

A grayscale background image showing several coronavirus particles. The particles are spherical with numerous spike-like protrusions extending from their surface. They are scattered across the frame, with some in sharp focus and others blurred in the background.

3 MARCH 2020

"THIS EVENT HAS BEEN
CANCELLED"

—
COVID-19 IS IN TOWN

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EXECUTIVE SUMMARY

Since publishing our article, "COVID-19 & Travel Insurance" on 25 February 2020, the virus has continued to spread and, as at 3 March 2020, has affected 76 countries. Apart from the real and significant health concerns posed by COVID-19, the sustained spread of the virus is also impacting the running and organisation of major international tourism events.

If the insurer seeks to rely on any exclusion in its policy, then the insurer bears the onus of proving that exclusion applies. Any decision regarding ex-gratia payments need to be made having regard to advice from a number of experts, and should be documented in the insurer's Pandemic Claims Response Strategy ("PCRS") to facilitate efficiency, honesty and fairness in the process and outcome, and maintain consistency in the determination process.

Cancellation claims increasing

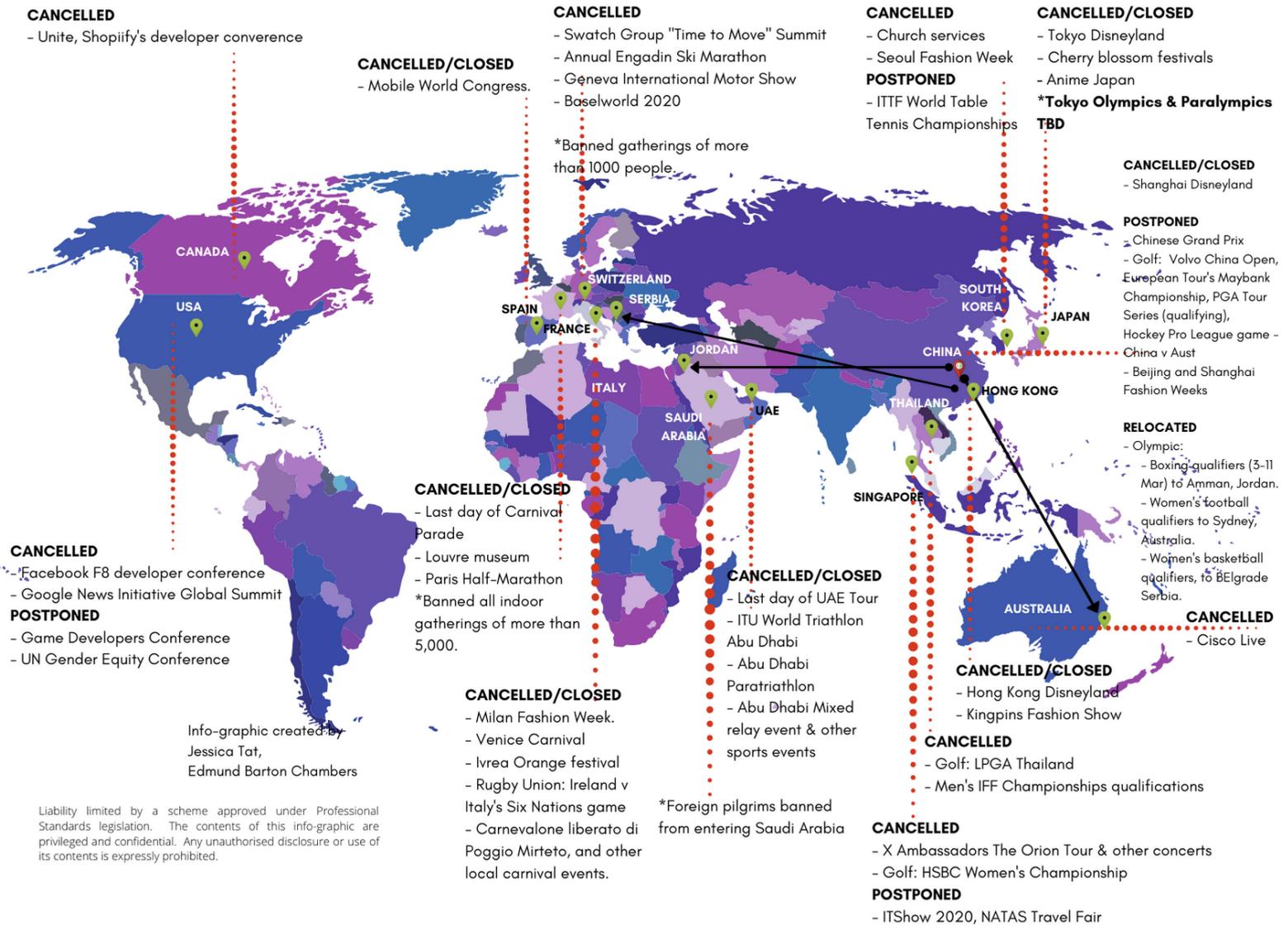
With the number of international events being cancelled and access to tourist destinations being affected, there may be a further influx of cancellation claims if the current rate of infection continues.

