

Thursday 25 March 2021

## High Court agrees to hear arguments in BI test case

The Insurance Council of Australia (ICA) today welcomed the High Court's request to hear oral arguments on the application for special leave to appeal the NSW Court of Appeal's recent judgment in the first business interruption test case.

The insurance industry remains of the view that pandemics were not contemplated for coverage under most business interruption policies and that the Quarantine Act exclusion excludes COVID-19 related claims.

The Court today indicated arguments will be heard on a date to be determined in May or June at the earliest.

There are other issues concerning the interpretation of business interruption policies that also need to be resolved to determine whether policyholders will ultimately be covered, which is why a second test case has been commenced in the Federal Court of Australia.

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 that contain a hybrid of these type of wordings.

The Federal Court is expediting the second test case, proposing that the trial take place in the first half of September and any appeal be dealt with the Full Court of the Federal Court in the first week of November.

This means that insurers and policyholders will have certainty on most substantial issues in 2021 and reflects the importance of this case to all relevant policyholders and insurers, not just parties to the proceedings.

The industry will meet the costs of policyholders in the second test case, as it did in the first test case and will for any appeal.

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

Today's decision is a welcome next step in this important process and the insurance industry looks forward to presenting what we believe is a compelling case based on a solid legal framework.

Given this issue relates to a policy exclusion for which insurers have not been collecting premiums, seeking reinsurance or collecting reserves, there is a strong public interest benefit in the High Court hearing oral arguments.

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