to evolving regulatory requirements, and strengthen capabilities in areas such as cybersecurity.

Even not-for-profit organisations, including community sporting clubs, are feeling the pressure, facing legal and reputational risks stemming from leadership disputes and defamation claims.

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## Governance reforms

This year has seen a wave of significant governance reforms. These include the expansion of the Anti-Money Laundering and Counter-Terrorism Financing Act, the rollout of the FAR, proposed limitations on board tenure, and the introduction of new rules concerning climate-related financial disclosures. Together, these changes will require boards to take a more proactive and hands-on approach to managing compliance and overseeing risk frameworks.

Political developments overseas are continuing to reshape the risk landscape. Geopolitical risk remains a priority for many boards. The return of a Trump administration in the United States has already triggered regulatory rollbacks, particularly in relation to environmental and social matters. At the same time, companies operating locally are facing stricter climate disclosure obligations. This creates a regulatory paradox that boards with both local and international operations must carefully navigate.

Boards must remain engaged with environmental and social risks, regardless of shifts in political rhetoric. A lack of response or silence on these issues can still result in legal and reputational consequences. This is particularly relevant in light of the requirements for large reporting entities to disclose climate-related financial risks from the 2025 financial year.

## Cyber risk governance

Cyber risk continues to be a major area of concern. Boards, especially those operating in Australian Prudential Regulation Authority (**APRA**) regulated sectors, must ensure they possess the appropriate knowledge and governance structures to oversee cyber resilience effectively. APRA's [CPS 230](#) requires boards to have greater operational oversight to reduce the risks of disruption from system outages or cyber incidents.

**“Well-governed institutions are likely to be more resilient in times of stress. Poor governance creates weakness, which can crystallise in misconduct, losses and failures.”**

**Australian Prudential Regulatory Authority, 2025**

In addition, the FAR is increasing the level of board-level accountability for core business functions. With both CPS 230 and FAR now in effect, regulators will be closely monitoring how boards respond to these enhanced operational risk and accountability obligations. They are equipped with a strengthened enforcement toolkit to ensure compliance.

## Governance of AI

AI is another fast-evolving area that requires active and ongoing attention from boards as a core governance issue. While AI offers benefits such as operational efficiencies, cost savings, and opportunities for innovation, it also introduces a range of complex risks. These include bias in decision-making, lack of transparency, breaches of data privacy, and regulatory uncertainty. These risks are not merely theoretical. They can result in reputational damage, legal liability, and the erosion of stakeholder trust.

Directors should ensure that their organisations have clear, board-approved policies governing the use of AI. Risk assessments should be undertaken regularly, and there must be clearly defined accountability for AI outcomes. Boards should also receive ongoing reporting on AI-related developments and risks. Staying informed about emerging regulatory frameworks and ethical standards is essential in maintaining good governance in this space.

## Governance issues in the community

Governance issues are also emerging on a smaller scale within community organisations such as sporting clubs. These clubs are increasingly facing defamation claims arising from disputes about leadership, financial management, and team selections. Such disputes can quickly escalate into personal attacks, allegations of misconduct, and accusations of mismanagement. This not only damages reputations but can also lead to lengthy and costly legal disputes.

To manage these risks, clubs should implement clear communication policies, offer internal dispute resolution processes, and avoid the use of defamatory language in their interactions. These challenges are not limited to grassroots organisations. Larger, more structured clubs are also experiencing boardroom disputes, contested elections, and internal divisions. When committees become distracted by internal disagreements, Directors and Officers (**D&O**) may find themselves exposed to legal liability.

In addition to defamation, there is a growing risk of claims relating to director and officer misconduct where governance protocols are not properly followed. The implementation of strong internal dispute mechanisms, codes of conduct, and crisis management plans can play a vital role in reducing exposure to legal and reputational harm.

### Authors

[Samantha Younane](#), [Michelle Rich](#)

# Media and defamation: A shifting legal landscape

Australia's defamation laws are undergoing rapid change, driven by digital platform reforms, evolving litigation trends, and new approaches to managing reputational risk.

## **Liability lines redrawn**

Stage 2 digital platform reforms clarify intermediary responsibility and reduce risk for passive platforms. Separately, stricter legal thresholds – like the Concerns Notice and serious harm test – are filtering out weaker claims.

## **Litigation loses its shine**

Defamation filings are falling as high-profile court losses, reputational fallout, and legislative hurdles make formal action less attractive.

## **Reputation management goes strategic**

With legal options less appealing, crisis communications and PR strategies are taking centre stage in protecting reputations.

Insurers, publishers, and individuals now face a more complex defamation landscape.

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## Rewriting the rules: Who's liable for what online?

Australia's Stage 2 Defamation Reforms have reshaped the legal landscape for digital platforms, including social media and search engines. These updates clarify liability, drawing a line between passive service providers and those with the ability to prevent defamatory content from being published or accessed.

One major aim is to shield intermediaries that lack editorial control over third-party content. This comes in response to *Fairfax Media Publications Pty Ltd v Voller* [2021], which saw intermediaries increasingly targeted by plaintiffs instead of original publishers.

Although most jurisdictions aimed for a July 2024 implementation, by late 2023 only three of eight had made progress. National consistency remains elusive, and loopholes from Stage 1 reforms continue to allow forum shopping.

With AI-generated content on the rise, questions of authorship and accountability are set to become even more complex for platforms and lawmakers alike.

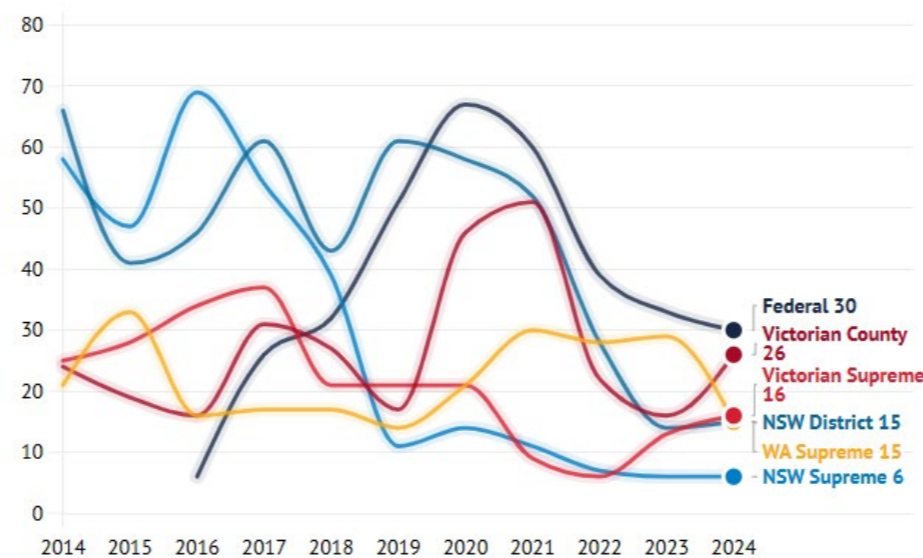
## Fewer headlines, fewer claims: The defamation downturn

Tougher legislation and high-profile court losses have dramatically slowed the flow of defamation claims in 2024–25.

Federal Court filings have dropped to just 30 claims in the past year, down from 40 in 2022 and 67 at the 2020 peak. The trend is mirrored in state courts: Victoria's County Court received 26 claims this year (down from 51 in 2021), while the Supreme Court of Victoria received 16 (down from 21 in 2020).

## Court defamation filings

A decade of defamation filings in Federal, NSW, Victorian and WA courts.



Source: "Why a multimillion-dollar legal boom is running out of steam," Whitbourn, The Age (11 May 2025)

## Big names, bigger consequences: The cost of going to court

Australia's most talked-about defamation actions – Ben Roberts-Smith and Bruce Lehrmann – have not only resulted in reputational ruin for the plaintiffs, but also eye-watering litigation costs. Both judgments are currently under appeal, but the financial and reputational toll has already made enormous waves.

Historically, media outlets often chose to settle early to avoid drawn-out legal battles. Now, some publishers are investing in defence strategies, betting that a strong precedent will deter future claims.

These high-profile cases have served as cautionary tales: even with strong financial backing and public support, litigation can make a bad situation worse, and cost millions in the process.

## Legislative lockdown: Making it harder to sue

A wave of legislative changes since 2020 has been designed to stem the tide of low-value or speculative defamation claims.

Key features of the reforms include:

- **Compulsory Concerns Notices** requiring plaintiffs to outline the alleged defamatory statements and demonstrate serious harm.
- **A Higher Threshold** that demands proof of tangible financial or reputational damage, something many potential plaintiffs can't establish.

The detailed nature of the Concerns Notice, now akin to a formal pleading, often requires legal counsel to draft, further increasing costs and deterring premature claims.

## A pivot to strategic communications, crisis comms and Public Relations (PR)

The fall in formal defamation cases hasn't made people less protective of their reputations, it's just changed the playbook.

Now, individuals and organisations are turning to crisis management teams, strategic communications advisors, and PR professionals to manage reputational threats. Often working alongside defamation lawyers, these experts engage with publishers pre-publication, ensuring stories reflect multiple perspectives and are handled with greater sensitivity.

For publishers, this pre-emptive engagement poses some risk, but also opens lines of communication that weren't available during the peak of defamation litigation.

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# Emerging threats and risks: Environmental liability

The environmental liability landscape is evolving, with heightened regulation, scientific developments, and litigation trends driving new risks across industries.

## **PFAS: Rising regulation and legal exposure**

Stricter PFAS limits, import bans, and government inquiries are increasing pressure on businesses. Legacy contamination and emerging health concerns are driving litigation risk.

## **PFAS claims: From property to personal injury**

Litigation is expanding beyond property damage to include potential personal injury and consumer claims. Downstream users and waste handlers face rising exposure.

## **Microplastics: A new frontier in liability**

Microplastics are under growing scrutiny, with regulatory bans and global treaty talks underway. Lawsuits and greenwashing claims are emerging, particularly in the US.

## **Energy storage: Fire, waste, and contamination risks**

Lithium-Ion battery (**LIB**) fires, toxic waste, and CO2 leakage are raising environmental and liability concerns as renewable energy systems scale up.

The environmental liability landscape is becoming more complex and high-stakes, with increasing regulation, scientific scrutiny, and litigation expanding risks across sectors. From PFAS and microplastics to energy storage systems, businesses face growing exposure and must adapt to manage these evolving challenges.