Legal interpretation of policy is essential to minimise unintended ramifications and outcomes.

IMPACT ON EVENTS WORLDWIDE

Since the WHO declared COVID-19 a Public Health Emergency of International Concern on 30 January 2020, there has been an increasing number of cancellation of major events across all sectors, including: sports, fashion, tech, politics, and culture.

Examples of major events cancelled, postponed or relocated as of 2 March 2020.



The list of events that have been cancelled, postponed or relocated continues to grow daily. While some travellers may have purchased Event Ticket Insurance, subject to the policy and circumstances of the cancellation, there may be a claim for the cost of the event ticket. However, for those travelling to an event which is cancelled due to COVID-19, travel insurance may be the only way to recover travel costs "thrown away".

In addition, organisers are beginning to cancel events purely as a precautionary measure without any report of local outbreaks or government restrictions.

While most cancelled events were initially in China, where the COVID-19 outbreak started, there has been increasing reports of events worldwide either cancelled in advance or concluded prematurely as a precautionary measure or, due to positive diagnosis of one individual or a local outbreak. Cancelled events include Fashion Week in multiple cities, political conferences, tech conferences and shows, sports, and some famous tourist destinations have been closed indefinitely.

Arguably, the most prominent world sporting event which relies on the participation of over 206 countries, the Olympics, is in some doubt with the emerging and developing crisis in Japan.

The decision to decline a claim may rest on a number of factors, including:

- when the policy commenced,
- what is claimed,
- where the policyholder was travelling to,
- what and where was the event, and
- who cancelled the event and under what circumstances.

MULTIDISCIPLINARY RESPONSE

If the insurer seeks to rely on any exclusion in its policy, then insurer bears the onus of proving that exclusion applies. Ensuring a denial is sound will require good documentation and reference to COVID-19 events, government issued warnings, and WHO declarations.

LEGAL CONSIDERATIONS

Legal interpretation of a policy is essential to minimise unintended ramifications and outcomes. questions that need to be considered include:

- whether the event cancelled is due to a local outbreak of COVID-19, government restrictions, or merely as a precaution?
- If the pandemic exclusion is applicable, what are the requisite circumstances?

COMMERCIAL CONSIDERATIONS

In addition to addressing the legal questions, the response needs to also consider the business' risk appetite and claims philosophy, i.e. aggregation of risks.

Insurers should take a multidisciplinary approach by engaging with the relevant experts, including: CEO, CFO, CRO, actuary, legal, underwriting, reinsurance manager, claims, and marketing.

The approach adopted should be documented in the insurer's PCRS to ensure decisions and outcomes are efficient, honest and fair. Having a documented PCRS is also central to maintaining consistency in the management and determination of claims.

In the meantime, with an increasing number of local outbreaks and travel warnings, insurers should take steps to notify all current and new policyholders of the pandemic exclusion, and document all relevant government warnings and WHO declarations.

EX-GRATIA A COMMERCIAL DECISION

This decision on ex-gratia payments should be documented and be a part of the insurer's PCRS.

Whether ex-gratia payments are made, or not, this commercial decision should be informed by the Hayne Royal Commission and business considerations, including:

- community standards and expectations,
- what is fair, honest and reasonable in these circumstances, and
- whether not offering ex-gratia payments is the most cost-efficient strategy.

