



## Episode 67

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# Floods and Bushfires

When advising a purchaser client, the extent of the advice a prudent solicitor should give in relation to the property being purchased will vary depending on the retainer, the sophistication of the client, and the nature of the property being acquired.

Properties may be affected by climate risks such as coastal erosion, or increasingly frequent and severe flooding and bushfires. You may need to check with the client what their expectations are about advice relating to flooding or bushfires or other climate impacts.

The Law Society of New South Wales has published a *Climate Change Practitioner Guidance* which explores the principles that apply when considering how climate change risks may be relevant to client advice. As well as addressing the various business risks faced by commercial clients, the Guidance refers specifically to conveyancing transactions as follows:

- Consider the impact of physical events on conveyancing transactions and whether any climate related risks are disclosed in the transaction documents.
  - Is it necessary for a purchaser to carry out further investigations to identify these risks, such as obtaining specialist technical reports?
  - If advising on insurance or financing, address the impact of climate related events on the cost and availability of insurance and how this affects the price or the decision whether to buy. Consider the risk that certain properties become uninsurable or ones for which mortgage finance cannot be obtained.

Under the *Civil Liability Act 2002* there is no proactive duty to warn of obvious risks. But sometimes what seems obvious to the solicitor is not obvious to the client, and in some instances it may be appropriate to limit your retainer and refer the client for specialist technical advice.

I'm Malcolm Heath

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### Resource

[Climate Change Practitioner Guidance](#)