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**“I am interested to see whether there is an uptick in environmental claims, noting that we have seen a new PFAS claim brought in the last month (and several new claims in the US), along with talk of further actions in this space. Whether the Round-up and Essure decisions creates issues for plaintiffs in these kinds of actions will also be an area to watch.”**



**Samantha Saad**  
Special Counsel, Class Actions

## PFAS in focus: Rising regulation and business risks

Per- and Polyfluoroalkyl Substances (**PFAS**), man-made chemicals used since the 1940s in manufacturing and firefighting, are known as “forever chemicals” due to their persistence in the environment. While PFOS and PFOA, the most common types, have been phased out, PFAS do not break down and continue to accumulate in living organisms.

Exposure occurs through air, soil, and water, as PFAS leach into groundwater and travel long distances. While direct exposure from products is declining, contamination in food chains remains widespread, with most people having PFAS in their blood. In December 2023, the International Agency for Research on Cancer classified PFOA as carcinogenic, prompting the Australian Government to recommend minimising human exposure.

Regulatory focus on PFAS is increasing in Australia, including:

1. A Senate Select Committee on PFAS was formed in August 2024.
2. NSW established a committee on PFAS contamination in waterways in September 2024.
3. The Australian Drinking Water Guidelines were updated in October 2024, lowering acceptable PFAS levels.
4. By July 2025, new regulations under the Industrial Chemicals Environmental Management Standard will ban certain PFAS imports and manufacturing.

As testing improves into 2026, regulatory thresholds for safe PFAS levels will continue to tighten, signalling increased scrutiny and rising risks for businesses.

## PFAS litigation in Australia: The next wave of claims

In Australia, PFAS claims have largely focused on remediation costs from spills and declining property values due to legacy contamination. With PFAS regulation only introduced in 2018, further litigation is expected, particularly as older site investigations may not have adequately addressed contamination.

Personal injury claims, following trends in the US, may also emerge. However, proving causation remains a challenge, as the long delay between exposure and harm complicates litigation. As scientific understanding evolves, personal injury claims could increase. Additionally, consumer product litigation is growing, particularly around sustainability claims.

While the most high-profile cases involve Aqueous Film-Forming Foam (**AFFF**) contamination, PFAS is used across various industries. This could lead to litigation from downstream users – companies using, but not producing, PFAS. PFAS also enters waste streams via industrial runoff, disposal, and domestic sources, affecting landfill operators, recyclers, and water facilities, all of which may face legal risks.

PFAS-related class actions are increasing globally, with Australian cases so far focusing on AFFF's impact on property values, land use, and Aboriginal connections to land. As media attention and litigation grow, class actions are expected to expand into consumer liability, personal injury, and remediation – areas that have seen traction in the US but remain underdeveloped in Australia. Given PFAS's water solubility and widespread impact, future class actions will likely involve large plaintiff groups.

With rising regulatory scrutiny and public awareness, governments and corporations will face mounting challenges in managing PFAS risks and reputational damage, increasing litigation exposure.

## Microplastics: Emerging risks and liability concerns

Microplastics (**MPs**) are emerging as a significant environmental risk, similar to PFAS, as they gain recognition as a contaminant of concern.

Manufactured intentionally as small plastic particles, MPs are found in consumer and industrial products. Common sources include microbeads in personal care items, abrasives, and pre-production plastic pellets (nurdles). MPs also result from the breakdown of larger plastic items, such as bottles, fishing nets, and synthetic fibres, through sunlight, waves, and friction.

Found in environments from ocean trenches to remote glaciers, MPs contaminate air, freshwater, soil, and food production cycles. They've even been detected in human blood and tissue, raising concerns about long-term effects. As MPs bioaccumulate, they present complex causation issues and evidentiary challenges, with science on their impacts still evolving.

Environmental and statutory liability risks are increasing due to regulatory changes, including bans on plastic beads and single-use plastics, as well as negotiations around an international plastics treaty. In the US, class actions have already been filed, such as against Handi-Craft Company and The Wonderful Company LLC, for products leaching microplastics. These lawsuits, alongside rising greenwashing claims, pose significant risks for D&O liability and product liability moving forward.

## Managing environmental and regulatory risks in renewable energy storage

As the push to reduce greenhouse gas emissions intensifies, the development of renewable energy storage systems becomes critical. However, the rapid adoption of these technologies presents environmental and regulatory risks that to be managed carefully.

Renewable energy storage is key to harnessing surplus energy from intermittent sources like wind and solar. In Australia, LIBs and pumped hydrogen energy storage are the dominant systems. LIBs, used in homes and Electric Vehicles (**EV**), have been involved in several overheating incidents leading to fires.

These batteries degrade over time, raising concerns about waste disposal, soil and groundwater contamination, and toxic gas emissions. Moreover, emerging technologies often lack adequate regulation, detection systems, or emergency protocols, increasing the potential for incidents.

The expanded use of renewable energy storage also poses significant environmental risks, such as CO2 leakage from underground wells or soil acidification. Global incidents, such as CO2 pipeline ruptures and methane leaks, highlight the real-world consequences of these technologies' hazards. As these systems become more widespread, the growing environmental and regulatory risks should be considered to minimise exposure and ensure long-term sustainability.

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Nadica Mirceska, Sarah Mellowes, Amanda Beattie, Gavin Davies



# General liability: Emerging pressures and risks

The general liability landscape is shifting, with new liability exposures, legal changes, and regulatory pressures reshaping risk assessment and coverage for insurers.

## **Dual insurance and contractual complexities**

Dual insurance claims are rising in construction, mining, and real estate, shifting liability and spreading settlement costs across multiple policies. Insurers must proactively review policies to manage exposure.

## **Workplace injury claims and prolonged litigation**

Workers' compensation claims are becoming costlier and more protracted, particularly in Queensland, where overlapping liability frameworks delay settlements and increase defence costs.

## **Vicarious liability shifts in institutional abuse claims**

A landmark High Court ruling has limited institutions' vicarious liability for non-employees, leading to more negligence-based claims and complex litigation strategies.

## **LIB fires: An escalating property risk**

Fires linked to lithium-ion batteries in consumer devices, e-bikes, and EVs are increasing liability claims. Regulatory gaps add further uncertainty for insurers.

As the insurance landscape continues to evolve, insurers must adapt quickly to these emerging risks and regulatory changes to ensure effective coverage and risk management.

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## Dual insurance: Rise of claims involving dual insurance defendants

Claims involving dual insurance are increasingly common in personal injury cases, particularly within the construction industry. This trend extends to other sectors, including mining, labour hire, and real estate.

Traditionally, personal injury claims in the construction industry focused on contractual indemnities. However, these claims are now often paired with dual insurance claims, especially when contractual documents include both a contractual indemnity and an obligation to insure clause. When this obligation is met, a dual insurance claim can be pursued. This typically involves sophisticated parties who have negotiated contracts to obtain the benefit of additional insurance coverage.

Insurers should be proactive in reviewing contractual documents for clauses that could trigger dual insurance claims moving into 2026 – when such claims arise, they often reduce the insurer's liability, as multiple insurers become liable for contributing to settlement costs. For the insured, this could mean a significantly lower deductible or excess under an alternate policy.

## Workplace injuries: The prolonged and costly impact of workers' compensation systems

Workplace injuries are a persistent issue within the insurance industry, and they continue to present long-term challenges due to the complex interaction between workers' compensation systems and general liability claims.

Workplace injury claims are typically more difficult and time-consuming to resolve than non-employment related personal injury claims. This is largely due to the intertwined nature of workers' compensation systems in each jurisdiction, which often delays settlements and increases both claimant and defence costs.

For example, in Queensland, a general liability claim under the *Personal Injuries Proceedings Act 2002 (PIPA)* cannot progress until any corresponding workers' compensation claim under the *Workers' Compensation and Rehabilitation Act 2003 (WCRA)* is resolved. Additionally, common law claims under the WCRA are only ready to proceed after all statutory requirements and assessments have been met, further delaying the process.

These delays create significant challenges for insurers, who face prolonged claim lifecycles and higher costs due to the overlap between workers' compensation and public liability systems. Moreover, a claimant's ability to protect limitation periods by merely delivering a Notice of Claim under the WCRA adds complexity, as non-employer defendants may be forced to enter litigation to safeguard their own interests.

This creates an extended claim duration, increased costs, and a barrier to settlement, which ultimately burdens insurers with both time and financial implications.

## Defamation: The surge in claims and liability implications

Defamation claims are surging, triggering coverage under many general liability insurance policies that extend beyond "personal injury" definitions to include defamation, libel, and slander. These emerging claims trend is increasingly catching insurers off guard.

The rise in defamation claims is driven by two key factors:

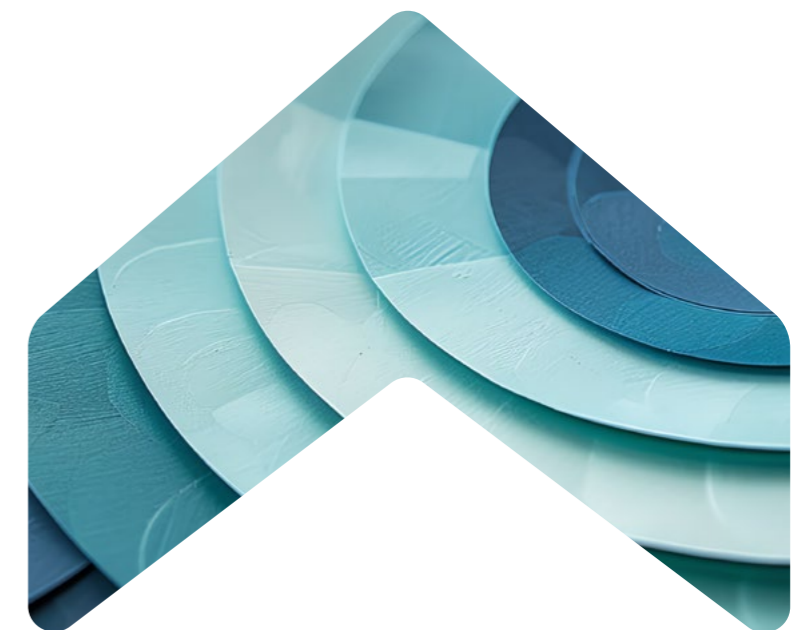
1. **High-profile defamation case:** Involving public figures such as Ben Roberts-Smith, Rebel Wilson, and Bruce Lehrmann, which have raised public awareness of defamation as a legal recourse.
2. **Social media proliferation:** Giving individuals a platform to widely publish statements, often leading to claims when reputations are perceived as harmed.

