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COVID-19 AND LOSS OF INCOME

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EXECUTIVE SUMMARY

Income loss due to COVID-19 is a reality.

With the implementation of the Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19), the spread of COVID-19 is expected to increase and it is a matter of "when" and not "if" we will see even greater impact on work places.

This paper will look at the circumstances that could give rise to recovery of income loss, either via workers compensation or income protection insurance in the context of COVID-19.

We will explore some of the challenges and what steps insurers can take to ensure that claims processes and outcomes are efficient, honest and reasonable.

Workers Compensation insurance

Whether workers compensation will respond to claims by those affected by COVID-19 while in the course of their usual employment will depend on the circumstances and evidence in relation to each claim. As COVID-19 becomes more widespread, proving that employment was the main contributing factor to contracting the disease will become increasingly difficult. Keeping contemporaneous records of the outbreak in Australia will be key for determining claims.

Income Protection Insurance

The expected incubation period for COVID-19 is 14 days, and those infected could experience a range of symptoms, most will be mild and will recover within 14 days. For this reason, the number of claims under Income Protection policies should be limited.

AFFECTING THOUSANDS, AND COUNTING

Since publishing our article on travel insurance, ***"This Event Has Been Cancelled"*** - ***COVID-19 Is In Town on 3 March 2020***, thousands of Australians have been affected by school and business closures, quarantine and self-isolation notices.

The list of closures continue to grow on a daily. In addition to businesses, schools, tourism, aged care facilities and health care providers, the Australian Defence Force has also confirmed three officers diagnosed with COVID-19.

The National Employment Standards entitles all employees, except casuals, to 10 days of paid sick and carer's leave for each year of employment. For those affected by COVID-19 outside of work, paid sick leave would be an important source of income.



SCHOOLS

Students from 3 NSW schools in isolation - impacting over 5000 families.

- Epping Boys High School - closed for 1 day on 6 March 2020.
- Willoughby Girls High School and St Patrick's Marist College, Dundas closed as of 9 March 2020.
- Carey Baptist Grammar School, Melbourne closed on 10 March 2020.



HEALTH CARE PROVIDERS

Staff & patients of hospitals in isolation.

- Ryde Hospital - 117 people in isolation.
- Canterbury Hospital - 8 staff and 3 patients in isolation.
- Liverpool Hospital - 23 staff and 5 patients in isolation.
- Brisbane's Mater Hospital - 15 emergency staff in quarantine.



AGED CARE

BaptistCare Dorothy Henderson Lodge, Macquarie Park.

The aged care facility has been locked down after a worker tested positive and a resident died from COVID-19. On 8 March 2020 a second death from the same aged care facility was reported. Bringing the national COVID-19 death to 3.



BUSINESSES

Telecom, law firm, and media hit with closure - impacting over 1000 employees.

- Clayton Utz, Sydney - evacuates 600 staff on 5 March 2020.
- Vodafone - evacuates head office in North Sydney and shuts 3 shops in Perth on 5 March 2020.



MORE FLIGHTS CANCELLED

Over 900,000 Australians employed in tourism.[1]

Qantas - In addition to the suspension of flights to China, flights to Japan, Hong Kong and New Zealand will be cut.

LARGE CONFERENCES CANCELLED

Affecting over 1000 professionals from around the world.

- Insurance Council of Australia annual forum in Sydney cancelled.
- Urological Society of Australia and New Zealand annual conference in Sydney cancelled.



[1] https://www.statista.com/topics/4551/travel-and-tourism-industry-in-australia/#dossierSummary_chapter3

GATHERING INFORMATION AND EVIDENCE

To facilitate efficient, honest and reasonable claims management and outcomes, insurers' Pandemic Claims Response Strategy ("PCRS") should include the implementation of a claimant's questionnaire designed to address the circumstances and elicit information relevant for the assessment of COVID-19 claims. Additionally, maintaining a contemporaneous record of outbreaks across Australia is equally important.

Asking the right questions

Insurers should obtain information about the claimant's daily life to confirm that employment was the main contributing factor to contracting COVID-19. Questions should be designed with input from claims, legal and medical providers.

Contemporaneous record of outbreaks - an essential piece of evidence

Keeping detailed contemporaneous records of known outbreaks and confirmed cases based on reliable government sources is essential when determining COVID-19 claims. A timeline of events based on the records should be created and carefully managed. Claims assessors should be able to access the timeline and refer to it as part of the claims assessment process to assist with maintaining consistency with the process and outcomes.

Good record keeping will become more important as COVID-19 continues to spread and reports from days prior become more difficult to locate. Due to the evolving circumstances and constant updates, PDF copies of all original source material should be safely kept to maintain the veracity of the document.

As COVID-19 continues to spread across Australia, in relation to claiming workers compensation proving that the employment was the main contributing factor to contracting COVID-19 will be increasingly difficult, and disputes will inevitably arise. Contemporaneous records will also be key in resolving disputes.

Role of Regulators

Alternatively, relevant regulators could also assist in information gathering and by keeping a detailed timeline of events as COVID-19 spreads across Australia.

WORKERS COMPENSATION

The employee must be able to show that they contracted COVID-19 in the course of employment, but only if the employment was the main contributing factor to contracting the disease.[1]

The State Insurance Regulatory Authority (“SIRA”) advises that each claim needs to be considered on its individual merits, having regard to the individual circumstances and evidence in relation to each claim.

