



# McCormick Harris

## INSURANCE

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CLIENT NEWSLETTER

## Taking stock: risks may change in the ‘new normal’



**Back in business: it's time to reassess insurance arrangements**

Shopping centres are busy and football is back on television as lockdowns ease, but there are plenty of questions over what the “new normal” will look like as a vaccination or cure for COVID-19 remains some distance away.

Firms throughout Australia have changed the way their businesses operate in recent months due to the enforced shutdowns and social distancing measures, and you may now be considering what changes will remain and what the long-term impacts will be.

At this point that's not an easy question to answer. Views are mixed on how quickly earnings will recover across different sectors, and prospects for an economic recovery are also uncertain. Optimists flag a V-shaped rebound, while others see an extended period in the doldrums.

In recent months, businesses have taken a number of cost-saving measures to offset diving revenues, but SMEs have mostly elected to continue protecting their assets and operations by maintaining their insurance cover.

Insurers announced short-term assistance measures to help prevent businesses taking drastic action that would leave them exposed to risks, while some of our clients have also elected to spread their premium payments.

Ultimately, research by insurance company Vero shows that 85% of SMEs it surveyed have made no changes to their business insurance despite two-thirds experiencing a decline in revenue due to COVID-19.

Insurance aside, some 88% made other changes as a result of the pandemic with

the most common actions including reducing staff hours, implementing remote working and finding alternative ways to reduce costs.

The research suggests SMEs have been seeking advice from a variety of sources, such as brokers like us, the Government or other financial advisers, on how best to gain assistance and to adapt their operations.

SMEs surveyed on average expect to experience business pressures for about six more months, while some see impacts from the COVID-19 outbreak lasting up to a year.

Issues that may need to be considered in the insurance context may include whether there has been a change in business premises, or if plans are underway in that regard, and whether the right cover is in place for IT systems.

Staffing changes may have implications for workers' compensation while the different operation of the business and continuing risks from the virus threat may require a closer look at liability covers.

If you have Business Interruption cover you may want us to examine your policy to see if cover may be available for recent events, given differences of legal opinion over how strongly some policies impose an exclusion on pandemic-related claims, and what you may require going forward.

With so much change taking place so rapidly, it can be easy to overlook the need for your insurance cover to also keep pace, so now is a particularly opportune time to speak with us to help adjust or fine-tune your cover in this challenging period.



Staying safe: new workplace measures are required

## Virus strains: returning to offices presents challenges

We're in the same boat as you. Like most of our clients, businesses that closed their doors while staff worked remotely from spare rooms and dining tables during the coronavirus outbreak are realising that returning to the office is not as simple as unlocking the office door.

The enormous variety of SME operations that make up Australia's largest single business grouping are re-opening their doors, starting up machinery and getting back to work as controls ease.

But Federal Government moves to revive the economy also put the onus on employers to ensure a safe workplace environment for staff and visitors as the risk of catching the virus is still very much with us.

Businesses have always had obligations to their employees under health and safety laws and the coronavirus is upping the ante and adding another layer of risk.

Step three of the Government's roadmap, scheduled for this month, highlights an expectation that "all Australians return to work with physical distancing and hygiene".

There are 10 national COVID-19 safe workplace principles, and Safe Work Australia has documents on its website that address many of the practicalities.

Issues to consider include having plenty of hand sanitiser for people as they enter a workplace, and move about during the day, and ensuring regular cleaning of high-touch surfaces.

Safe Work Australia also suggests putting up posters as a reminder to keep at least 1.5 metres apart, while offices should be organised to facilitate social distancing.

For offices, "hot-desking", under which no one has a designated place to work, will likely be consigned to the past, and some workstations may need to be moved. Safety rules are suggested for meeting rooms and common spaces.

The way people commute to the office is another question to consider, while working hours may need to be staggered to reduce congestion in areas such as foyers and lifts.

Employees must be encouraged to stay home if they are feeling unwell, and

should be required to tell a designated person if they have been in close contact with someone who has the virus or if they have been tested for the illness.

You will need to consider the repercussions if one of your employees – or, indeed, you – does contract COVID-19, including what steps to take to ensure the workplace is safe for other people.

That could mean the workplace will have to close while cleaning takes place, highlighting the importance of having a business continuity plan to minimise further disruption.