These drivers have fueled a growing number of individuals pursuing defamation actions, often believing they have been wronged, regardless of legal merit. This crosses over with financial lines insurance products, as businesses, particularly media and advisory firms, face heightened defamation exposure.

For insurers and underwriters, this trend expands the risk profile of general liability policies. Defamation claims are often costly to defend, with legal fees frequently exceeding awarded damages. Settlements can be complex, as reputational harm is deeply personal to claimants.

Businesses involved in publishing or advisory services face heightened litigation risks, making careful underwriting and policy wording review increasingly critical moving forward.

[Click here](#) to explore our section on Media and Defamation: *Media and Defamation: A Shifting Legal Landscape*.



## High court vicarious liability decision reshapes institutional abuse claims

A landmark decision on vicarious liability by the High Court of Australia in November 2024 has shifted the legal landscape in institutional abuse claims. The majority determined that vicarious liability does not extend beyond an employment relationship in Australia, prompting changes in how claims are brought and defended.

The High Court unanimously held that Bishop Paul Bird, of the Catholic Diocese of Ballarat, was not vicariously liable for historical abuse allegedly perpetrated by a priest, overturning a 2023 Victorian Court of Appeal ruling.

While Justice Gleeson acknowledged that vicarious liability could extend beyond a strict employment relationship, it would not apply unless the wrongful conduct was committed in the course of the perpetrator's institutional role, otherwise referred to as "agency".

This decision reaffirms that, to establish vicarious liability:

1. There must be an employment relationship, and
2. The wrongful acts must occur within the scope of the perpetrator's authorised role.

The decision shifts the focus in institutional claims to the negligence/breach of duty causes of action if no employment relationship exists, which is particularly relevant in cases involving clergy.

There is now an increased focus on plaintiffs seeking to establish actual knowledge or systemic failures by institutions as an alternative, which may result in increased interlocutory applications as plaintiffs seek to strengthen their cases in light of the High Court's decision.

## LIB fires: A growing insurance risk

LIB fires are becoming an increasingly common and dangerous issue, presenting a rising risk for insurers and property owners.

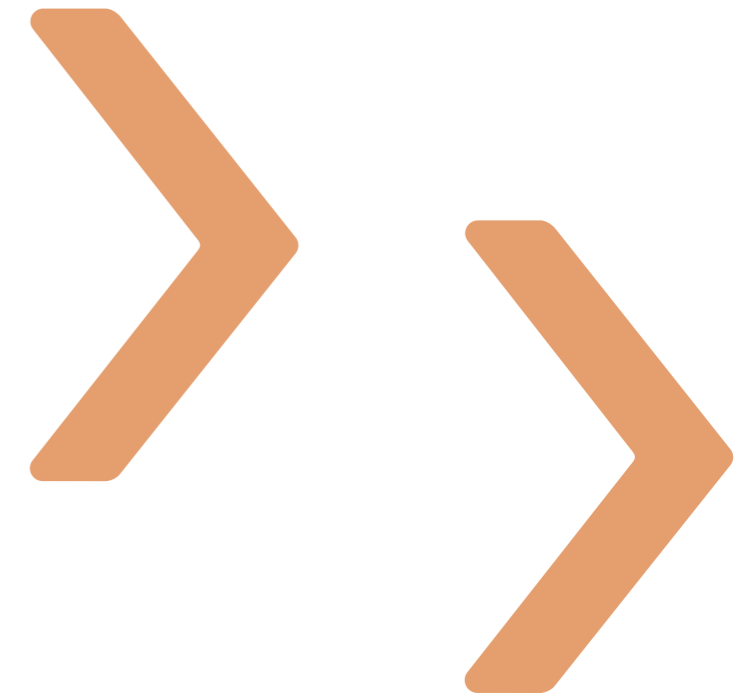
LIBs power everyday devices like smartphones, e-bikes, and EVs. While efficient, they carry a serious fire risk if damaged, overcharged, or overheated, due to a process called thermal runaway. This can lead to sudden, intense fires that are difficult to extinguish.

In 2024, Australia saw a spike in LIB-related fires, including a tragic fatality near Lake Macquarie. Fires have broken out in homes, factories, and waste facilities, often causing severe damage. Despite their growing use, safety regulations remain limited, though some developments are emerging.

LIB fires are driving higher property claims as fires can destroy homes, vehicles, and businesses. Liability exposure is also increasing – importers can face claims under Australian Consumer Law, and property owners may be held responsible if fires spread to neighboring properties. As LIB use grows, insurers need to monitor this risk closely and consider policy adjustments to address the potential for large-scale losses.

### Authors

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[Jonathan Maher](#)



# Professional and financial risks: Shifting priorities

Australia's business landscape is being defined by significant changes in governance, regulatory environments, and risk management.

## **Residential construction: Growth, cladding claims, and regulatory reforms**

Australia's residential construction sector is set to grow, with 1.2 million homes planned over five years. However, challenges like labour shortages, supply chain issues, and insolvencies remain. In Victoria, cladding claims are rising due to the Atlantis Towers case and approaching deadlines.

## **Mergers and Acquisitions (M&A) activity and Warranty and Indemnity (W&I) claims surge**

A resurgence in M&A activity is expected to increase W&I claims, particularly in sectors like energy, technology, and financial services.

## **Shifting priorities across DEI and ESG**

As global trends impact Australian businesses, there are signs of a shift in the focus on DEI and ESG initiatives.

## **Increased scrutiny on financial institutions and D&O risks**

Financial institutions face growing regulatory scrutiny, including the FAR and climate-related financial reporting. D&O will also see heightened accountability for governance failures, market misconduct, and cybersecurity risks.

Proactive risk management and strategic compliance will be essential to navigating this challenging environment.

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**“While ESG can usually be seen as part of broader risk factors, the increasing focus on it, the speed of change, and the uncertainty about impacts mean insurers should think about creating a specific approach and possibly a formal policy for managing ESG risks.”**

**Insurance and Sustainability Trends: 10 priorities for insurers to consider in 2025**, OliverWyman

## Residential construction: Growth amidst challenges

Australia’s residential construction sector is set for significant growth, driven by government efforts to address the housing crisis.

Federal and State Governments have committed to building 1.2 million new homes over five years from July 2024, alongside major transport infrastructure projects to support urban development. This surge in activity will increase demand for construction professionals across residential and transport sectors. However, challenges persist, including labour shortages, supply chain pressures, high builder insolvency rates and shifting regulations. In Victoria, concerns over state debt add further uncertainty.

While this construction boom presents clear growth opportunities, businesses must navigate workforce gaps, rising costs, and regulatory shifts to deliver projects on time and within budget. Understanding these pressures will be critical for insurers, underwriters, and legal professionals advising the sector in 2026.

## Cladding claims surge expected in Victoria

Victoria is bracing for a rise in cladding-related claims, driven by an upcoming court decision and looming legal deadlines.

The Victorian Court of Appeal delivered its decision in the Atlantis Towers case in April 2025, confirming that the State of Victoria can pursue LU Simon Builders for recladding costs under subrogation rights. Meanwhile, the 15-year limitation period for cladding building actions under section 134A of the *Building Act 1993 (Vic)* has been extended, but many claims still need to be filed soon to avoid being time-barred.

Construction firms, insurers, and legal professionals should expect a wave of claims as the deadline nears. Businesses should prepare for increased litigation activity and consider their exposure to cladding-related disputes.

## Regulatory reforms to tighten compliance in construction

Australia’s building and construction sector is facing further regulatory reforms that will heighten compliance requirements and legal exposure for professionals.

Design professionals may soon be required to certify the compliance of their designs. Victoria is also set to follow NSW’s lead by introducing a statutory duty of care, creating new avenues for claims against construction professionals. These reforms reflect a broader push to improve building quality and accountability in response to past defects and safety issues.

Construction professionals must prepare for increased oversight and potential liability. Stronger compliance processes and thorough documentation will be key to managing these risks.

## Resurgence ahead: The impact of M&A activity on W&I claims

After a downtrend in W&I claims through 2024, a resurgence is expected due to increased M&A activity, especially in mid-market deals.

This rise is driven by upcoming reforms to the merger clearance framework, anticipated lower interest rates, and a weaker Australian dollar. Key sectors, including energy, technology, and financial services, are expected to lead this growth as they adapt to evolving regulations and seize new opportunities.

With increased M&A activity, W&I insurance notifications are set to increase, particularly third-party claims. This trend will likely continue, driven by an active regulatory and litigation environment in Australia. Key areas for W&I claims in the coming year include cyber and data protection, as well as climate-related disclosures. Cyber threats are becoming more sophisticated, with data breaches and ransomware attacks rising, risking sensitive customer data and operations.

Given the expanding cybersecurity regulatory framework, breaches related to cybersecurity compliance are expected to increase, especially in SMEs with limited internal controls. There may also be a rise in W&I claims related to climate and sustainability breaches, particularly with the phasing in of climate-related financial disclosures, as well as intellectual property, financial statements, and employment matters.

## Shifting priorities: The future of DEI and ESG in Australia

We expect a challenging 2026 for DEI and ESG in a rapidly changing global trade and geopolitical environment.

In the US, efforts to scale back DEI and ESG commitments are gaining momentum. Several major corporations have abandoned DEI policies, and some financial institutions are reducing their ESG focus. While these shifts will impact Australian boardrooms, the effect is expected to be more nuanced. With a strong regulatory framework and broad consensus around certain ESG commitments, such as climate, a full-scale rollback seems unlikely. However, we're seeing signs of a shift toward shareholder primacy.

For example, some large Australian companies are slowing down green hydrogen projects, reflecting a retreat from ambitious sustainability targets. Economic pressures, like tariffs, and changing political landscapes are driving this recalibration. A growing theme is corporate Australia's resistance to mandated disclosures. For instance, the ASX Corporate Governance Council recently debated requiring company directors to disclose personal characteristics, including sexual orientation.

With little consensus among business groups, the proposed changes were scrapped in February 2025. Meanwhile, the government's mandatory climate financial disclosure laws, effective January 2025, have support from key sectors but are also facing criticism. In an election year, these laws can certainly shape Australia's ESG stance in the future.

