

Property damage insurance claims: How long have you got?

The New South Wales Court of Appeal held earlier this year that the limitation period for a claim under a property damage insurance policy starts when the property damage occurs, not when the insurer declines indemnity.

In the case [Globe Church Incorporated v Allianz Australia Insurance Ltd \[2019\] NSWCA 27](#) (26 February 2019), the policyholder Globe Church Incorporated (Globe Church) held an industrial special risks policy with two insurers. Globe Church made a claim for damages relating to rainwater and flooding around two years after the flooding. The insurers denied indemnity two years later and, following protracted but unsuccessful settlement negotiations, Globe Church commenced proceedings five years after that – which was around nine years after the property damage occurred.

The insurers asserted Globe Church's claim for breach of contract was time-barred because the cause of action for breach of contract accrued when the property damage occurred.

The majority of the NSW Court of Appeal agreed with the insurer. They held that the policy wording did not make lodgement of a claim a condition precedent for indemnity and therefore the insurers' obligation to indemnify arose when the property damage was suffered. At this point the cause of action for unliquidated damages is complete and time will start to run. The court noted this construction of indemnity policies of insurance was consistent with the position in other Australian jurisdictions and the United Kingdom.

It is important to keep limitation periods at the forefront of your mind when taking instructions to act in indemnity insurance claims. Read the policy wording carefully to determine when the insurer's liability arises and clarify quickly when the damage occurred.

When acting for a policyholder in a property damage indemnity dispute, you will most likely need to:

- commence proceedings or
- obtain written assurance the insurer will not rely on a limitations defence

within the relevant limitation period from the date of the property damage. In Victoria that is six years.