

# **Business Interruption Claims Guide**

## **In Response to COVID- 19**

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## **INDEX**

Page No.

<b>What is Business Interruption?</b>	2
<b>What are the types of Business Interruption covers?</b>	2
<b>Policy Extensions</b>	2
<b>Common Business Interruption terms</b>	3
<b>COVID-19 Business Interruption Test Case &amp; Background Summary</b>	4
<b>What are the important components to consider with a Business Interruption claim?</b>	5
<b>COVID-19 and Business Interruption Claims</b>	6
<b>What information is needed to lodge a claim for Business Interruption as a result of COVID-19?</b>	6

## What is Business Interruption?

Business Interruption cover is designed to protect a client following an insured event which has resulted in a loss to their income or an increased cost incurred to keep the business working. The intended outcome is to ensure the business can be placed back in the same financial position it was in before the loss.

The cover typically extends from the date of loss to when the business is back up and operational or when turnover returns to the pre-loss position subject to the indemnity periods.

In order for a Business Interruption claim to be accepted it must be triggered by an event covered by the policy and have no relevant exclusions.

Cover can also be extended to include interruption from other sources that the business depends upon to provide their services including prevention of access, public utilities, suppliers, murder and suicide amongst others.

It's important to note Business Interruption is an optional cover in addition to Material Damage and as such not every client will take out this cover.

It's important to consider that no two claims are the same and each must be considered based on its own circumstances.

## What are the types of Business Interruption covers?

While Business Interruption is a blanket term, there are variations of cover that can be taken along with different extensions.

### Basic Cover includes:

- Net income (net profit or loss before income taxes) that would have been earned or incurred by a client, and
- Normal operating expenses incurred, including payroll, that continue despite the suspension of operations.

## Policy Extensions

Below are the different policy extensions a client can take out, each of which will have their own sublimit. Please note, these are the most common extensions to Business Interruption policies:

### Increased cost of working

This cover applies when a client's business incurs an increased cost of working on top of their normal expenses to keep their business operational.

**Rental Income**

This covers loss of rental income if a client is unable to lease their commercial property due to an insured event.

**Restoration of data**

This covers the additional costs to restore systems data following an insured event.

**Accounts receivable**

This covers a loss to the business as a result of Accounts Receivable being reduced such as:

- Losses incurred by a company when they are unable to collect payments from customers that owe the business money, and
- Losses from indirect costs such as interest payments on business loans secured by the expected accounts receivables to be paid

**Common Business Interruption terms**

**Gross Profit** is the profit made after sales less the cost to produce and sell a company's products or services.

**Annual Gross Profit** means the Gross Profit during the 12 months immediately before the date of the occurrence of the loss after deductions.

**Rate of Gross Profit** means the rate of Gross Profit as a percentage, earned on the Turnover during the financial year immediately before the date of the loss.

**Annual Revenue** means the Revenue earned during the 12 months immediately before the date of the loss.

**Turnover** means the amount paid for goods sold and delivered or services provided by the business.

**Annual Turnover** means the Turnover during the 12 months immediately before the date of the loss.

**Payroll** means the remuneration (including but not limited to wages, salaries, payroll tax, FBT, bonuses, leave payments, workers' compensation insurance premiums, superannuation contributions), paid to all of your clients employees.

**Rate of Payroll** means the proportion that the Payroll is to the Turnover during the financial year immediately before the date of occurrence of the loss.

**Trends** mean any variation or changes of circumstances affecting the business before or after the insured event or that would have affected the business had the event not occurred.

**Uninsured Working Expenses** means the working expenses of a business which a client has chosen not to insure and have specified this when taking cover out (will be specified in their policy).

## **COVID-19 Business Interruption Test Case & Background Summary:**

The claimants 'Tourist Parks & Lifestyle Villages' and 'Thrive Health & Nutrition', represented by Clayton Utz, brought a case against HDI Global as the first defendant and, Hollard Commercial as the second defendant, who were represented by Clyde & Co. The hearing took place on the 2nd October 2020 and the case was to legally test the construction of the claimant's insurance policy and the Insurer's decision to refute indemnity.

The Insurers argued that the intention of the policy was not to provide cover however, the claimants argued that COVID-19 is not a disease which has been declared to be a quarantinable disease under the Quarantine Act 1908 and subsequent amendments.

In fact, the disease was declared as a disease under the Biosecurity Act 2015.