## Financial institutions

Financial institutions serving retail clients face increased regulatory scrutiny as ASIC strengthens its enforcement against misconduct harming consumers. New legislation affecting large institutions will take effect in 2025.

As of 15 March 2025, insurers and superannuation funds officially became subject to the FAR in Australia, joining banks which have been under the regime since 15 March 2024. Climate-related financial reporting for large companies, including many financial institutions, is also underway.

On the prudential front, CPS 230 will take effect from 1 July 2025, addressing operational risks linked to APRA-regulated entities' reliance on external providers for key services.

ASIC is intensifying enforcement of design and distribution obligations (**DDO**), with multi-million-dollar penalties already secured for target market determination failures. Continued enforcement is expected into 2025.

Superannuation funds will face greater scrutiny following ASIC's criticism of trustees, aligning with the Federal Government's plan for mandatory service standards. Scams remain a key focus, with the Scam Prevention Framework Bill taking effect in February 2025, and ASIC pursuing enforcement action, including against HSBC.

Financial institutions must prioritise compliance and consumer protection to meet stronger governance expectations and avoid regulatory action.

## D&O

D&O will face a more challenging environment due to legislative changes, increased regulatory scrutiny, and political uncertainty. ASIC has warned D&Os on enforcement priorities, including cybersecurity, market misconduct, governance failures, and breaches of directors' duties.

It seeks to hold D&Os personally accountable, arguing that corporate contraventions are linked to D&Os who allowed or enabled them. Insider trading and whistleblower offences will also be under greater scrutiny. While shareholder class actions were low in 2024, disclosure risks remain high due to economic and market volatility.

**“While there are thousands of climate change-related claims, very few claims against directors and officers personally have materialised. The softness of the D&O liability insurance market has also meant that insurers are less focused on climate change as a risk.”**

**Global Directors' and Officers' Survey Report 2024/2025, WTW**

Capital raising disclosure risks have eased as companies move towards private fundraising, but ASIC has raised concerns over declining IPO activity. Rising insolvencies, particularly in construction and hospitality, will add pressure, with FY25 insolvencies expected to surpass FY24 levels. D&Os must proactively manage risk to mitigate potential liability.

## Securities class actions: Proving loss remains a key challenge

In the past year, several judgments in securities class actions have underscored the challenges plaintiffs face in proving loss. Notably, all six securities class actions that have gone to trial have resulted in some degree of loss for plaintiffs.

**“I wonder if 2025 and onwards will be when we start to see claims in relation to ESG issues. It’s an area that we have expected to see plaintiff firms focus on but there hasn’t been much movement in that space to date. ASIC’s successful enforcement action in a number of greenwashing bases last year could see that change in the coming year or so.”**



**Amanda Beattie**  
Head of Class Actions

Even in cases where a company was found to have breached its obligations, plaintiffs have struggled to establish actual loss. These decisions have reinforced the critical role of expert evidence and a well-supported counterfactual analysis.

While this trend does not necessarily signal a long-term decline in securities class actions, it has contributed to a temporary slowdown in new filings over the past year. However, this pause is unlikely to last. One potential consequence is a reduction in settlements, as defendants may feel more confident taking cases to trial.

That said, settlements will still be a strategic option in certain cases where it remains in the best interests of the defendants.

**Authors**

[Sarah Metcalfe](#), [Marcus Saw](#), [Jacques Jacobs](#), [Samantha Younane](#)

**Class Actions 2024 Wrapped: A year in review and our predictions for 2025**

2024 was another eventful year in the class actions space.

There were some important decisions, notable settlements and a reduction in the number of shareholder class actions, which has traditionally been quite dominant.

We have also seen a growing trend of class actions which focus on consumer protection, data breaches following cyber security incidents and employment. These shifts seem to reflect both regulatory changes and an increasing willingness amongst claimants to test new legal avenues for collective redress.

Reflecting on these developments, our class actions team have prepared a wrap up of the year that was and share their thoughts on what to expect in the year ahead. Read our wrap up below.

Click below to access the report



# Property, energy and infrastructure: New risks and opportunities

Insurers are continuing to grapple with evolving risks, emerging technologies, and regulatory challenges across the property, energy and infrastructure space.

## **Climate change and the Australian insurance industry**

Natural disasters are driving up premiums. With only 5% of APAC climate losses insured in 2024, legal focus on exclusions is rising. Insurers are responding with flexible cover and clearer pricing.

## **Technology's transformation in Australian property insurance**

AI is streamlining underwriting, claims, and fraud detection. Insurers must balance innovation with regulatory compliance and cyber risk.

## **Chubb v WSP case: subrogation rights and AI in Protection and Indemnity (P&I) clubs**

This case reinforces co-insured protection from subrogation. P&I clubs are using AI to improve claims and lower risk.

## **The rise of Autonomous Vessels (AVs) and aviation regulations**

As AVs increase, Australia faces regulatory and cybersecurity hurdles. The 2024 aviation Charter boosts transparency on delays and cancellations.

## **Renewable energy risks and aging power assets in Asia**

Renewables face performance issues in harsh conditions, while aging power assets are exposed to infrastructure and damage risks.

The industry must quickly adapt to change, balancing innovation with effective risk management.

## **Key Contact**

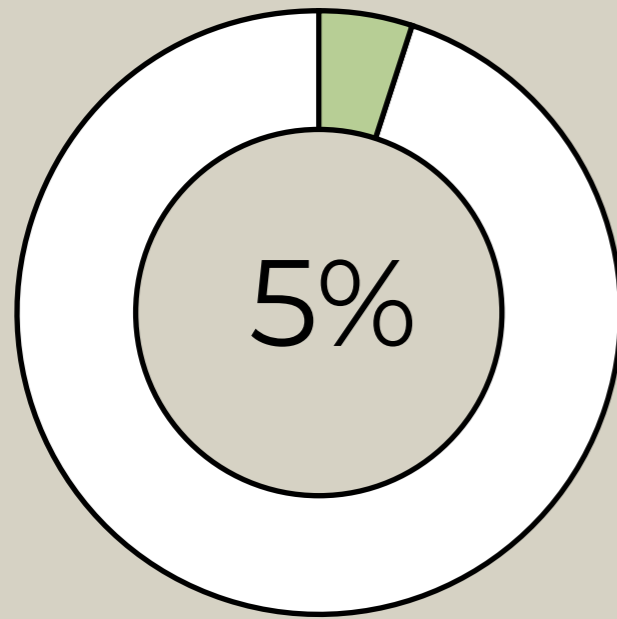


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**“Only 5% of climate-related economic losses in APAC were insured in 2024, making it the largest gap globally.”**

**5 Top Trends for Risk Capital in 2025, Aon**

## Climate change and the Australian insurance industry

Climate change remains a critical issue for the Australian insurance industry in 2026 and onwards, with natural disasters such as bushfires, floods, cyclones, and hailstorms increasing in frequency and severity. Insurers are under growing pressure to reassess risk exposure, resulting in higher premiums and limited coverage, especially in high-risk areas.

To maintain affordability, the Australian government has introduced initiatives like the Cyclone Reinsurance Pool to help insurers manage losses and ensure coverage remains accessible. Despite this, many policyholders are struggling with rapidly rising premiums, which increased by about 14% from mid-2023 to mid-2024. This has led to a rise in policy switching, impacting consumer retention rates and profitability.

Legal scrutiny over policy exclusions for climate-related damage is intensifying, with courts focusing on distinctions between terms like “flood” and “storm damage.” As litigation grows, insurers must ensure precise and defensible policy wording to minimise legal risks.

To tackle the issue of “uninsurability”, insurers must innovate by offering flexible coverage, integrating climate resilience measures, and encouraging sustainable practices. Transparency in risk assessment and pricing is becoming a key expectation, with policyholders demanding clearer insights into how climate risks are evaluated.

As climate change reshapes the landscape, insurers must balance financial stability with consumer expectations and regulatory developments.

## Technology’s transformation of Australian property insurance

Technology innovation is reshaping Australia’s property insurance sector, offering both opportunities and challenges. As insurers enhance underwriting, streamline claims, and manage risks, AI – particularly Generative AI (**GenAI**) – is playing a crucial role.

### Smarter underwriting and risk assessment

AI enables insurers to analyse vast datasets, refine risk models, and improve accuracy. GenAI can process non-standard broker slips, structure them into usable formats, and enhance data integration, leading to faster, more precise underwriting. However, while IT investments are increasing, few insurers are fully leveraging AI’s potential in 2025.

### Faster claims processing and fraud detection

AI-driven automation reduces manual workloads, minimises errors, and improves fraud detection. The 2022 Flood Response Inquiry highlighted claims delays due to unusually high volumes – an issue AI can help resolve by expediting triage and settlements, ensuring faster payouts.

### Navigating compliance and emerging risks

AI supports regulatory compliance by continuously analysing requirements, but insurers must manage risks like cyber threats, system failures, and automation errors. Ensuring fairness and regulatory alignment is critical.

By adopting AI responsibly, insurers can boost efficiency, improve customer experience, and future-proof their businesses.

## *Chubb v WSP*: Clarifying subrogation rights against co-insureds

The recent decision in *Chubb Insurance Australia Ltd v WSP Structures Pty Ltd* [2024] FCAFC 123 highlights a growing trend in the treatment of subrogation rights and insurance coverage. The Full Court upheld that WSP, a firm of consulting engineers, qualified as an “Insured” under a composite insurance policy, confirming its status as a co-insured. This ruling has significant implications for subrogation rights against co-insureds, an issue long debated in both the UK and Australia.

Under English law, a third-party required to be insured alongside the primary insured is presumed to be protected from subrogation claims, effectively creating an implied waiver of subrogation rights unless explicitly stated in the policy.

While Australian courts have not always adopted this approach, recent decisions and obiter commentary suggest that they are moving closer to aligning with the English view in the future. The WSP decision seems to signal a shift towards this direction.

However, it's crucial to remember that subrogation may still apply in certain circumstances, such as misconduct or policy breaches by the co-insured, or when separate insurable interests exist. Insurers must navigate these nuances carefully when dealing with subrogation rights in co-insured scenarios.

### AI integration in P&I Clubs: Enhancing claims handling and risk mitigation

P&I Clubs use software like QuestMarine and Windward for risk assessments, identifying loss behaviour, and setting premium levels. AI is now poised for integration into claims handling services.