States and territories are moving at varying paces on winding back restrictions, and each has its own laws and agencies responsible for workplace health and safety, further adding to a complex picture.

In such a rapidly changing environment we can advise you on risk management measures and helping to ensure the right insurance arrangements are in place to minimise the risks you face as the nation gets back to work.



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COVID claims: the pandemic has led to confusion over coverage

## Business Interruption explained

There's a great deal of confusion right now about Business Interruption cover, and whether small businesses impacted by the coronavirus pandemic and associated government-imposed shutdowns have valid claims.

Many businesses have seen revenues devastated over recent months as they have been prevented from trading to help keep on top of COVID-19 transmission, and those with insurance policies in place may have hoped to be able to recover some of their losses.

It's not our role to tell you whether a claim will be paid or not – that is something that only your insurer can adjudicate on. However, we are here to put your case to your insurer in the strongest possible way.

We can help explain some of the intricacies, go through the “wordings” of your specific policy – they are not all the same by any means, especially when it comes to defining exclusions for pandemics – and assist you in outlining the circumstances of your loss should you wish to make a claim.

We can also help you understand your insurer's decision, the reasons behind it, and your options for challenging it if your claim is declined.

However, the harsh reality is that the bulk of Business Interruption cover is unlikely to respond to a claim.

Reinsurers began withdrawing their cover of insurers due to the scale of the global risk following assessments after the SARS and MERS outbreaks some 15 years ago, and insurers followed suit by excluding the risk because the scale of a pandemic and the likely cost could not be defined. As we have seen since, the cost has been massive.

Insurance policies generally respond to physical damage at an insured's premises, and even when an infectious diseases extension is in place, this is not usually designed to cover pandemics – and most policies will exclude it as a risk.

The diseases cover is intended to cover localised outbreaks of diseases such as Legionnaires' or salmonella.

But this does not mean that it is impossible to have a valid claim as a result of COVID-19.

Every circumstance and every policy is different, and some policies contain outdated exclusions referring to the now repealed Quarantine Act, which was replaced by the Biosecurity Act in 2015.

While insurers argue that the intent of the exclusion is still clear, some law firms believe that the wording could invalidate exclusions.

The Australian Financial Complaints Authority is considering whether to proceed with a test case that could provide guidance, and in other countries such as the US and UK, debate is raging over similar issues.

There's no doubt that it's a complex matter, and it could be some time before it is fully resolved.

But we can help. Our expertise and experience in times like this are just some of the reasons that you use a broker.

# Understanding the new unfair contract terms regime

Less than a year from now the way insurance contracts are prepared and written is set for a major shakeup after the Federal Government decided to impose unfair contract terms (UCT) laws on the insurance industry.

The change will kick in on April 5 next year and will apply to contracts that are entered into on or after that date, or renewed or varied after that date. It is one of many reform proposals made by the Hayne royal commission that the Federal Government has fully committed to taking up.

The law change is aimed at protecting consumers from unfair provisions that have so far been exempted from the UCT regime. The change will include insurance contracts that we as brokers negotiate on your behalf with insurers.

That's going to involve plenty of work between now and April 5 as the industry

prepares to switch to the new regime. As Dallas Booth, the Chief Executive of the National Insurance Brokers Association (NIBA), puts it, we brokers must have a good understanding of the UCT concepts and legislation so we can determine if a term is unfair and detrimental to the interests of our clients.

A paper prepared by NIBA says clients will have new rights to challenge insurers' terms as being unfair when the new UCT regime kicks in. It is potentially another tool to get claims paid, according to the paper.

All insurance contracts covered by the Insurance Contracts Act will have to comply with the UCT laws under the new regime. The protections will apply where the contract is a consumer contract or small business contract; the contract is a standard form contract; and it is a financial product or a contract for the

supply, or possible supply, of services that are financial in nature.

NIBA says the changes aim to prevent insurers from including terms in their standard form contracts that are unfair to the other party.

If a policy provision is challenged in court and found to be unfair, and therefore void, it means the term will be treated as if it never existed. But the contract will continue to bind the parties to the extent that the contract is capable of operating without the unfair term.

That, in a nutshell, is how the changes to insurance contracts will operate under the new UCT regime. They are relatively complex, but we have it all sorted out. Come April 5 next year, you should have an added sense of security that "fairness" will have to be taken more strongly into account.



**Fairness first: the unfair contract terms regime is set to extend to insurance**



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