Public liability

It's been another profitable year for public and product liability, with net combined ratios this year sitting at 86% - following three years of profitability. Concurrently, the market is showing initial signs of softening. Despite this, the public liability landscape has had some significant shifts over the past year.

The first is the ban on claims farming. Following the Queensland government's ban on claims farming in 2022, NSW introduced similar legislation in March this year, with South Australia currently considering a claims farming bill in the Upper House. Claims farming has contributed to an increase in public liability claims over the past few years, with the impact being most significant for child abuse portfolios. This ban will provide some relief to insurers, though the level of relief is unclear at this early stage.

The second is a shift from securities class actions, which dominated pre-COVID-19 professional indemnity and Directors & Officers claims experience during the Royal Commission, to product liability and consumer claim actions.

Thirdly, PFAS, widely known as forever chemicals. Market sentiment towards PFAS risk has also started to shift. PFAS litigation has been prevalent in the US over the past few years, with one manufacturer, 3M, alone being the named party in more than 4000 lawsuits, and paying upwards of $10 billion USD in damages.

To date, PFAS litigation in Australia has typically been against government entities' historical use of PFAS in firefighting foam. In December 2024, the first consumer class action in Australia was filed against 3M, alleging health risks from PFOS – a type of PFAS, stretching back to at latest the 1980s.

If US litigation is any indication, the results of this action may spur other class actions. At this stage, it's not known whether PFAS represents the 'next asbestos'. Some US studies have drawn a link, but there's no Australian study yet. The widespread use of PFAS to date means the financial impact of any successful litigation would be significant – while some insurers have introduced PFAS exclusions, these don't apply to past exposures.

These recent environmental shifts combined with market softening mean insurers will need to balance defending market share with financial sustainability in the next few years.