QuestMarine is a data analytics platform that identifies suspicious loss behaviour, offering risk monitoring insights and advising Members on loss prevention. While it's primarily used for underwriting, it can be expanded to claims handling. Opportunities exist to integrate such software into claims and risk mitigation processes moving forward.

For example, Members can log into Club websites to access vessel details, including current position, next port, and trade type. AI can cross-reference claim data for the cargo and port, predicting risks upon arrival. Additionally, AI can provide a loss prevention guide from the Club's database, offering Members risk overviews with tailored advice.

This integration could reduce the frequency and severity of cargo claims in high-risk areas, lowering Members' risk profiles and premiums into the future.

### The rise of AVs: Global developments and regulatory challenges

The use of AVs and Autonomous Driving Systems (ADS) is rapidly growing globally, with applications in oceanography, offshore oil and gas, scientific research, and defence. Recent developments and regulatory challenges are outlined as follows:

#### The world's first fully electric AV

The MV Yara Birkland, launched in April 2022, is the world's first fully electric, autonomous commercial ship. It completed its first fully autonomous voyage in March 2023, traveling from Yara Porsgrunn to Brevik, Norway.

#### Defence use of autonomous systems

In the Ukraine-Russia conflict, AVs have played a strategic role, with reports of sea drones damaging the Kerch Bridge in September 2022 and pushing back the Russian fleet in the Black Sea. There were also reports of an AV washing ashore near Russia's naval base.

#### Australia's regulatory framework

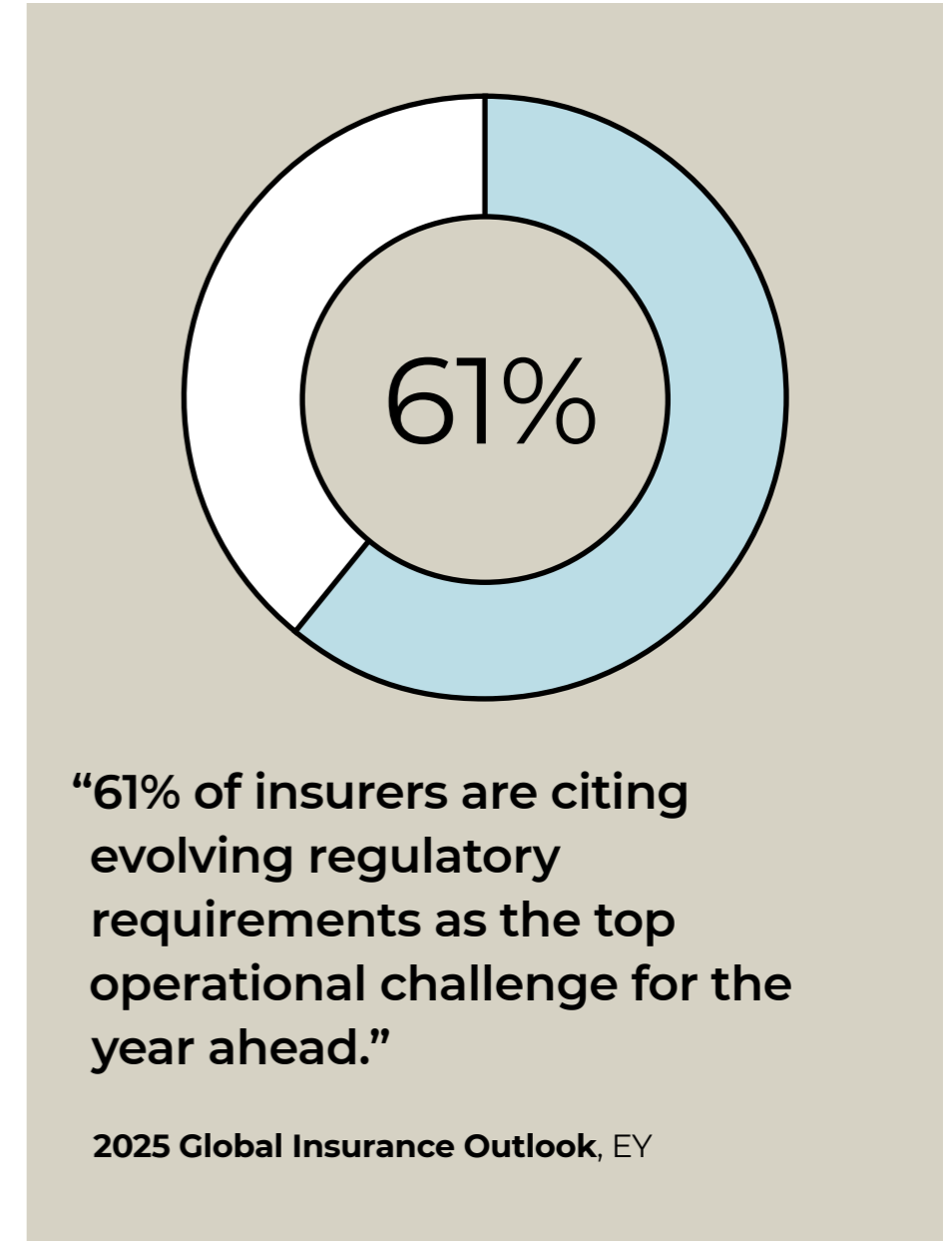
The Australian Maritime Safety Authority (AMSA) notes that AVs fall under the same regulatory framework as other vessels. However, the current system must adapt to address liability, crew requirements (including remote control), and cyber security risks. The International Maritime Organisation is working on adjusting international conventions to accommodate these changes.

Moving into 2026 and beyond, Australia should monitor these developments and adapt its legislation to stay aligned with the evolving global regulatory regime.

#### Australia's evolving passenger rights: The impact of the 2024 'Aviation Charter of Rights'

Passenger rights, particularly in relation to flight delays and cancellations, have become a key political issue in Australia and are expected to remain a prominent topic in 2026.

In late 2024, the Federal Government introduced a draft 'Aviation Charter of Rights' aimed at providing greater clarity for passengers facing delays, cancellations, and baggage issues. The charter includes provisions such as full refunds within 14 days for flights delayed by over three hours, as well as complimentary meals, accommodation,



and transfers. Additionally, it proposes the creation of an independent Aviation Industry Ombuds Scheme to handle passenger complaints and ensure regulatory compliance.

While the charter does not include fixed compensation for delays, unlike the systems in place in the EU and UK, it marks a shift towards a more comprehensive regulatory framework. The issue of passenger rights is poised to remain a focal point in both political and media discussions throughout 2026.

## The rise of drones: Navigating growth, risks, and insurance challenges

The commercial drone industry is experiencing rapid growth, with Australian drone flights expected to increase by 20% annually over the next two decades.

Drones are now being used across various industries, including transport, logistics, agriculture, mining, defence, and law enforcement. However, this accelerated growth brings new challenges, such as cyber threats, interference with manned aircraft, and potential property damage. A notable incident occurred in 2023, where 440 drones malfunctioned during a light show in Melbourne, highlighting the emerging risks associated with drone technology.

As drone use continues to rise, aviation insurers are adapting by developing tailored policies and on-demand solutions, such as 'pay as you fly' options. With ongoing industry expansion, the insurance market for drones is expected to evolve further in 2026 to address the unique risks posed by this growing technology.

## Data centres and rising energy demand in Asia

The growing reliance on cloud services and AI has driven demand for data centres across Southeast Asia.

While Singapore has long been the region's data centre hub, restrictions on new developments have shifted investment to Thailand, Malaysia, Vietnam, and Indonesia, where land and energy costs are lower.

Data centres are highly energy intensive. Their powerful computing equipment, combined with Southeast Asia's hot, humid climate, requires extensive cooling systems, further increasing power consumption.

These facilities also concentrate significant risk. The choice of fire suppression systems can impact damage outcomes in a fire, while assessing equipment loss can be complex. One key issue is whether insurance policies cover loss of warranty, which is not always considered 'damage' under standard terms.

## Renewables: Prototypical risk in Asia

The rapid expansion of wind and solar energy across Asia brings increased reliance on developing technologies, introducing greater uncertainty. As these technologies scale to unprecedented levels, the risk of underperformance rises.

Many prime wind power locations in Asia feature soft marine clay, hard volcanic rock, or deep coastal waters – making floating offshore wind an attractive solution. However, this requires robust dynamic cables to endure harsh sea conditions. A lack of international cable standards and limited operational data further complicates large-scale deployment.

In solar, some technologies have already been abandoned for new projects, highlighting the 'trial and error' nature of renewable energy development.

## Aging power asset fleet: Supply and transmission in Asia

Most power facilities are designed for a 20–30-year lifespan, yet many hydropower, oil and gas assets in Asia are now operating beyond their intended service life. As operators extend asset use, they face mounting challenges in equipment reliability and safety, with an expected rise in age-related property damage claims.

Over time, degradation risks accumulate, including corrosion, fatigue, cracking, and obsolescence due to evolving technology and standards. Managing these risks becomes even more complex when dealing with a large fleet of aging assets.

Adding to this, plants slated for decommissioning are often kept in service longer due to rising demand and a lack of alternative energy capacity. This frequently occurs without the necessary maintenance, as asset management is deprioritised in anticipation of shutdown.

Grid stability remains a major concern in Asia Pacific. Many existing transformers were not designed to accommodate renewable energy sources, which introduce increased capacity and bidirectional electricity flow.

Without investment, this mismatch can further strain aging infrastructure and accelerate grid degradation.

### Authors

[Kristine Vale](#), [Ed Burrell](#), [Wes Rose](#), [Tom Morrison](#), [James Cooper](#), [Naraya Lamart](#), [Joseph Nicholls](#), [Ollie van der Zee](#), [Hongi Han](#), [Mantita Yeo](#)



# Cyber, privacy and technology: Navigating compliance, liability and innovation

Rapid regulatory changes are reshaping how businesses handle data, AI, and cybersecurity.

## Ransomware reporting

From May 30, 2025, certain businesses must report ransomware payments under a “no fault, no liability” framework. Payments remain legal but must comply with anti-money laundering laws.

## NZ privacy framework

New Zealand’s Poupou Matatapu framework helps agencies comply with privacy laws, emphasizing data management and cultural awareness.

## NRIC data and AI regulation in Singapore

Singapore’s new ACRA portal raised privacy concerns over NRIC searches, while the AI governance framework sets fairness, accountability, and transparency standards for 2025. Businesses must navigate evolving data and AI regulations.

