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INSURANCE TODAY

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PUBS EXPOSED IN DAMAGES PAYOUT

Hoteliers and pub owners could be exposed to legal action if their patrons are injured during a holdup, following a recent case in the NSW District Court.

In a decision that deeply concerns both the hospitality and insurance industries, a man was awarded \$76,000 after he successfully sued the Drummoyne Sports Club in Sydney's inner-west for injuries he sustained during an armed raid on the club in 2002.

Ross Brown, 64, was toppled from his bar stool at the club after three men armed with guns entered the premises.

Mr Brown attempted to strike one of the intruders but lost his balance and fell from his stool, with the intruder falling on top of him.

The men then fled with more than \$1500 cash.

The would-be hero, who fractured his pelvis in the fall, sued the club for not taking adequate measures to prevent the bandits from entering the premises.

District Court Judge Colin Phegan agreed with Mr Brown's argument, stating the club's doors should have been locked at 8pm to prevent unauthorised access.

If the doors had been locked at the time, the bandits would have been forced to smash their way in, giving bar staff inside adequate time to warn patrons to comply with the intruders' demands, Judge Phegan said.

About 30 patrons were inside the club at the time of the robbery.



Ready for business: a court decision means a locked and empty bar is just about the only "safe" situation for a publican or club licensee

The Drummoyne Sports Club has lodged an appeal to the court's decision. Depending on the outcome of the appeal, the case could set a costly precedent for club and pub owners around Australia.

Clubs NSW Chief Executive David

Costello says the concept that pubs should lock their doors to prepare their patrons for the trauma of a robbery "defies all logic and common sense".

Mr Costello says locking patrons inside a pub or club to prevent robbers entering ran contrary to the best advice from police and security experts.

"This decision affects not just clubs, but hotels, service stations, banks, nightclubs and other businesses that are victim to armed robbery," he said.

An industry spokesman says the decision, if set as a precedent, would be unworkable for most clubs and lacks common sense.

The decision implies that clubs either have to close their doors after 8pm or employ some sort of security screening procedure for patrons.

For clubs, many of whom are already battling to survive, added security measures would be costly and impractical.

What are the wider implications for premises that have patrons and money on the premises? Are their implications for restaurants and cafes, for example? If you're concerned about the level of security your business has, talk to us – we're only a phone call away.



DON'T BE INUNDATED



While Australia is afflicted by one of the worst droughts on record, winter is fast approaching and the season's accompanying rain is – according to many long-range forecasters – on its way at last.

Time will tell, of course, but through all the dry weather businesses and householders may have forgotten just how devastating heavy rainfall can be. Because with heavy and prolonged rain – no matter how welcome – comes flood.

And in a country where building towns close to water was once a necessity, flood is uncomfortably common. That's why flood insurance is so critical to peace of mind.

Some areas are more flood-prone than others. Accordingly, obtaining flood insurance for some places is more difficult – and when it can be obtained it's certainly more expensive.

These days the insurance industry is taking a more proactive approach to flood risks, because it's now widely accepted that the data exists to enable insurers to identify the most likely areas to be flooded. That data should also be used by governments at all levels to plan and build proper flood mitigation programs.

That's becoming more important now that climate change is being factored into the insurance industry's calculations. Information on changing weather, water flows and coastal and inland erosion patterns is vital – particularly for companies and organisations that want to understand flood risks.

The Insurance Council of Australia is now working on the production of a single nationwide flood map. In the past some state and local governments have been reluctant to release their flood data, but the council has been working with the Council of Australian Governments as well as the councils represented under the National Flood Risk Group.

The Federal Government has also established a \$345 million, five-year framework that includes the creation of an Australian Centre for Climate Change Adaptation and research programs to identify gaps in knowledge about the effect of climate change on water.

Naturally the insurance industry is looking forward to the results, because flood-mapping will enable us to properly measure

flood risks in specific areas. That should make obtaining flood cover much less complex.

Even though more insurance companies have begun to offer limited flood cover on most domestic home and contents policies, the more we know the more we can do to help. The causes of flood are many and varied, and even the definition of "flood" has sometimes been a real problem.

As the insurers see it, flooding occurs when rivers, creeks, lakes, dams, reservoirs and other natural watercourses burst their banks or overflow. But the variations are many and varied. For example, some policies may say that stormwater damage occurs when the storm makes an opening in the roof or walls and lets water in and rainwater damage occurs when the rain gets into your building because it cannot drain off the land any other way.

And when debris blocks a drain, are you covered? Does the type of debris have to be defined? What's the difference between stormwater and rainwater? We can help you through that type of minefield at the start – when you take out the policy – and when a claim has to be made.

As flood risks become easier to understand, we're likely to see much less complex policies becoming available. We look forward to the day when policies aren't issued with flood listed as an exclusion.

To find out the risk of flooding in your area, it may also help to do some research yourself. You could do worse than to ask a variety of sources for flood information in your area. Local councils should (and we emphasise *should*) be able to tell you if an area is flood-prone.

Other sources include the local water authority, neighbours who have lived in the area for a long time, local solicitors and conveyancers who handle property matters.

We're always available to advise you on the most appropriate cover for your property, and one of the factors we'll always want to discuss with you is flood risk.

It's a complex risk, and given the evolving risks associated with climate change, there's much to be aware of. If you'd like more information about flood insurance, don't hesitate to give us a call.

