



News release

Insurance Council
of Australia

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Business insurance customers should submit BI claims

The Insurance Council of Australia (ICA) today urged small businesses to submit a claim against their business interruption (BI) cover through their broker or insurer if they believe their policy responds.

This call follows the High Court's decision yesterday not to allow an application to appeal the judgment of the NSW Court of Appeal in the first BI test case.

The Court of Appeal's November 2020 judgment found that references in insurance policies to a now-superseded Act of Parliament did not allow insurers to deny BI claims made because of the COVID-19 pandemic. Finalisation of many claims may still not take place until further clarity is provided by a second test case, underway now in the Federal Court.

This second test case will determine the meaning of policy wordings around disease definition, COVID outbreak proximity, the impact of government mandates, and other policy wording matters.

However this does not prevent policy holders from lodging a claim now.

Some class action law firms have claimed yesterday's decision only has implications for customers of the two insurers involved in the first test case, Hollard and HDI, and that customers of other insurers will have to pursue their own legal remedies.

However Insurance Council members have previously committed to applying the rulings of the courts in the BI test cases in a consistent way when assessing all claims, and the ICA is currently advertising in national newspapers and online providing guidance on how to make a BI claim.

If a claim is denied by an insurer, the Australian Financial Complaints Authority (AFCA) can make binding decisions on claims up to \$1.085 million free of charge for policyholders, in contrast to the substantial fees sought by class action funders and lawyers.

Further guidance on making a BI claim is available on the [AFCA](#) and [ASIC](#) websites, and general information on this issue can be found on the [ICA's website](#).

Quote attributable to ICA CEO Andrew Hall:

The test case process has been utilised to provide certainty across a range of questions, and with each final decision by the courts, insurers will commence assessing claims that will respond to each ruling.

It is the position of the ICA that policyholders affected by COVID shutdowns are entitled to lodge a claim with their broker or insurer against their business interruption cover.

As we are also nearing the end of the financial year, lodging a claim in this matter can be complex and requires gathering evidence – that's why policyholders should start that process now.

While many claims will have to wait until the outcome of the second test case, lodging a claim now means that once that outcome is known a resolution can take place quickly, providing certainty for policyholders.