

Thursday August 30,
2020

News Release

Insurance Council and AFCA agree to launch business interruption test case

The Insurance Council of Australia (ICA) and the Australian Financial Complaints Authority (AFCA) have agreed to file a test case considering the application of infectious diseases cover in business interruption policies.

The primary purpose of the test case is to seek a decision from a superior court on whether references to a quarantinable disease under the Quarantine Act 1908 should be construed as a reference to a listed human disease under the Biosecurity Act 2015 in various policies issued to small businesses containing business interruption cover.

On behalf of all insurers who offer commercial products, the ICA will seek leave to have the test case heard as an expedited matter.

The outcomes of the test case will be used by AFCA in determining relevant complaints arising in respect of business interruption claims.

The legal costs of the test case will be funded by the ICA.

Quotes attributable to Rob Whelan, CEO, Insurance Council of Australia:

“The Insurance Council of Australia has prepared this test case on behalf of the general insurance industry.

“A decision from a superior court will assist insurers, AFCA and customers in developing a better understanding of how exclusions in policy documents respond to the unique circumstances of the COVID-19 pandemic.

“Insurers believe the intention of pandemic and communicable human disease exclusions are clear. However, a judicial determination will provide insureds and AFCA with greater legal certainty on this issue.”

Quotes attributable to John Price, Lead Ombudsman Insurance, AFCA:

“Following discussion with the Insurance industry, ASIC, APRA and Treasury, AFCA has agreed that a test case before a superior court should proceed to allow for a determination of this threshold issue. Resolution of this threshold issue is important to assist AFCA in its dispute resolution role.

“I am pleased the Insurance Council of Australia and its members have engaged with AFCA in identifying claims that will form the combined test case.

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“I am also appreciative of the complainants for agreeing to have their cases heard in this manner.

“The outcome of the case will provide some clarity for all stakeholders in particular small business and insurers.”

ABOUT THE INSURANCE COUNCIL OF AUSTRALIA:

The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent about 95 per cent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

March 2020 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$51 billion a year and has total assets of \$133.8 billion. The industry employs about 60,000 people and on average pays out about \$169.4 million in claims each working day.

Over the 12 months to March 2020 the industry's net profit after tax (NPAT) was \$1.5 billion – a 56.7 per cent decrease from the prior year's NPAT of \$3.5 billion. The industry's underwriting result was also \$1.5 billion, falling by 47 per cent from \$2.8 billion in the prior year. <http://www.insurancecouncil.com.au/about-us>

ABOUT THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY:

The Australian Financial Complaints Authority (AFCA) is a non-government ombudsman service providing free, fair and independent help with financial disputes. AFCA is a one-stop-shop for consumers and small businesses who have a dispute with their financial firm, over things such as banking, credit, insurance, advice, investments or superannuation. Where an agreement cannot be reached between parties, AFCA can issue decisions that are binding on financial firms.

For more information, visit afca.org.au