

24 February 2021

Second business interruption test case

The Insurance Council of Australia today welcomed the commencement of proceedings in the Federal Court of Australia to test the application of further issues in relation to pandemic coverage in business interruption policies.

Lawyers representing participating insurers have filed pleadings with the court to formally commence a combined second test case.

This second test case follows an initial test case heard in the NSW Court of Appeal last year regarding the application of the Quarantine Act exclusion to business interruption policies. An application for special leave to appeal in the first test case is currently before the High Court.

The second test case consists of nine separate small business claims lodged with the Australian Financial Complaints Authority (AFCA) as part of its dispute resolution process. The insurers represented are Allianz, IAG, Chubb, Guild, and SwissRe Corporate Solutions, and the claims cover a range of business sectors and locations.

The second test case will determine the meaning of policy wordings in relation to the definition of a disease, proximity of an outbreak to a business, and prevention of access to premises due to a government mandate, as well as policies with a hybrid of these types of wordings.

The insurance industry understands the concerns of policy holders who may be waiting for a determination of their claim or resolution of a dispute, however these matters are not clear cut and there is a need to clarify the legal principles used to resolve disputes.

The case is being lodged with the Federal Court at AFCA's request because of the range of jurisdictions represented by the nine claims. The courts' determinations will provide the clear direction and guidance required for decisions to be made on similar issues arising in other disputes.

The industry is meeting the costs of policy holders in this legal process, as it is doing in the first test case.

Quote attributable to Andrew Hall, CEO, Insurance Council of Australia:

Insurers want this second test case brought to the court as quickly as possible so the process can be started to give certainty to policyholders and the insurance industry.

The nine cases included have been agreed following thorough negotiations with AFCA, which reviewed 14 cases presented by insurers for consideration.

Once final rulings have been obtained, insurers are committed to applying the relevant principles in an efficient, transparent, and consistent way when assessing customer claims.