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Should they?   Before *section 54* of the *Insurance Contracts Act 1984* (Cth) came into effect in 1984, the answer to those questions was “*quite possibly*”.   Would a refusal by an insurer to pay in such circumstances be a *fair* or *equitable outcome*?   Most people probably wouldn’t think so, because the fact of the bald tyre couldn’t really be said to have caused or contributed to the damage.   The *Australian Law Reform Commission* found that:   *“The existing law is unsatisfactory in that the parties’ rights are determined by the form in which the contract is drafted rather than by reference to the harm caused. The present law can also operate inequitably in that breach of the term may lead to termination of the contract regardless of whether or not the insurer suffered any prejudice as a result of the insured’s breach”.*     **Section 54 – Insurance Contracts Act 1984**     Section 54 of the Insurance Contracts Act provides:               “***Insurer may not refuse to pay claims in certain circumstances***   *(1)  Subject to this section, where the effect of a contract of insurance would, but                    for this section, be that the insurer may refuse to pay a claim, either in whole                    or in part, by reason of some act of the insured or of some other person,                    being an act that occurred after the contract was entered into but not being                    an act in respect of which subsection (2) applies, the insurer may not refuse                    to pay the claim by reason only of that act but the insurer's liability in respect                    of the claim is reduced by the amount that fairly represents the extent to                    which the insurer's interests were prejudiced as a result of that act.*  *(2)  Subject to the succeeding provisions of this section, where the act could                    reasonably be regarded as being capable of causing or contributing to a                    loss in respect of which insurance cover is provided by the contract, the                    insurer may refuse to pay the claim.*  *(3)  Where the insured proves that no part of the loss that gave rise to the claim                    was caused by the act, the insurer may not refuse to pay the claim by                    reason only of the act.*  *(4)  Where the insured proves that some part of the loss that gave rise to the                    claim was not caused by the act, the insurer may not refuse to pay the                    claim, so far as it concerns that part of the loss, by reason only of the act.*  *(5)  Where:*  *(a)  the act was necessary to protect the safety of a person or to preserve                            property; or*  *(b)  it was not reasonably possible for the insured or other person not to do                            the act; the insurer may not refuse to pay the claim by reason only of                            the act.*  *(6)  A reference in this section to an act includes a reference to:*  *(a) an omission; and* *(b) an act or omission that has the effect of altering the state or condition of                          the subject-matter of the contract or of allowing the state or condition of                          that subject-matter to alter.”*   The most recent High Court decision on section 54 is *Maxwell v Highway Hauliers Pty Ltd HCA 33 (September 2014).*   See: [*http://www.austlii.edu.au/au/cases/cth/HCA/2014/33.html*](http://www.austlii.edu.au/au/cases/cth/HCA/2014/33.html)   The case involved an interstate trucking business where trucks were damaged in separate accidents when the drivers were not appropriately “*PAQS*” certified. Lloyds were the insurers under an insurance policy providing for accidental cover to the trucks, and refused to pay the claims on the basis that the driver’s did not have the requisite certification.   The High Court applied section 54 and found that Lloyds was liable to pay the claims, as the Court found that the purpose of section 54 was to strike “*a fair balance between the interests of an insurer and an insured”.*     ***How are You Affected?***     Terms in your policy attempting to limit the insurer’s liability upon an act or omission by you occurring after your policy commenced may not necessarily be an effective means for the insurer to deny or limit its cover, unless the particular act or omission causes or contributes to the loss and prejudices the insurer.     ***What Should You Do?***     You should read your policy carefully and discuss it with your insurer or insurance broker. You should also question your insurer or insurance broker about the circumstances in which the insurer is likely to deny a claim.  By Clive Mills | | | |  | | --- | |  | | | |