On the 18th November 2020 the NSW Court of Appeal ruled against Insurers in the COVID-19 Business Interruption test case that they agreed to hear.

By way of background:

On 16 June 2016 the Quarantine Act 1908 was repealed and the Biosecurity Act 2015 came into force effective the same day. The Biosecurity Act 2015 did not provide for declarations of quarantinable diseases.

Instead, the Director of Human Biosecurity was able, in certain circumstances, to determine a disease to be a "listed human disease". Before the repeal of the Quarantine Act 1908, COVID-19 was not declared to be a quarantinable disease.

On 21 January 2020, COVID-19 was determined to be a listed human disease under the Biosecurity Act 2015 and not the Quarantine Act 1908.

The Court supported the view of the claimants and ruled in their favour.

Insurers have since lodged an appeal and we now await the ruling which is expected around July 2021.

So what next? If Insurers lose their appeal, it means that Insurers whose wordings state the Quarantines Act 1908 cannot refute policy coverage if there is a valid policy trigger. This is because COVID-19 was declared a human disease under the Biosecurity Act 2015 and not the Quarantine Act 1908.

However, if the Biosecurity Act 2015 is referenced, it is unlikely the client will have cover, or the policy will trigger. If however, the wording stipulates the Quarantine Act 1908, there could be a policy trigger.

Please be advised, there will may be limitation on coverage and the wordings will need to be carefully reviewed on a case by case basis.

The full ruling can be found:

<https://insurancenews.com.au/breaking-news/bi-test-case-ruling-goes-against-insurers>

## What are the important components to consider with a Business Interruption claim?

### Has there been an actual loss?

- Like with any claim, the activating policy, Material Damage clause must have been triggered and extensions considered.
- Are there any exclusions, conditions or restrictions that could apply before a Business Interruption claim will be accepted?
- Often quantum will be unknown at lodgment and there is no need to finalise your calculations prior to lodgment.

### Trends

Identifying trends will often have the most significant impact on a Business Interruption claim calculations. This is because Business Interruption will typically occur over an extended period and as such what has taken place before and after the event will be taken into account to determine what a fair amount to pay is.

### Common trends that will be considered are:

- Business Growth
- New Products
- New Customers or Suppliers
- New Locations
- Expansion plans
- Acquisitions
- Historic growth and expected growth

### Increased costs working

When reviewing increased cost of working, it's important to consider the following:

- Is there any additional expenditure incurred that is necessary to keep the business running?
- Is the expenditure only related to the claim?
- The client must still mitigate their loss
- It cannot exceed the gross profit
- It must occur during the indemnity period

### What is the length of the indemnity period?

The claim starts from the date of the loss and extends to when the business's turnover and profit levels are back to where they would have been if the loss hadn't occurred. However, this is limited by the indemnity period nominated on the schedule. Typically, it is for 12 or 24 months.

### Where can I find examples of how Business Interruption is calculated?

A good place to see examples of Business Interruption calculation is via the LMI website with link below:  
<https://cms.lmigroup.com/bi-explained/au/how-a-claim-is-calculated/insurance-coverage/>

## **COVID-19 and Business Interruption Claims**

Like with any other Business Interruption claim, in order for a claim to be accepted it must be triggered by an event covered by the policy and have no relevant exclusions.

It's important to consider that no two claims are the same and each must be considered based on its own circumstances.

### **What information is needed to lodge a claim for Business Interruption as a result of COVID-19?**

Depending on the decision of the appeal, we expect Insurers will be receiving an increased volume of claims over the first 6 months of 2021. As such, the best approach you can adopt is to provide as much information as possible at the lodgment stage with Insurers and aim to make the claim as close to one touch as possible.

#### **Consider the following information which typically is required to review a claim:**

- Date of closure of the business or the first day that the business was impacted. If your business was closed by a public authority and you have this in writing, please include this in the claim submission to your broker.
- A detailed summary of the closure including clear reasons why it was closed and how it was impacted your Business Interruption perspective.
- The duration of the closure and the reason why it was able to reopen. Was it that the Government eased restrictions or other reasons?
- If there was an outbreak at the premises or within the vicinity of: explain what happened, how many people were involved and any other information relevant for assessment.
- What was the drop in business turnover? This will need to be supported with profit and loss statements.
- You may wish to engage your accountants or an expert company such as claims preparers. (Please check with your broker that these costs are covered under your policy).
- Any other claims information which may be useful for the Insurer to consider the claim.



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