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| March 2016 Newsletterhttps://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/5586f26d-804f-4d5c-8685-80c900036b2f.jpg Insurance Policies - In What Circumstances Can An Insurer Refuse to Pay? Your car is waiting at traffic lights when another vehicle runs into the back of it. There’s a lot of damage that is going to cost a lot to repair. Your insurer says they’re not paying for the damage because you had a bald tyre on your car when the accident occurred. Can they refuse to pay up? 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 |

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