

Official launch of the Allens Arthur Robinson *Annual Review of Insurance and Reinsurance Law 2010*, delivered by Justice Sackar

Insurance is of course a global market. Australian lawyers therefore, must of necessity keep pace with global trends and decisions. That said, it can be time consuming to do so even if one practises in the field. It may be further accepted that there are many aspects of the general law and / or legislative and regulatory regimes which directly or indirectly impact on the insurance market and which any prudent lawyer would need to be constantly aware of to be able to give comprehensive advice.

In medicine I suspect for a very long time except in some areas for example such as anatomy, textbooks have become largely irrelevant. Doctors rely heavily upon learned papers, seminars and / or discussion groups. The same is not quite yet true of the law but we now have access to decisions moments after they have given via various online sources. This serves to create a sense of immediacy not known once in the law. However the pace of change, in part because of the appellate process, does permit a moment or two of reflection for the lawyer after a decision is handed down. The full impact of it, especially where there are multiple judgments, may not be immediately apparent.

To have access to a publication such as the Annual Review of Insurance and Reinsurance Law produced by Allens Arthur Robinson insurance practice group is a real bonus for the professional lawyer or insurance professional alike. It is entirely unsurprising that it is now in its second decade.

I should observe that one of my judicial colleagues, Mr Justice Michael Ball is a former partner and member of the practice group and of course one of the chief authors of the report which lead to the Insurance Contracts Act. He is also the co-author of the standard insurance textbook. There has therefore indeed been a long tradition of insurance expertise within the practice group here at Allens.

The 2010 publication contains an abundance of items delivered by means of relatively bite-sized portions. It comprises a concise, pithy, accurate and highly informative set of materials. Some of the titles for the case notes are particularly catchy, such as "Flogging a possible dead horse" which deals with the reinstatement of a deregistered company to pursue the possibility of accessing an insurance policy. Or: "Nice try but no cigar," which of course deals with the question of when a person is able to rely upon the relevant proportionate liability scheme as enacted in Victoria.

A glance at the table of contents makes it plain to any person interested in the subject, that it is a must have and must read. It not only provides a distillation of important Australian cases, State and Federal, at trial and appellate level, but case law developments in the UK, Singapore, Hong Kong and China. It also contains references to changes in the legislative and regulatory environments here and abroad.

Of some considerable significance to local practitioners are of course the most recent High Court judgments handed down in 2010. There are if I may say excellent notes on each of them.

Some highlights include for example a note on that court's decision in *Wallaby Grip v QBE* handed down in March 2010, which serves as a timely reminder on the question of who

bears what onus in circumstances where a policy document is missing. The court reaffirmed the proposition that the onus is on the insured to prove the existence of a policy and its terms and that the loss is covered by the insuring clause. It is then a matter for the insurer to prove any exclusion, limitation or restriction on the scope of indemnity.

The note on the case of *Selected Seeds v QBEMM* handed down by the court in November last year is another timely reminder of the principles concerning the construction of policies but importantly the construction of exclusion clauses.

The note on the decision of the NSW Court of Appeal in *Makawe v Randwick City Council*, exposes a further development in the jurisprudence concerning what has become known as the 'salient feature' test for determining whether a duty of care exists in novel circumstances. The case note speaks of the test being entrenched by that authority. Perhaps it could be more accurately said to be entrenched for only as long as the High Court chooses not to intervene.

Equally as important as the case law on one view is the note for example on the introduction into Federal Parliament in March of 2010 of the Insurance Contracts Amendment Bill. The Bill has currently lapsed because Parliament was prorogued for the federal election. However if revived it would potentially provide for significant changes to the legislation in relation to, for example, the duty of disclosure and the enhancement of consumer protection with regards to unfair or harsh contract terms. If ultimately introduced it would as the note observes bring about significant changes to insurers operational and administrative procedures.

The 2010 publication, as with past years, is a serious and valuable contribution to the dissemination of learning in the field of insurance.

I warmly congratulate Allens Arthur Robinson, John Edmond, the National practice leader, John Morgan the editor and the many contributors on this production. I now have great pleasure in declaring the 2010 volume launched.