

Following recent developments concerning your Business Interruption policy and potential claims arising from the Covid 19 Pandemic.

On the 18th November the NSW Court of Appeal delivered its judgement on a test case concerning the validity of an exclusion relating to the Quarantine Act 1908 (which was replaced by the Biosecurity Act in 2015). The judgement held the exclusion could not be relied upon by Insurers. This opens the door for potential business interruption claims arising from the pandemic. This particular decision only impacts certain policies and we have identified your policy as one where it appears to apply.

Things you should be aware of:

- This decision was a surprise to Insurers and they are considering an appeal. If they do appeal the process is likely to be lengthy.
- This is just one of a number of hurdles that need to be overcome before any claim will be successful
- Other test cases are being prepared to seek clarity on a number of issues that may include:
 - * The application of the prevention of access clauses
 - * The date/s that may be crucial in determining the onset and conclusion of any claimable indemnity periods
 - * What will be the tests/conditions that establish a causal relationship between the Pandemic and the various policy triggers needed for a successful Business Interruption claim (The British High Court has considered some of these questions which may (or may not) influence Australian decisions – UK Insurers are appealing)
- **It is not our role to provide advice on the likely outcome of any claim.** Insurers will review claims on the particular circumstances and the outcome of the various legal cases. Insurers are likely to resist paying these claims until they have exhausted all avenues including appeals. This will mean that any claim that is ultimately successful may not be settled for a considerable period (perhaps years) and any settlement may only be a small proportion of actual losses. **As always we will use our best endeavors to prosecute your claim to the maximum amount possible – our role is first and foremost to be your advocate and work on your behalf.**

It is a matter for your own judgement as to whether or not you wish to lodge a claim for losses you have suffered or extra expenses you have incurred due to the Covid 19 pandemic. Click on the following [Business Interruption Claim Form - Covid19](#) short 'Notification of Loss' form that you may complete and return to us. We will then lodge this with your Insurers on your behalf and provide any response received.

If you would like to read the judgements from the courts they are available here:

[British High Court \(161 Pages\)](#)

[NSW Court of Appeals \(11 Pages\)](#)