

# “Have a plan” for response to BI test case: ASIC

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Non-life

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Australia

The Australian market is currently awaiting the business interruption (BI) test case results launched [in mid-August](#) at the New South Wales (NSW) Supreme Court.

Initiated by the Insurance Council of Australia (ICA) and the Australian Financial Complaints Authority (AFCA), the test case will clarify certain infectious disease exclusions found in many BI policies.



In light of this, the Australian Securities and Investment Commission (ASIC) released a letter outlining steps of action for market players.

When handling claims from SMEs relating to BI losses from Covid-19, ASIC notes general insurers, Lloyd’ s coverholders and (where appropriate) brokers, should “take steps to ensure any information [provided] to policyholders about coverage — before claims are lodged — is clear, accurate, balanced and doesn’ t mislead or deceive.”

ASIC added they “strongly encourage” the market players to communicate with policyholders in a way that will help SMEs make “appropriate and informed decisions” about whether or not to file BI claims from the current pandemic.

Policies that don’ t contain a pandemic exclusion (or contain only a partial exclusion), should see carriers appropriately assess claims and make pay-outs in a timely manner to help relieve financial pressures on small businesses.

If there are reasonable grounds to pay part of a claim (but not in full), the regulator asks general insurers and Lloyd’ s coverholders to make an interim payment.

As for policies with a pandemic exclusion (that refers to either the Quarantine Act or Biosecurity Act), general insurers should keep a close watch on the outcome of the current test case and “have a plan for responding to the outcome.”

Once a decision has been made by the NSW court, insurers’ plans should include “how to communicate with policyholders if the court [rules] in favor of policyholders. General insurers should also provide appropriate information to insurance brokers to pass on to small business policyholders.”

The test case commenced with HDI Global Specialty (Australia) and Hollard Insurance. The two insurers were seeking declarations regarding two small business claims lodged with AFCA.

ASIC concluded: “We expect that... your firm’ s approach to BI claims by small business policyholders is consistent with the approach outlined in this letter.”