## Agent AI growth and quantum cryptography

AI will evolve into autonomous multi-agent systems, driving efficiency and industry disruption. Furthermore, quantum computing threatens encryption, pushing businesses toward post-quantum cryptography for future security.

To navigate these rapid regulatory changes, businesses must stay proactive in compliance, risk management, and future-proofing their systems to mitigate emerging data, AI, and cybersecurity risks.

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## “Cyber insurance expected to grow from US\$14 billion to US\$27 billion (2023 – 2027).”

Cyber Insurance Risks and Trends 2024,  
Munich Re

### Ransomware regulation: A new era in the fight against cybercrime

The Cyber Security Act 2024 has introduced a mandatory ransomware and cyber extortion payment reporting obligation for certain businesses.

From 30 May 2025, reporting business entities (i.e. an organisation with a turnover of over \$3 million per year or those responsible for critical infrastructure) who make a ransomware payment are required to make a report to the Australian Signals Directorate (ASD) within 72 hours of making the ransomware payment (or becoming aware that a ransomware payment has been made).

The Act aligns with the 2023-2030 Australian Cyber Security Strategy, part of which calls for businesses to report ransomware payments under a “no fault, no liability” framework. While the government discourages ransom payments, it recognises that making them illegal would not prevent them.

Instead, the reporting obligation aims to gather data to help disrupt the ransomware business model and provide guidance, including those businesses in Australia with an annual turnover that exceeds the turnover threshold specified in the Rules<sup>1</sup> and not being a Commonwealth body or a State body.<sup>2</sup>

<sup>1</sup> The Minister for Cyber Security can prescribe the Rules to specify the relevant annual turnover threshold. The development of the Rules are subject to a minimum 28 day consultation period. The Government has indicated during the development of the legislation its intention to consult on setting the turnover threshold at A 3 million.

<sup>2</sup> A responsible entity for a critical infrastructure asset under 2B of the Security of Critical Infrastructure Act 2018 must still report a ransom payment, even if the two conditions are not met.

The reporting requirement will help the government understand ransomware threats better, but businesses must still comply with anti-money laundering and sanction laws before making any ransom payments. This regulation marks a new phase in addressing cybercrime through transparency and data-driven disruption.

### Penalties for privacy violations: The emergence of enforcement and insurability

The amendments to the *Privacy Act 1988* (Cth), which took effect on 10 December 2024, brought significant changes to the enforcement of privacy regulations, including the imposition of hefty penalties for non-compliance.

The new amendments grant the Office of the Information Commissioner (**OAIC**) greater authority to impose penalties for privacy violations. Penalties for serious privacy breaches could reach up to A\$50 million, three times the benefit gained, or 30% of the adjusted turnover. For less serious violations, fines of up to A\$3.3 million can be imposed, and breaches of specific Australian Privacy Principles (**APPs**) or failure to submit compliant data breach statements may incur penalties of A\$330,000. These changes are designed to strengthen privacy protection in Australia, increasing accountability for entities handling personal data.

The emergence of these penalties is going to have significant implications for both businesses and insurers. Entities will need to prioritise privacy compliance to avoid substantial fines, while insurers may revise their policies to address the insurability of privacy violations. Insurers may require insureds to demonstrate compliance before offering coverage, and companies will need to invest in stronger privacy safeguards to mitigate risks.

### PouPou Matatapu: Strengthening privacy management in New Zealand

In August 2024, New Zealand’s Office of the Privacy Commissioner (**OPC**) introduced PouPou Matatapu, a comprehensive privacy management framework aimed at helping agencies better navigate privacy compliance under the *Privacy Act 2020*.

PouPou Matatapu, which translates to “pillars of privacy,” addresses common challenges faced by organisations in implementing the Privacy Act’s principle-based approach. The framework outlines ten essential topics covering the privacy management lifecycle, offering practical guidance for creating and maintaining a robust privacy management system. It encourages organisations to foster a culture of privacy and provides a standard for assessing compliance with the Information Privacy Principles of the Act. This framework is now an essential tool for agencies to ensure compliance and avoid lapses in privacy practices.

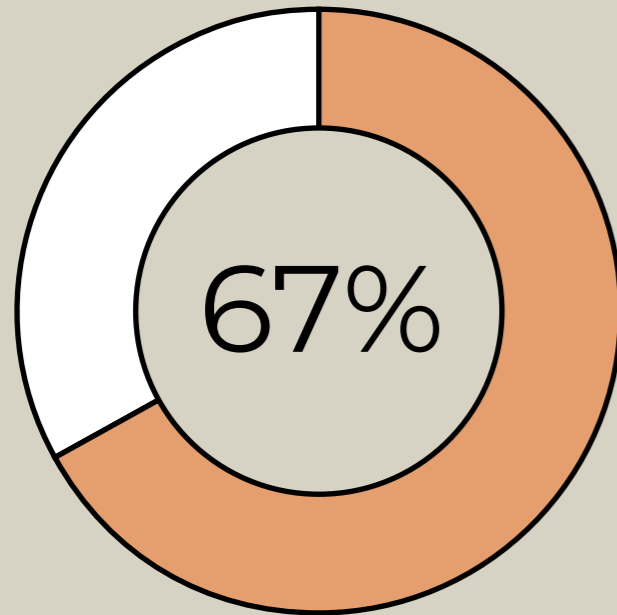
With PouPou Matatapu now available, the OPC expects agencies to have a clear understanding of their privacy obligations and to have implemented effective privacy practices. As the framework sets a higher compliance standard, agencies will likely face greater scrutiny moving forward, and the OPC is expected to show less leniency towards those failing to meet these expectations. Organisations that don’t adopt robust privacy management practices may face increased risks, including legal consequences and reputational damage.

### The Privacy Amendment Bill 2023: Expanding privacy notification requirements in New Zealand

The Privacy Amendment Bill 2023, currently progressing through the select committee process, aims to strengthen privacy rights and improve transparency regarding personal information collection in New Zealand.

The bill introduces a new information privacy principle, IPP3A, which extends the existing notification requirements under Information Privacy Principle 3 (**IPP3**). While IPP3 currently requires notice when an agency collects personal information directly from an individual, IPP3A expands this obligation to include indirect collection of personal information.

Under IPP3A, agencies must notify individuals about the collection, its purpose, the recipients of the information, and individuals’ rights to access and correct the information. Exceptions to this requirement include situations where the information is publicly available or where the individual has already been informed about the details of the collection.



**According to the Capgemini Research Institute, 67% of businesses in Singapore are prioritising AI in 2025, with 75% planning to test or adopt AI technologies**

**Capgemini**

### Policy updates for use of NRIC data following intragovernmental confusion in Singapore

Recent changes in Singapore’s handling of National Registration Identity Card (**NRIC**) numbers have raised concerns about data privacy and authentication practices.

In 2018, the Personal Data Protection Commission (**PDPC**) restricted the collection of NRIC numbers, allowing them only when necessary for safety or legal reasons. However, in December 2024, the Accounting and Corporate Regulatory Authority (**ACRA**) launched a public portal that allowed individuals to search full names and NRIC numbers, leading to public outcry.

The government clarified that the initiative aimed to address misconceptions about NRIC numbers being private and to reduce their use for authentication, which has led to scams. The PDPC plans to update its guidelines to align with this shift, and government consultations with businesses will follow.

The government’s shift towards educating the public on secure authentication practices means that businesses will need to reassess how they handle NRIC data into 2026 and onwards. We expect this change to prompt claims related to data handling, as businesses may need to adopt more secure methods for customer identity verification. The upcoming consultations and guideline updates will be essential for businesses to navigate these changes and avoid potential risks.

### Proliferation in use of AI and regulatory guidelines for use of AI in Singapore

AI is rapidly emerging as the leading technology investment for businesses in Singapore, raising both opportunities and regulatory concerns.

Many businesses in Singapore are prioritising the adoption and testing of AI moving forward. In response, regulators such as the Personal Data Protection Commission and the Infocomm Media Development Authority have published guidelines like the Model AI Governance Framework (2nd Edition) to ensure responsible AI deployment.

Additionally, the principles to promote fairness, ethics, accountability, and transparency in AI use within the financial sector aim to address risks arising from AI applications. While these frameworks are currently voluntary, they set best practices to manage emerging technological risks.

As AI adoption accelerates, these frameworks are likely to evolve into minimum industry standards. Businesses that fail to comply could face regulatory scrutiny and potential claims related to misuse or mismanagement of AI technologies, especially as AI’s role becomes more embedded in business operations.

### The rise of agent AI

AI has advanced rapidly, with generative tools like ChatGPT excelling at summarisation and creative tasks.

Looking ahead in 2025, the focus is shifting to smarter, autonomous AI agents capable of handling more complex, interdependent tasks with minimal human input, edging closer to artificial general intelligence.

These systems are expected to transform industries such as supply chain management and predictive maintenance by enabling faster, more agile decision-making.

While the commercial potential is vast, the cost of development is high, with major players like Google and Meta investing heavily. Emerging competitors like China’s DeepSeek may also play a disruptive role in shaping the future of agent AI.

Once the Privacy Amendment Bill 2023 passes, agencies will need to revise their privacy practices to ensure they comply with the updated notification requirements for both direct and indirect personal information collection. Failure to do so may result in non-compliance with the Privacy Act 2020, which could have legal consequences and impact organisations’ reputation regarding privacy practices.

## Quantum computing and traditional cryptography's demise

Quantum computing is advancing fast, with breakthroughs like qubits enabling calculations beyond classical limits. This progress poses a serious threat to traditional cryptography, risking data security.

Governments and businesses are investing heavily, with Australia alone committing \$940 million to a commercial quantum project. As encryption methods become vulnerable to quantum-powered attacks, the focus is shifting to Post-Quantum Cryptography (PQC) to safeguard data in the quantum era.

## Cyber incidents and class action risk

While recent privacy reforms did not introduce a *direct right of action*, the class action risk for companies facing major data breaches remains high.

In 2023, the Government *agreed in principle* that individuals should have the right to seek remedies for breaches of the *Privacy Act 1988* (Cth), but this was not included in the 2024 reforms.

A direct right of action could have accelerated claims, but the risk remains significant, especially for large-scale breaches or highly sensitive data. Consumer class actions are already underway against Optus and Medibank over the 2022 cyberattacks. These test cases suggest similar breaches may continue to attract plaintiff firms and funders.