The insurer may choose to offer ex-gratia payments. If that is the case, insurers need to establish a strategy in response to the following:

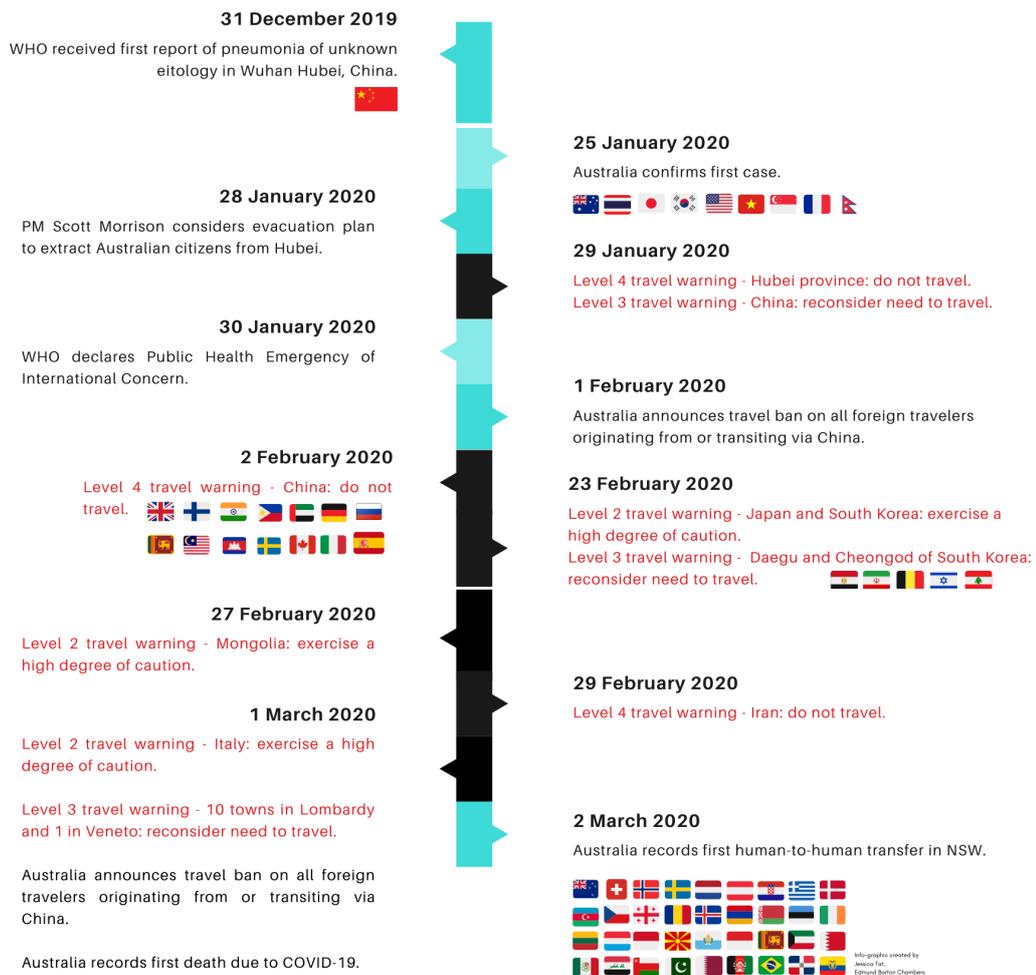
- whether all claims made in relation to COVID-19 and are otherwise not payable under the policy, will receive a nominal amount or will be determined based on pre-determined criteria, or both.
- whether priority should be given to a certain class of claims, i.e. medical, loss of income and cancellation claims for policyholders who are currently overseas.
- establish a timeframe in which decisions and payments will be made, efficiently.

If more time is needed to establish a strategy of ex-gratia payments, each insurer should consider its proposed claims process in the policy wording and adhere to its terms to ensure procedural fairness.

COVID-19 IN AUSTRALIA

At the time of writing this article over **90,000** people have been infected, and **3,125** deaths recorded worldwide. Australia recorded its first death on **1 March 2020**.

COVID-19 KEY DATES



As the WHO warns the world that we are entering into uncharted territories, Attorney-General Christian Porter is warning that it is very likely biosecurity laws will be invoked contain the spread of COVID-19 by forcibly detaining and decontaminating people with the virus, and preventing people from attending mass gatherings. Steps taken by other countries, including the cancellation of events, restricted access, if at all, to tourist sites, and closure of schools, appears to also be in contemplation if, or when, a local outbreak occurs in Australia.

For insurers who also issue policies overseas to travelers to Australia, they will likely be seeing a another new wave of claims.



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