

DISPUTES IN AUSTRALIA 2021: THE VIDEO WRAP

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Video

In a video series, our national litigation experts reflect on the key contentious trends for 2021 (and make a few New Year predictions). Includes reports on class actions, finreg, corporate crime and IP disputes.

DISPUTES WRAP SUMMARY: ANNA SUTHERLAND

Watch this short summary of key trends and predictions from our national head of disputes and global joint-managing partner, Anna Sutherland.

You can delve into more detail in each of our short videos below. To receive general updates about dispute resolution topics to your inbox, subscribe to our dispute resolution mailing list [here](#) or visit our [Disputes Australia Notes blog](#) for case and legislative updates.

HEAR FROM OUR EXPERTS

CLASS ACTIONS

We have witnessed growth in the frequency of filings, particularly in the Victorian Supreme Court with the introduction of contingency fees, as well as class action multiplicity and competing claims growth within all jurisdictions. Adding to the volatility in the space issues around the validity of common fund orders, class closure orders and regulation of litigation funding as well as reforms designed to regulate the minimum return group members should receive in a class action settlement judgement.

FINANCIAL SERVICES REGULATORY

The overall theme in contentious FSR is a regulatory shift stemming from the pandemic. There's new leadership at ASIC and an abandonment of the 'why not litigate' mantra. We expect ASIC to continue to focus on areas where consumers have suffered harm, as well as remediation and potentially also debt capital markets (especially the management of conflicts of interest). And of course, cryptocurrencies will continue to be closely monitored by the regulator. Watch our contentious FSR wrap for more.

CORPORATE CRIME & INVESTIGATIONS

2021 saw the corporate criminal justice pipeline grow steadily, with substantial increases in reporting of misconduct filtering through to slowly more prosecutions and convictions. One of the major trends we expect to continue in 2022 is an increase in the number and variety of reports of misconduct, due to improving governance standards, the widening obligations to report to regulators, more whistleblowing activity and increased focus on ESG. In the coming year boards and senior executives should be focused on their internal reporting processes and culture to ensure significant issues are brought to the attention of senior officers to give companies the time they will need to consider the appropriate action.

CYBER AND DATA DISPUTES

Cyber attacks are indisputably on the rise, with regulation quickly following suit. This year has seen regulators ramping up the enforcement action against businesses that fail to take adequate steps to prevent cyber attacks and data breaches. We expect this trend to continue in 2022 as businesses look to overseas developments to remain ahead of the curve. 2021 also saw the continued development of cyber specific insurance and is sure to be a hot topic for future policy discussion. Keeping an eye on overseas developments may help keep businesses ahead of the curve in coming years.

ESG DISPUTES

In 2021 we saw climate litigation actually land and affect the way companies are approaching strategic investment decisions and approvals for new projects, their climate commitments and their engagement with relevant stakeholders. The speed of changes in this area is making climate change a priority focus for all businesses. We expect further action on climate change in the wake of increasing global pressure (including the COP-26 conference), and a number of upcoming elections in 2022. Another area to watch will be the way in which new technologies allow for emissions reductions. Watch our ESG disputes wrap for more.

INTELLECTUAL PROPERTY DISPUTES

It's been an action-packed year for IP litigation, despite the pandemic. The understanding of the value of inventions in the pharmaceutical world has never been deeper, as vaccines have helped us all return to the new normal. High tech inventions are increasingly important to keep people connected, safe, active and entertained. Intellectual property relating to solutions to climate change is a huge area for IP in the future, and we're already seeing that in our practice. Watch our IP disputes wrap for more.

INSURANCE DISPUTES

Without doubt the hottest topic in insurance this year has been the battle over insurance cover for the financial losses suffered by policyholders due to the pandemic and these discussions are likely to continue well into 2022. The past twelve months have also seen a continued hardening of the D&O market due to the increasing class actions and regulatory activity. Increases in frequency and sophistication of cyber attacks is also an ongoing feature in 2022 with companies needing to consider if they are covered by an existing policy and, even if so, to check their exclusion clauses.

INTERNATIONAL ARBITRATION

Arbitration is certainly on the rise in Australia, and we've seen a significant increase in both the size and scope of cases. Recent decisions in the UK, Hong Kong and Singapore have confirmed that compliance with pre-arbitration escalation clauses in contracts is a question of admissibility (rather than jurisdiction). Looking ahead, we expect to see an uptick in the use of arbitration by the technology, consumer product and banking and finance sectors, particularly given the confidentiality and enforceability of the arbitral process. Watch our international arbitration wrap for more.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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