UNDERINSURANCE A MAJOR CONCERN

Insurance is perhaps the antithesis of a stock market investment; rather than putting money into a venture in the hope that good things will happen and the investment will accrue greater value, insurance is calculated around the likelihood of the unwanted occurring and money being lost.

But while the two do share one common trait – prudent financial management – the necessity of insurance continues to go unheeded.

This was illustrated in no more drastic fashion than the fire in April that engulfed Perth's historic Midland Military Markets.

The blaze began in a nearby phone shop and quickly spread, leveling the converted army workshop and sparing only one of the market's 200 stores and shop fronts. Fire authorities estimated the damage bill at \$5 million.

Unfortunately, only a handful of storeowners were insured, with the majority facing a costly and drawn-out repair bill – if they can afford it. Many will probably never return to business, with surveys by the Insurance Council of Australia showing about 70% of uninsured and underinsured businesses affected by a catastrophic event don't recover.

It is this sort of failure to prepare for unforeseeable risks that has concerned the insurance industry for years.

A groundbreaking 2002 report into underinsurance by the Insurance Council found about 1.78 million homes, or 25% of total households, have no insurance cover.

About 5% of owner-occupied buildings contain no basic level of building cover, while contents are even less protected, with 20% of homes uninsured.

The report also investigated the number of small to medium-sized businesses lacking adequate cover and found about 17% of the nation's small enterprises are uninsured.

More than 40% of businesses have no cover for interruptions, while 12% have no private or public liability cover.

Renters have among the highest rates of underinsurance in Australia, with a recent AAMI report showing about half of renters have no home contents insurance.

Of those renters who do have home contents insurance, 35% have not updated their insurance in the past five years.

In 2005, the Australian and Securities Investments Commission (ASIC) tabled its report into home insurance, showing between



Nice place. but is it adequately insured?

27% and 81% of consumers were underinsured by 10% or more.

The ASIC report, *Getting home insurance right – A report into underinsurance*, was commissioned in response to the 2003 Canberra bushfires that destroyed 488 homes. It showed that Canberra homeowners affected by the fires were underinsured by between 27% and 40%.

ASIC also investigated the level of cover for homeowners in Innisfail and Babinda on Queensland's north coast after Tropical Cyclone Larry struck in March last year, finding about half were underinsured.

This level of underinsurance was exacerbated by two factors – a 50% escalation in building costs in Larry's wake and the increased cost of rebuilding older homes that didn't comply with current anti-cyclone standards.

In response to these challenges, insurance companies have become more proactive in making home cover both available and affordable. Where they had been muted in the past, insurance companies are now more vocal in raising awareness of underinsurance and renewals.

A follow-up study released in January this year by ASIC found home building insurance had become easier to obtain since the Canberra bushfires.

The report, *Making Home Insurance Better*, showed the industry has taken numerous steps since 2005, including the introduction of "total replacement policies" where the total cost of rebuilding was covered rather than the insured sum.

Of course, using a broker makes everything much simpler! Give us a call if you'd like some advice, and let us do the detailed work for you.

KEEPING LIABILITY PREMIUMS AFFORDABLE

Calls from the Australian legal industry to roll back reforms to personal injury laws have been an ongoing concern for the insurance industry, because these reforms have allowed public liability insurance to remain affordable and available.

It's easy to forget that just a few years ago public liability insurance was prohibitively expensive. For higher-risk businesses and organisations – ranging from pony-riding schools to church fetes – insurers showed no interest in providing cover. And when brokers managed to secure cover through their knowledge and contacts, the costs were high and the restrictions on cover tough.

During 2001 and 2002 a series of costly public liability insurance claims were made for relatively minor personal injuries. Insurers, already experiencing a capital squeeze as a result of being unprofitable, raised their premiums and tightened their conditions. Public liability insurance availability dried up.

It quickly became clear that the lack of affordable public liability insurance was having a negative effect on the activities of business – particularly small business – as well as community and sporting groups.

The pressure on community groups was met in 2002 when the insurance industry established a pool arrangement through the Community Care Underwriting Agency, which provided liability cover to not-for-profit organisations.

But the problem was much wider than that, and the state governments worked with the insurance industry to examine the issue and took expert advice on the best way to deal with it.

The final decision was to reform the negligence laws. That meant the community would take greater personal responsibility for their actions while providing for the needs of the seriously injured.

In the years since these reforms were implemented, some members of the legal community have increasingly opposed them. It's not surprising; some companies specialising in public liability actions were badly affected, and were forced to drastically cut staff or concentrate on other types of work.

The reforms have also seen the NSW and Victorian governments drop workers' compensation premiums by 5% and 10% respectively.

The Australian Competition and Consumer Commission has confirmed that insurance premiums for the not-for-profit sector are

more affordable now than before the reforms were implemented.

There are now more affordable damages awards for minor injuries; better information on and scrutiny of public liability policies, premiums and claims and there is targeted cover for the not-for-profit sector.

Talk to us about public liability insurance trends. We are happy to discuss your options, and outline how we can select the policy that best suits your needs.

DISCLAIMER: The information in this publication is of general nature as a service to clients and other interested parties. The articles included herein are not intended to provide a complete discussion of each subject and should not be taken as advice. While the information is believed to be correct, no responsibility is accepted for any statements of opinion or any error or omission.

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