

Australian Court of Appeal considers welding exclusion

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< Previous

Incorrectly named insured policy dispute - was the broker or insurer liable?

Next >

Contractors' liability and contract works exclusion

In [Ritchie v Insurance Australia Ltd \[2022\] NSWCA 278](#), the New South Wales Court of Appeal has upheld the first instance judgment on the meaning of a [public liability policy](#).

The appeal concerned only one element of the judgment, the construction of a 'Welding Endorsement'.

Facts

The case concerned a bush fire which was caused when employees of Advanced Plumbing & Drains Pty Ltd (in liquidation) were cutting reinforced steel with a power cutter. The friction between the steel and cutting blade produced sparks, and the sparks ignited a bush fire.

The claimant brought proceedings on behalf of group members who suffered [property damage](#) or personal injury as a result of that fire. Advanced Plumbing went into liquidation and so the claimant sought leave to bring the claim directly against insurers.

The relevant insurance policy contained a "Welding Endorsement" which stipulated that the [insurer](#) would not pay any liability arising out of or in any way connected with:

"...arc or flame cutting, flame heating, arc or gas welding... and/or spark producing equipment... unless such activity is conducted in strict compliance with the Australian Standard AS 1674, Part 1 - 1997 'Safety in Welding and Allied Processes – Fire Precautions".

NSW Court of Appeal decision

The words "spark producing equipment" were interpreted as referring not only to equipment which generated sparks as part of its purpose, but also equipment which generated sparks when used in a specific way.

The purpose of the Welding Endorsement was to exclude a list of activities carrying a risk of fire unless they were carried out in strict compliance with fire precaution standards. On that basis, there was no cover, and the appeal was dismissed.

Comment

Although a decision of the Australian court, and so persuasive but not binding on an English court, this case serves as a useful reminder of the need for strict compliance by insureds with the terms of any 'hot works' conditions in their policy if liability is to attach.

Contents

- [Perils: Property insurance claims newsletter - October 2023](#) →
- [Insurance considerations following use of RAAC concrete](#) →
- [Underlying contracts remain key in arguments over scope of co-insurance](#) →
- [Recklessness not 'accidental' when it comes to trespass](#) →
- [Property damage oil spills, reliance and duties of delivery drivers](#) →
- [The Supreme Court considers limitation in environmental nuisance claims](#) →
- [Incorrectly named insured policy dispute - was the broker or insurer liable?](#) →
- [Australian Court of Appeal considers welding exclusion](#) →
- [Contractors' liability and contract works exclusion](#) →
- [FOS: complaints involving damage to underground pipes](#) →

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