

### What is the Quarantine Act Test Case (the first test case)?

The industry's first test case is in relation to the operation of infectious disease exclusions prevalent in the Business Interruption section in Business Package insurance policies within Australia. The test case was coordinated by the Insurance Council of Australia (ICA) and the Australian Financial Complaints Authority (AFCA) on behalf of all insurers that sell products with Business Interruption cover and insureds who have purchased the cover. The test case required some real-life current claims cases that would help to inform the outcome and assessment of policies and claims for all providers of Business Interruption Insurance. Two insurers and their policyholders volunteered to be those cases.

Hollard was one of them.

### What is Hollard's role in the first test case?

Hollard volunteered to be part of the industry test case prepared by the ICA. Whilst we remain of the clear view that Business Interruption coverages do not cover pandemics, we believe the process of legal review is valuable to us and our customers. By choosing to associate as a party in the industry test case, Hollard considered that it could play a valuable role to assist the whole insurance industry, in reaching a better understanding of how local infectious disease exclusions respond to the unique circumstances of this pandemic.

### What was the outcome of the test case?

In November 2020 the NSW Court of Appeal found against the arguments of insurers and declared that COVID-19 is not a quarantinable disease as defined in the Quarantine Act 1908, and so the exclusion in the Disease Cover of policies is not enlivened. An application to appeal that decision has now been rejected by the High Court and so the NSW Court of Appeal ruling on that issue stands.

### Why is there a second test case?

It is important to note that claims will still turn on individual circumstances and business interruption cover under many of the policies in the market will still need other triggers to be satisfied. A number of these triggers and the legal principles underpinning them have therefore been examined by the Federal Court as part of the second industry test which was heard in September 2021. The second test case considered a number of issues including:

- the meaning of policy wording triggers in relation to a disease such as the definition of an 'outbreak' of a disease 'occurring' within a particular geographical radius of the relevant location,
- what amounts to 'preventing or restricting access to' the premises
- relevant causation principles that apply in relation to such clauses; and
- other important elements in quantifying whether business interruption loss such as the scope of any trends and adjustments to be applied.

The reasons of judgment of the Federal Court were delivered on 8 October 2021 and the parties to the second test case are now considering whether bases for appeal arise. Anticipating the likely need for appeal, the Federal Court has already set time in November to hear any appeal before the Full Bench with the appeal judgment of the Full Court expected to be delivered in December 2021. Further information on the second test case can be found on the ICA website.

### Does Hollard have any of the issues being examined in the second test case in its wordings?

Although Hollard is not a named party to the second test case, the issues being considered in the second test cover a number of issues that also arise in the Hollard underwritten policies. In the circumstances, while these issues are being considered by the courts, we will necessarily need to await final determinations on these matters prior to being able to finalise your claim.

## Does this change Hollard's position in paying the claims?

As we are still waiting for a final resolution of the test case issues there is likely to be no change to the status of your claim at the present time. However, we will continue to review all claims according to their individual circumstances. This will include whether they will require clarification of issues that are being addressed as part of the second test case.

Our Business Interruption claims team will be reviewing the current position and what next steps maybe needed to assist us with the assessment of your claim.

## What information do we need if you wish to submit a claim?

If you want to submit a claim now or for other information requests on claims lodgements, please visit our [Business Interruption Online Claims page](#).

There is also a list of documents that the claims team will need to assist with the assessment of Business Interruption claims.

## How is a financial loss calculated?

Each claim is reviewed based on its individual circumstances. Our [Business Interruption Online Claims page](#) offers a guide on how Business Interruption claims are generally calculated and what we will take into consideration when calculating Business Interruption claims.

## Will policyholders' future premiums be impacted by submitting a Business Interruption COVID-19 claim?

No, for Hollard policyholders' we can confirm that future premiums will not be impacted by Business Interruption COVID-19 claims being lodged, denied, or paid.

## Can I still approach AFCA to resolve a complaint if I am dissatisfied?

Yes, your rights to lodge a complaint with AFCA are not affected. We encourage you to look at AFCA's website which includes all necessary information about the complaints process.

AFCA has also published information for small businesses about the BI test cases here:

<https://www.afca.org.au/news/current-matters/business-interruption-insurance-test-cases>

## How will this decision impact current service levels from your claims team?

We have prepared for either eventuality of this judgement and that is why we have implemented a designated information and claims lodgement link on our website- visit our [Business Interruption Online Claims page](#).

Our claims team will endeavour to keep up the standards you have come to expect but, as with any major event where claims activity or information requests increase, there can be some disruptions. So there might be some delays in service standards initially whilst we continue to monitor the impact and allocate additional resources.

## Does your support for vulnerable customers apply to COVID-19 related claims?

Throughout the pandemic we have provided a range of relief to our customers and partners. [Visit our website](#) for more details.

In addition, our website includes a flyer on [Supporting Customers Experiencing Vulnerable and Financial Hardship](#).

We encourage you to inform our claims department if you have a claim for a vulnerable customer and they will be able to assist you. Or alternatively we have a dedicated email address where you can send the information which will be treated with the utmost confidentiality. The email address is: [hcicareofficer@hollardcommercial.com.au](mailto:hcicareofficer@hollardcommercial.com.au)

## **I have read that the insurance industry would suffer significant losses - will they still be able to pay claims?**

All insurers are regulated by APRA. As part of APRA's prudential requirements insurers are required to keep sufficient reserves to enable payment of claims.

## **What effect, if any, will this have on Hollard's ability to pay claims?**

Hollard is authorised by APRA to conduct General Insurance. Hollard's regulatory capital adequacy multiple at 31 December 2020 was 1.66 times the regulatory minimum requirement. This measure reflects the level of capital a general insurer holds relative to the regulatory minimum and our multiple indicates there is a capital buffer against the risk of unexpected or adverse outcomes. Hollard remains confident in its claims paying ability.

## **What do we do if we need more information?**

Contact your Account Manager, email the query to [bicclaims@hollardcommercial.com.au](mailto:bicclaims@hollardcommercial.com.au) or contact us on 02 9551 1033.