Employers across Australia must take out workers compensation insurance to cover themselves and their employees. Casual workers are also entitled to workers compensation. Workers compensation provides payment to employees if they are injured at work or become sick due to their work.[2] In NSW, section 4 of the *Workers Compensation Act 1987* includes disease injury.

In addition to matters canvassed in section 9A(2) of the NSW *Workers Compensation Act 1987*, circumstances specific to obtaining information in relation to COVID-19 should be considered and may include:

- Work related travel to an area with a known COVID-19 outbreak.
- Work related activities that include engagement or interaction with people who have contracted COVID-19.
- Any interaction with family or friends who have contracted COVID-19, i.e. living with someone or attended gatherings with people who has been tested positive.
- Travel history two weeks prior (number of weeks prior subject to medical advice) to the date of the claimed event.

[1] <https://www.sira.nsw.gov.au/news/bulletins/workers-compensation-bulletin-issue-88-march-2020>

[2] <https://www.fairwork.gov.au/leave/workers-compensation>

"MAIN CONTRIBUTING FACTOR"

The purpose of workers compensation insurance in NSW is to compensate workers who suffered injury or illness and their employment was a main contributing factor.

However, merely because the injury arose out of or/and in the course of employment, or the worker's incapacity for work resulted from the injury does not automatically mean that the employment was a "main contributing factor".[1]

Even for those who contracted COVID-19 while at work, the individual circumstances of each claim will still need to be examined to ensure that all claims are assessed and determined consistently.

It has become common for employers to take precautionary steps to protect their workforce and business, such as:

- temporarily shutting the business,
- requests an employee to refrain from attending work because they have been in contact with someone diagnosed with COVID-19, or had recently returned from overseas, or
- implementing procedures to limit the potential spread of COVID-19 in the workplace.

It is unlikely that claims arising from the circumstances above would be successful under the workers compensation scheme unless the worker can demonstrate that their employment was a main contributing factor to contracting COVID-19. These steps taken, or not taken, by employers may become relevant to future common law claims.

[1] *Workers Compensation Act 1987* NSW - section 9A(3)

INCOME PROTECTION

Income Protection (“IP”) may be most relevant to those that are self-employed or contractors.

A claim for loss of income under IP insurance will have to satisfy the requirements specified within the wording of each policy.

The expected incubation period for COVID-19 is 14 days, and those infected could experience a range of symptoms, most will be mild and will recover and therefore, the number of IP claims will likely be limited. However, life insurers' should be prepared and alert to some of the issues they will need to address when determining IP claims due to COVID-19.

Considering the symptoms of COVID-19 and the need for quarantine, below are some general issues IP insurers may need to address subject to their policy wording:

- COVID-19 symptoms can vary from no symptoms to critically ill, however everyone testing positive for COVID-19 must be quarantined. In situations where the policyholder cannot perform the duties of their occupation (subject to the specific policy wording) working from home, will they satisfy the definition of totally or partially disabled?
- It is common for people suspected of COVID-19 to self-isolate while waiting for lab confirmation, when should the waiting period commence if the person tests positive?
- Some policies exclude:
 - any loss due to visiting a country with a “Do Not Travel” warning advice – should this exclusion apply to policyholders that travelled into the country before the warning advice was issued?
 - any loss from intentionally exposing oneself to sickness – now that COVID-19 has been declared a known event and Smartraveller advice warning against cruise travel, could this exclusion include traveling into a city where there is a current outbreak or embarking on a cruise?

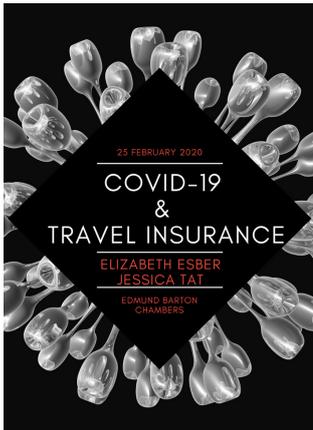
BESPOKE SOLUTIONS

IP policies vary in their terminology, scope, and exclusions, and therefore insurers will need solutions that are tailored to the nuances of their policy and the requirements from the Hayne Royal Commission.

Given the variation observed across the IP policies reviewed, the solutions to a COVID-19 claim require a bespoke response. Notwithstanding that, any adopted approach will need to comply with claims philosophy as well as community standards and expectations. Identified below are some of the essential steps that should be considered.

Recommended steps for all insurers:

- Identify the points of dispute in the policy in relation to COVID-19, and potential category of claims.
- With reference to the points of dispute and category of claims, identify the relevant evidence required to assess the claim. i.e. if the circumstances of the claim involves the policyholder travelling overseas despite the travel warnings issued prior to travel, record of the travel warnings will be material.
- Questions designed to elicit the necessary information specific to COVID-19 from policyholders.
- Obtain contemporaneous records of the outbreak, and generate a timeline in which claims assessors can rely on.
- Keep a digital copy of all contemporaneous records.



COVID-19 & TRAVEL INSURANCE 25 February 2020

To travel or not to travel? A high level discussion on the pandemic exclusion clauses and the challenges faced by travel insurers in light of the Coronavirus outbreak.



"THIS EVENT HAS BEEN CANCELLED" - COVID-19 IS IN TOWN 3 March 2020

Following on from *COVID-19 & Travel Insurance*, an in dept discussion on cancellation claims on travel policies and the need for a Pandemic Claims Response Strategy ("PCRS").

For a copy of the above publications please visit <http://ebc44.com/articles-papers/> or the LinkedIn pages of Jessica Tat and Elizabeth Esber.

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