For example, plaintiff lawyers are likely watching the Genea Fertility cyber incident closely, and a class action may well follow.

## Key trends in technology litigation

As businesses increasingly rely on technology to drive growth, litigation involving tech providers is expanding beyond traditional claims against IT service providers following cyber events.

With the rise of startups and the entrepreneurial dream, we're seeing more claims against app and website developers involving defective work and delays – often leading to large, speculative loss of profit claims. These disputes frequently raise complex issues around intellectual property rights in website source code. Developers can reduce risk through well-drafted contracts.

Enterprise Resource Planning (ERP) providers remain common targets. ERP software integrates core business functions like finance, human resources, and supply chain. Companies invest heavily in ERP implementations, and delays or cost overruns often lead to claims with significant loss components. These claims are increasing in number and complexity.

## To err is human, but is AI divine?

In July 2024, a faulty CrowdStrike software update caused a global outage for Microsoft Windows users. A single programming error triggered the disruption – highlighting how human error still drives many tech disputes.

Generative AI offers the promise of reducing human error by automating tasks and spotting anomalies. However, the decision-making processes of machine learning models are often opaque, even to their creators, making it difficult to detect AI-driven errors. This “black box” problem complicates liability.

For instance, Zillow faced a shareholder class action after its AI overvalued homes by more than USD \$500 million. Standard vendor contracts often shift AI-related risks to end users, but the Australian Government is reviewing whether stronger consumer protections are needed. In November 2024, it released a discussion paper assessing if current Australian Consumer Law adequately allocates liability between AI manufacturers and suppliers when things go wrong.

### Authors

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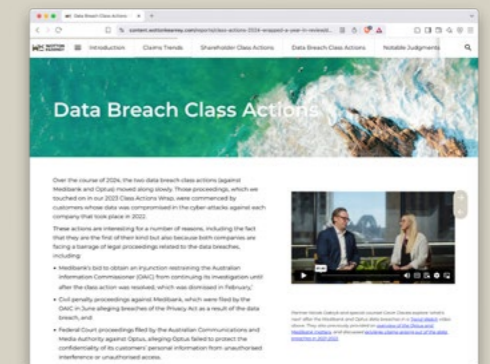
## Data breach class actions

Over the course of 2024, the two data breach class actions (against Medibank and Optus) moved along slowly. Those proceedings were commenced by customers whose data was compromised in the cyber-attacks against each company that took place in 2022.

These actions are interesting for a number of reasons, including the fact that they are the first of their kind but also because both companies are facing a barrage of legal proceedings related to the data breaches, including:

- Medibank's bid to obtain an injunction restraining the Australian Information Commissioner (OAIC) from continuing its investigation until after the class action was resolved, which was dismissed in February,
- Civil penalty proceedings against Medibank, which were filed by the OAIC in June alleging breaches of the Privacy Act as a result of the data breach, and
- Federal Court proceedings filed by the Australian Communications and Media Authority against Optus, alleging Optus failed to protect the confidentiality of its customers' personal information from unauthorised interference or unauthorised access.

Our Class Actions 2024 Wrapped report covers this in more detail. Click below to access the report



# Workplace and safety: Rising compliance and liability risks

Workplace laws are evolving, with regulators ramping up enforcement on psychosocial risks, workplace conduct, and wage compliance.

## **Psychosocial risks under scrutiny**

Regulators are targeting industries like hospitality and education for workplace bullying, stress, and harassment, making psychosocial safety a key compliance priority.

## **Expanding workplace conduct obligations**

The Respect@Work amendments place a positive duty on employers to prevent sexual harassment, extending liability beyond the workplace to online and after-hours interactions.

## **Redefining employment relationships**

Changes to the *Fair Work Act 2009* (Cth) (**FWA**) shift the focus to the true nature of work, increasing worker classification disputes. Additionally, from January 2025, criminal penalties for underpayment put businesses under greater scrutiny.

## **Flexibility, safety, and the right to disconnect**

Return-to-office policies bring new safety risks, while right-to-disconnect laws give employees the ability to refuse employer contact outside paid hours.

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## Crackdown on psychosocial hazards

Regulators are increasingly enforcing a person conducting a business or undertaking obligations under Australia's model Work Health and Safety (**WHS**) laws to eliminate or minimise psychosocial risks. Breaches can result in significant penalties, with prosecutions on the rise across states and territories.

Psychosocial hazards – ranging from anxiety, depression, and PTSD to fatigue-related injuries and chronic diseases – are gaining visibility through legal action. A 2023 NSW Government survey revealed that two-thirds of respondents had experienced workplace bullying in the past year. In response, SafeWork NSW launched its Psychological Health and Safety Strategy 2024–2026, prioritising compliance and enforcement for high-risk and large businesses.

The hospitality industry, in particular, is under scrutiny due to increased complaints and media attention.

Factors such as customer interactions, late-night shifts, and confined spaces heighten risks, while the industry's young, casually employed, and culturally diverse workforce is especially vulnerable to harassment and power imbalances. SafeWork NSW has intensified enforcement in this sector, signalling a stronger regulatory approach to workplace psychological health.

## Respect@Work amendments: Workplace sexual harassment prevention

The 2022 *Respect@Work* amendments mark a significant shift in how sexual harassment is addressed in Australian workplaces, placing greater responsibility on employers to combat harassment in all its forms.

The *Respect@Work* amendments, passed on 12 December 2022, revised the *Sex Discrimination Act 1984* and *Australian Human Rights Commission Act 1986*. They expanded the scope of sexual harassment to include conduct *"in connection with a person's employment"* at any time, not limited to the workplace or standard business hours. This includes online interactions, social media, and after-hours workplace events.

**“In Australia, psychosocial risks in the workplace continue to dominate headlines, with the corporate regulator recently warning that greater scrutiny will be placed on companies with poor personal behaviour as it signals deeper governance issues.”**

**Global Directors' and Officers' Survey Report 2024/2025, WTW**

Additionally, the threshold for harassment was lowered, focusing on whether a reasonable person would foresee the possibility of someone being offended, humiliated, or intimidated. Employers are now subject to a positive duty, requiring them to take proactive steps to eliminate unlawful conduct.

With a 24-month timeframe for lodging complaints with the Australian Human Rights Commission (**AHRC**), employers can expect an increase in complaints into 2026. To mitigate this risk, businesses must adopt higher standards of workplace conduct, ensuring a proactive approach to preventing harassment and demonstrating compliance with the new legal obligations.

## Changing loopholes: The definition of employee

Recent changes to the FWA under the 'Closing Loopholes' legislation have redefined what constitutes an employee, with the latest amendments taking effect from 26 August 2024.

The key change involves the introduction of section 15AA, which shifts the focus from contract terms to the *"real substance, practical reality, and true nature"* of the relationship between the individual and the employer. This change deviates from prior High Court rulings, which emphasised contract terms to define the relationship. Under the new framework, the totality of the relationship must be assessed, considering how the contract was actually performed in practice.

This change may lead to increased disputes over worker classification, particularly in cases where contractors argue they are essentially working as employees. The amendment could significantly impact both employers and workers, particularly when determining entitlements and protections under the FWA. The changes apply only to work performed from 26 August 2024, meaning businesses must reassess their current arrangements and ensure compliance into 2026 and onwards.

## New FWA changes: Criminal offences for intentional underpayment

From 1 January 2025, the FWA made it a criminal offence for employers to intentionally underpay employees, including conduct that results in underpayment occurring after this date.

The new law targets employers who knowingly engage in or cause underpayments. Underpayments investigated by the Fair Work Ombudsman (**FWO**) may lead to referrals for criminal prosecution. While genuine mistakes are exempt, the law emphasises the importance of regular pay reviews. Employers must ensure employees are classified correctly under relevant awards or agreements, receive proper pay rates, and are not subject to unauthorised overtime leading to underpayment risks.

The return of the "whole of relationship" test, which examines the true nature of the worker relationship, could increase underpayment claims – employers must take proactive steps to comply with the law, or risk legal action and reputational damage. Regular audits and correct classifications are essential to mitigate underpayment claims and avoid criminal liability.

## Return to work: Balancing flexibility, safety, and risk

The shift back to office work after years of hybrid arrangements has sparked ongoing debate. While employees value flexibility, employers are pushing for in-person work to boost productivity and collaboration. However, the issue extends beyond efficiency – remote work has reshaped workplace safety dynamics.

With employees working from home, employers have less control over safety protocols, increasing risks of workplace injuries, health issues, and workers' compensation claims. This could put added pressure on insurers facing claims for incidents that may not have occurred in a traditional office setting.

Balancing return-to-office mandates with employee expectations and risk management remains a challenge. Employers must navigate the legal, safety, and insurance implications while addressing workers' demands for flexibility.

## The right to disconnect: New FWA changes for employees

Employees have the right to refuse contact from their employers outside of paid hours, if reasonable, following changes to the FWA last year. In August 2025, this right will extend to small business employees.

With the rise of smartphones and advances in technology, employers are just a notification or phone call away and workers are increasingly expected to be available 24/7. The right to disconnect, which was added to the National Employment Standards as of August 2024, aims to combat this “availability creep.”

Employees are not required to monitor, read or respond to work communications from their employer outside of work hours, unless doing so is unreasonable. As cases begin to directly test these Fair Work amendments, we predict the right to disconnect will apply more to those working from changing rosters, such as hospitality and retail workers. Individuals working in offices, particularly

where client relations and deadlines are key, might be reasonably contacted by employers outside of paid hours.

## WHS offence penalties: Navigating non-insurability

The complex and evolving nature of WHS law creates a compliance landscape that is challenging for insurers and their insureds. One example is the non-insurability of penalties for companies or individuals in WHS breaches.

This trend involves the recent prohibition of indemnities and insurance for fines resulting from WHS offences in some Australian jurisdictions, including Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria and Western Australia. This does not apply in Tasmania or the Northern Territory.

The non-insurability of WHS offence penalties in these jurisdictions means companies and directors can no longer rely on insurance to cover substantial fines from WHS convictions. Companies and directors should be aware of regulators' increased focus on risk mitigation and accountability, ensuring comprehensive policies and procedures are in place. Insurers and insureds must also confirm their policies exclude indemnifying WHS prosecution penalties, as that would be an offence in these jurisdictions.

## Employment law class actions

Employment law class actions have steadily increased in recent years, with over 20 currently ongoing and several active investigations. Last year saw the largest-ever settlement in an underpayments class action, \$230 million in one of the Junior Doctors cases. Several of these cases remain active, along with underpayment claims against various defendants across multiple industries.

