

Litigation, ADRs, Regulation, Modernisation

In recent times much has been happening in the areas of litigation, dispute resolution and regulation. This bulletin headlines some of the more recent and relevant facets of the changing commercial environment.

Litigation

Class Actions have never been a feature of the NZ legal scene with ACC effectively precluding collective action in respect of personal injury. However in recent times we have seen such measures for a wider range of grievances, namely, Feltex shareholders pursuing the failed company's board; overcharging bank fees; kiwifruit growers seeking redress for the PSA outbreak and, potentially, leaky building owners pursuing materials suppliers.

Such actions almost certainly will produce increasingly adverse outcomes for defendants and their insurers. The traditional means of assessing indemnity limit requirements may, in many cases, need to take this potential exposure into account.

Litigation Funding. This is where civil claims are being facilitated by third party funding. This feature of the litigation environment in NZ will surely become more prevalent.

For insurers, out-of-court settlements where claimants have contracted to a litigation funder can be problematical in that an otherwise acceptable out-of-court settlement can be stymied by the funders who may have rights under its contract with the claimant to frustrate conventional settlement negotiations.

ADRs

Alternative Disputes Resolution - settling claims in various ways outside of the Courts. Mediation is common in settling insurance-backed disputes. Where settlement is not reached in this informal process the parties can revert to the Courts for a final outcome.

Arbitration is a more formal alternative where the Arbitrator decides the outcome and there may only be limited rights of appeal.

Regulation

We have over the past few years drawn attention to changes in legislation and their impact on businesses and insurers. (see [Market Bulletins](#) on the VL website).

Much has been said and written in particular about the impending Health & Safety Reform Bill whose introduction is being delayed by some "rearguard action" on the part of some parliamentarians and the Sentencing Amendment Act 2014 is causing some consternation in its uncomfortable fit with the principles of Accident Compensation.

But as well, the new and expanded roles of the Financial Markets Authority and the Commerce Commission will impose new constraints on the commercial sector with attendant greater exposures for companies and their insurers.

Courts Modernisation

The **Judicature Modernisation Bill** is currently under consideration. This is an omnibus bill that seeks to make Courts more transparent, modern, people centred and efficient. Specifically, and most likely to affect the management of insurance claims, are the provisions to enable District Courts to hear civil claims up to \$350,000 (currently \$200,000)

There have been extensive references to these topics in the volumes of reading material which cross our desks at VL. Most pertinently are the following publications from the well respected law firms Chapman Tripp and Duncan Cotterill and a recent article in the NZ Herald. We are grateful to these firms for permission to circulate these publications.

[Chapman Tripp | Dispute Resolution in NZ](#)
[Duncan Cotterill | Health & Safety Reform Bill Update](#)
[Duncan Cotterill | Health & Safety in High Hazard Industries](#)
[Duncan Cotterill | WorkSafe Releases Statistics on Fatalities](#)
[Duncan Cotterill | Health & Safety Advisor Jailed in England](#)
[NZ Herald | Legal Landscape looking riskier for firms](#)

Vero Liability, as it has in the past, continues to keep abreast of all facets of developments affecting its policyholders. This underpins the Vero Liability commitment to provide dependable underwriting and pro-active claims management via its network of professional insurance brokers and agents.

Please contact your specialist VL [Underwriter](#) or [Claims Professional](#) to discuss any aspect of this Bulletin.