

Legal Alert

Insurance

March 2020

Insurance Contract Considerations in Response to Coronavirus

On 12 March 2020 the [Insurance Council of Australia](#) declared the Coronavirus outbreak an “insurance catastrophe”. It has established a national taskforce which will collate data from insurers in order to better understand the impact on the insurance industry moving forward. It is anticipated that the highest incidence of claims will relate to travel insurance and business interruption cover.

Travel Insurance

Most travel insurance packages contain a number of components including, medical evacuation, cancellations and travel itinerary changes. As well as coverage clauses all policies have exclusions relevant to the specific components of the cover or general exclusions. It is important to read your policy in its entirety. The Certificate of Insurance is not the policy. You may have been provided with a copy of the policy wording at the time you took out the cover or the Certificate of Insurance may provide you with a link to the insurer’s website where the policy wording is to be found.

Some travel policies will contain explicit exclusions for claims arising either directly or indirectly out of epidemics or pandemics. Coronavirus was declared a pandemic by the World Health Organisation on 11 March 2020 and therefore the pandemic exclusion if it appears in a policy will have been triggered. Other exclusions to look for relate to what are defined as “foreseen circumstances”. Some insurers have issued notices deeming claims arising from Coronavirus to be arising from a “foreseen circumstance”. This has the effect under the policy to exclude claims for Coronavirus under any policy issued after the date of the insurer’s declaration.

If you have taken out travel insurance and you are not certain whether you are covered for the consequences of Coronavirus whether that be health or travel related speak to your travel agent, insurance broker or insurer direct. If you do obtain clarification, seek that clarification in writing.

Business Interruption

Generally business interruption cover is dependent on physical damage triggering the loss that is claimed. Some policies do cover business interruption or disruption as a result of the effects of a “notifiable disease”. Whether or not Coronavirus falls within the definition of a notifiable disease will need to be determined by reference to the definition sections in the policy. For the purposes of Government intervention some Governments have deemed Coronavirus to be a notifiable disease to trigger the relevant statutory powers that they have. In the absence of a definition of notifiable disease in a policy it may well be that the determination by a relevant Government will be sufficient to bring Coronavirus within the ambit of the policy. Each policy will need to be assessed on its own.

There are two ways in which business interruption claims are generally assessed. The first method is to take the difference between lost sales and expenses saved. The second is to look at the comparative net income of the business. Either way the intent is to put you back into the position that you would have been but for the event that triggered the claim.

Where your claim is consequent upon a disruption in the supply chain issues such as what steps you have taken to mitigate your loss (i.e. find alternate suppliers, etc) will arise. It is important to keep accurate records of firstly the direct consequences of the interruption to your business and secondly attempts that you have made to mitigate the effect of that disruption. It may well be that your actual claim does not crystallise until some time in the future when the actual financial impact is able to be calculated. However, most policies will require you to give notice now even if you are not able to quantify the amount of your claim.

Public Liability

One of the reasons that event organisers are cancelling events is the fear that if someone attends an event and contracts Coronavirus at the event that person may choose to sue the event organiser. This would trigger a public liability claim. However it is highly likely that public liability policies will contain relevant exclusions that would prevent claims being made in the event of a loss arising out of a pandemic. It is for this reason that event organisers are now acting as they may well be uninsured in certain circumstances.

Event Cancellation

Depending on the actual policy wording event cancellation policies will generally provide cover for losses associated with cancellations arising beyond the control of the event organiser. Losses that may be covered can include loss of revenue, refunds and contractual liabilities to third parties. Once again the issue of your attempts to mitigate any losses will also be important in assessing your claim.

However as with other policies it is possible that a pandemic or similar event could be excluded. It is for this reason as with other policies that a per policy analysis needs to be undertaken.

There is no one answer

As policy wording varies between insurers and the type of cover you may have, it is important to apply your particular situation to the express wording in the applicable policy.

You May Also be Interested in:

[Coronavirus \(COVID-19\) – A Legal Overview](#)

[Coronavirus and Force Majeure Clauses in Contracts](#)

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