In addition to these ongoing cases, we expect last year's changes to the FWA to open the door to more potential actions, particularly involving casual employees. A challenge to the Right to Disconnect is also likely to arise at some stage, potentially from a plaintiff firm.

## Wotton Kearney's 2025 workplace and safety guide

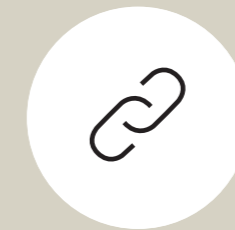
With evolving legislation and shifting workplace norms, keeping up with employer obligations and employee rights has never been more important.

That's why we've released our 2025 Workplace and Safety Guide — a comprehensive resource designed to help businesses and HR professionals navigate the complexities of employment, industrial relations, and safety law.

Packed with practical strategies and insights from our team, our guide covers key issues such as workplace safety, WHS compliance, and addressing bullying to foster safer, more respectful environments.

Sian Gilbert, Workplace and Safety partner, shared: “In 2025, staying ahead of workplace changes and mitigating risks is more critical than ever. Our guide breaks down the key issues, shares expert insights, and offers actionable solutions to help businesses confidently tackle today's challenges.”

Click below to access the report.



### Authors

Sian Gilbert, [Laura Gavan](#), [Liam Zisis](#), [Mikaela Mahony](#), [Atticus Saunders](#), Sarah Harvey, Sophie Stark, Sarah Moore, Rebecca Poynton, Rebekah Johnson, Edward Yoo

# Health: Reforms and increasing scrutiny

As industries face evolving regulatory landscapes, organisations must adapt to new reforms and increasing scrutiny in several sectors.

## **Aged care reforms**

The *Aged Care Act 2024* introduces a registration system for providers, emphasising accountability. Providers must comply with the aged care code of conduct or face penalties, with an expected rise in complaints.

## **Medicinal cannabis scrutiny**

Increased scrutiny of medicinal cannabis prescriptions is expected, especially for online services. Practitioners may face civil claims for inadequate patient care or negligence.

## **Shift to adversarial litigation**

Civil litigation is becoming more adversarial, leading to higher defence costs and prolonged case durations, particularly in healthcare.

## **Vaping reforms**

The Australian government's vaping reforms, effective July 2024, focus on regulating vaping products and reducing youth exposure. This will likely result in more regulatory investigations and compliance risks.

As these reforms take effect, organisations must stay vigilant and prepared to navigate the increasing regulatory demands and challenges ahead.

## **Key Contacts**



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## Aged care: Strengthening rights and improving accountability

Major reforms to aged care legislation are approaching, with new laws set to replace the *Aged Care Act 1997* and related legislation.

The new *Aged Care Act 2024* (Cth), effective 1 July 2025, will implement key recommendations from the 2021 Royal Commission into Aged Care Quality and Safety. The reforms aim to enhance the rights of older individuals and introduce mechanisms for complaints, safeguarding against neglect and poor care standards.

A central change is the introduction of a registration system for aged care providers, which increases accountability. The Aged Care Quality and Safety Commissioner will have the power to suspend or revoke a provider's registration for non-compliance with standards.

The new Act imposes a duty on providers to ensure their conduct doesn't harm the health and safety of care recipients, with penalties for breaches. Providers must also ensure workers comply with the Aged Care Code of Conduct, which emphasises dignity, respect, and honesty.

The number of complaints to the Commissioner is expected to rise, and aged care providers will need to prove compliance with the Statement of Rights and Code of Conduct, or face potential penalties and conditions.

## Medicinal cannabis: Scrutiny, standards, and the road ahead

The medicinal cannabis market has rapidly developed since the Therapeutic Goods Administration (**TGA**) began authorising prescriptions under the Special Access Scheme and Authorised Prescriber framework. However, there has been ongoing tension between health practitioners and the Medical Board.

The Australian Health Practitioner Regulation Agency (**AHPRA**) and the Medical Board have been closely monitoring medicinal cannabis prescribing practices. They have raised concerns about insufficient documentation and follow-up care for patients prescribed medicinal cannabis. Additionally, there is debate over the lack of evidence supporting the treatment of certain conditions with medicinal cannabis, despite TGA approval.

Regulatory scrutiny of medicinal cannabis prescriptions is expected to increase in the next 12 months. Online services offering medicinal cannabis prescriptions are at higher risk of investigation, particularly regarding the adequacy of clinical consultations and ongoing patient assessments. Practitioners may also face civil claims if found to be negligent in their prescribing practices.

## The shift to adversarial litigation: Rising costs and prolonged claims

Civil actions across many Australian jurisdictions are adopting a more adversarial approach, moving away from pragmatic negotiated settlements. This shift is impacting defence costs and increasing the time required to resolve claims.

The growing competition among plaintiff legal firms, combined with the expansion of previously State-based firms into other regions, is driving this change. Additionally, the use of remote videoconferencing post-COVID-19 has facilitated access to interstate experts and firms, streamlining the use of electronic evidence in proceedings.

This shift towards more adversarial litigation results in higher defense costs and longer case durations. In healthcare, political issues like the 'ramping crisis' and COVID-19 have led to an increase in complaints against health practitioners, particularly regarding delays in care.

This trend is expected to continue, increasing the costs of investigating and resolving claims. As a result, organisations in healthcare and other sectors must be prepared for prolonged litigation processes and potentially higher settlement costs.

## Vaping reforms: New regulations and rising compliance risks

In 2023, the Australian Government introduced significant reforms to regulate vaping products, focusing on reducing youth exposure to vaping and nicotine dependence.

These reforms, which affect the importation, manufacturing, supply, and advertising of vapes, aim to protect public health. On 1 July 2024, the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024 took effect in Victoria, prohibiting disposable vapes while allowing therapeutic uses.

Additionally, the TGA published strengthened standards for devices, ingredients, packaging, and labeling, with full implementation expected shortly.

The reforms will likely trigger an increase in regulatory investigations, especially regarding the advertising of nicotine and vaping products. There is also expected to be a rise in disciplinary complaints concerning doctors and pharmacists involved in prescribing or supplying non-therapeutic vapes.

Organisations in healthcare and vaping-related industries must be prepared for heightened scrutiny and potential compliance risks.

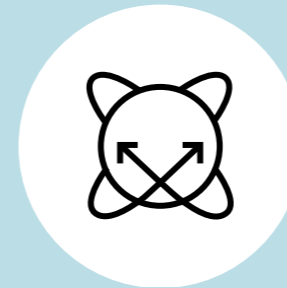
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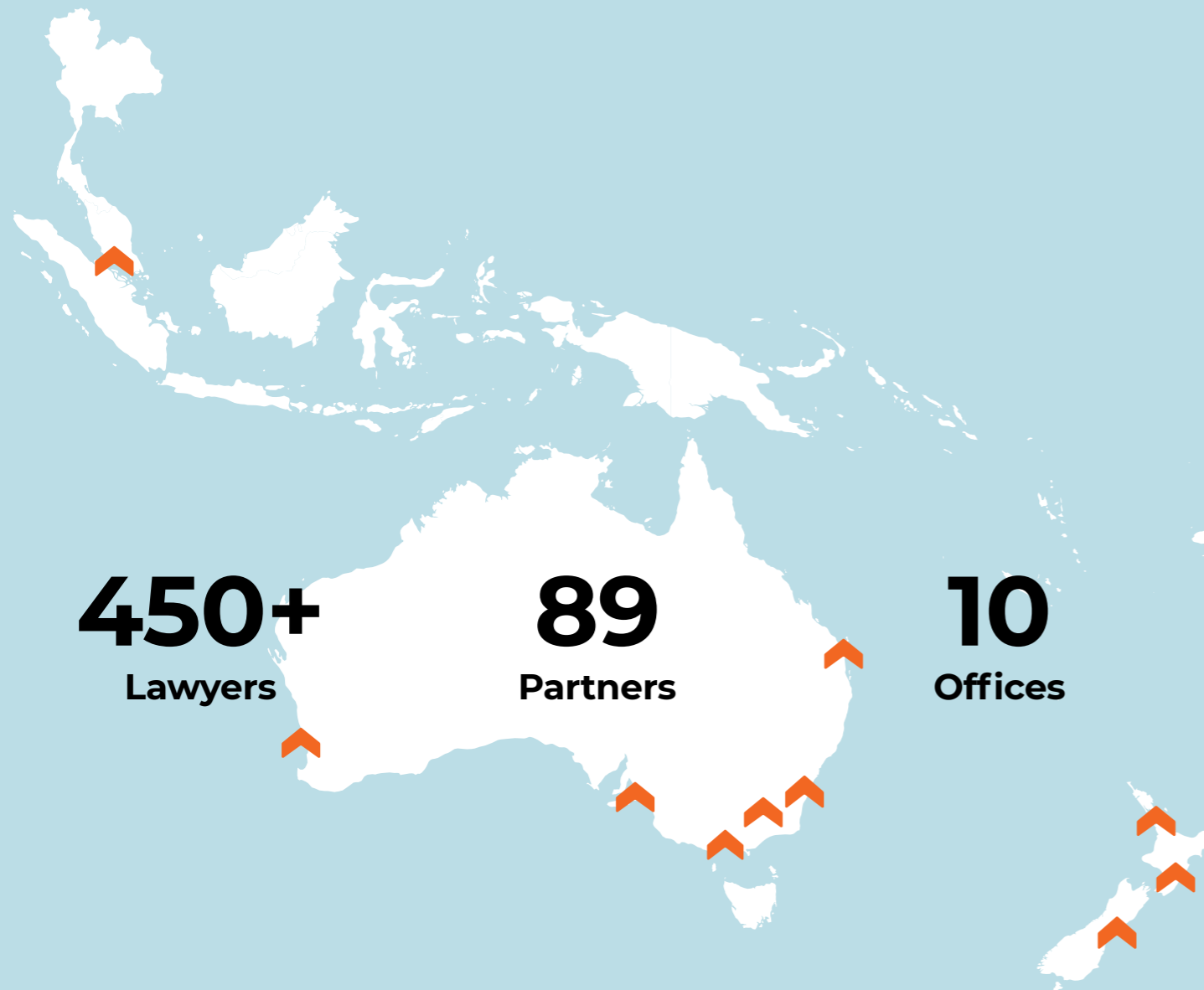
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