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Articles

Recreational drones and third-party liability: Insurance as an indispensable part of Australia's compensatory framework?

— *J Tarr, K Paynter, G Nicholson, M Guihot*

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As recreational drone deployment in Australia heads into the millions, ensuring adequate public protection is in place presents considerable challenges. A significant outlier against peer nations' risk management and prevention frameworks, Australia's 'light touch' regulatory approach aligns with federal and state governments' innovation strategies for growth of this industry. The trade-off inherent in this, however, goes to public well-being as third-party protection from drone injuries, damage or losses, demands additional attention to ensure an appropriate balance between competing interests.

Current regulatory approaches to prevention and risk management comprise information provision and educational outreach on the regulator's part but lack any formal training, licensing, registration, third-party insurance or operator certification requirements. Further, despite marginal deterrence measures provided, loss and injury compensation for third parties impacted is limited to the vicissitudes of civil law actions for recovery augmented by presumed access to voluntarily assumed insurance.

An Australian insurance market study however reveals that direct recreational drone coverage procurement is currently non-viable, and indirect coverage, such as through home and contents policies, is often so heavily restricted by policy exclusions as to be valueless to third party recovery. Accordingly, introduction of a mandatory third-party insurance framework for injured third parties is now timely and, despite the evolving nature of the drone industry, should not be deferred to the next decade, as proposed in the Australian Government's 2024 Aviation White Paper — Towards 2050.

There is no nullifying of a motor vehicle's policy of insurance, or is there? The Court of Justice introduces uncertainty into the motor insurance directive through the principle of abuse of rights

— *James Marson and Katy Ferris*

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On 19 September 2024, the Court of Justice of the European Union rendered its judgment in *Mutuelle Assurance des Travailleurs Mutualistes (Matmut) v TN (Matmut)*, offering a potentially significant interpretation of the Motor Vehicle Insurance Directive (MVID). The MVID plays a pivotal role in enhancing protections for third-party victims of motor vehicle incidents by establishing a uniform framework of compulsory insurance across EU Member States. This protective right is very restrictively interpreted as it ensures that victims of motor accidents receive compensation for losses regardless of the insurance status of the liable party. *Matmut* arose from a preliminary reference from

France regarding the ability of an insurer to have a contract of insurance held null and void due to a misrepresentation by the policyholder, an ability available in accordance with French law. The judgment largely follows established jurisprudence but its import rests with the Court of Justice introducing an abuse of rights defence for national courts where insurers who wish to avoid a contract established on the basis of an intentional omission/false statement by the insured. The Court has consequently, and most probably unwittingly, allowed an escape from the compulsory motor vehicle insurance regime and pitted the principle of abuse of rights against the EU's long-established jurisprudence of denying a nullification or recanting of a policy of insurance.

Case Notes

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