

Insurance Insights

COVID 19 - Emerging Insurance Issues

Key takeaways

- A brief insight into COVID-19 insurance implications
- Business interruption and liability coverage

This article is the first in a series of updates on the insurance issues and implications emerging from the COVID 19 pandemic. The Insurance Council of Australia (ICA) has declared COVID-19 an official insurance catastrophe.

What is clear is that the consequences for insurers will be far reaching and are continuing to evolve.

Emerging Issues

Many policies have a general exclusion from any claims arising from an actual, likely or a threat of an epidemic or pandemic, such as COVID-19. However, we will still see COVID-19 claims in many different shapes and sizes.

Business Interruption (BI)

Ordinarily, BI insurance excludes cover if businesses are forcibly closed by authorities or impacted due to an outbreak of an infectious disease, quarantinable or notifiable under 'listed human diseases' in the *Biosecurity (Listed Human Diseases) Determination 2016* which is an instrument of the *Biosecurity Act 2015* (Cth), "Human coronavirus with pandemic potential" otherwise known as COVID-19 was listed on 3 February 2020.

Obviously, the extent of coverage will depend on the wording of particular policies.

Given the increased number of loss of rent claims that have or have the potential to be made since the COVID-19 restrictions commenced, many insurers have now withdrawn loss of rent as part of their BI packages.

Pandemic insurance was able to be purchased. It is not clear whether it would be available now or at what price! The Wimbledon Tennis Tournament, is expected to receive around 100 Million GBP after taking out pandemic insurance since the SARS outbreak 17 years ago.

Even if coverage is available, there may be a number of difficulties in bringing BI claims as a result of COVID-19.

We raise some issues that may or may not be relevant depending on the nature of a particular wording:

- (a) Was the business of a type that had been required or advised to close as non-essential? Did the business follow government advice?
- (b) Is it necessary to show physical damage to trigger BI or is the relevant BI loss an additional cover that does not require primary property damage? Similarly, is the cover for loss 'resulting from the incident' or 'resulting from the damage'?
- (c) Is loss resulting from a COVID 19 infected site, damage?
- (d) Depending on the nature of the business, causation and quantifying BI may be a challenge for an insured, given the difficulty of valuing future losses, against past losses and therefore the cause of the downturn. For example, valuing a restaurant's loss which is mandated to only be allowed to sell take away or has closed, may be easier than to value a multi-faceted professional services business that has some services experiencing a downturn due to COVID-19 whereas other services have experienced an increase.

It may also take some time for these losses to crystallise before a claim can be made or finalised.

Liability

If a third party suffers loss, allegedly as a result of the negligent act or omission with regard to an entity's COVID-19 response, liability policies may respond.

COVID-19 outbreaks on cruise ships and in aged care homes are emerging as class actions, in addition to hotels, schools, hospitals and other facilities affecting residents or patients, employees, members of the public or possibly shareholders.

Employers liability insurance may cover diseases that an employee becomes exposed to at work e.g. taxi drivers, cruise liner and flight crews, healthcare workers and more recently, abattoir workers. In relation to cruise ships, we know that plaintiff law firms are in the process of investigating class actions with regard to the Ruby Princess and the Greg Mortimer cruise ship that set sail for Antarctica 4 days after COVID-19 was declared a pandemic.

Again, the scope of coverage will depend upon the terms, conditions and exclusions of policy wording and the particular circumstances. If a personal injury claim is made, perhaps a liability policy might respond. If not, then perhaps D&O or Management Liability type policies may become relevant.

An interesting legal question as to causation will develop. That is, were any failings to take preventative COVID-19 steps the likely cause of the COVID-19 outbreak? Would the outbreak have occurred anyway?

Conclusion

The implications of the COVID-19 pandemic are limitless and will continue to reverberate as insurers manage the changing profile of claims, consumer expectations and changes in their risk profile. The landscape is shifting daily with many questions remaining. In this article, we have highlighted some of these implications.

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