

Business Interruption Insurance – Understanding your cover in times of disaster

What will you need to consider and understand if your own business or clients business has been adversely impacted by the floods?

The recent extreme weather events across vast areas of the country have had a devastating impact on people's lives and have again highlighted the importance of having appropriate insurance against such risks.

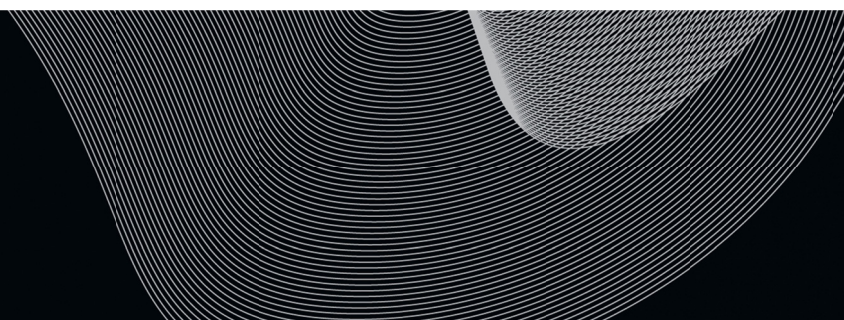
Together with damage to residential and business premises, the flooding has caused significant damage to infrastructure, including roads, utilities, public transport and public services. ANZ has estimated the cost of rebuilding in Queensland alone to be about \$20 billion, and the Queensland Resources Council estimates the cost to Queensland's coal export industry will be about \$3.3 billion in lost export trade. These are massive sums of money and raise the emotive issues of how and where the funds will be derived and how they will be deployed.

Insurance companies will likely meet some of the rebuilding costs. It is interesting to note that Queensland's two largest Insurers, Suncorp and IAG, estimate that their respective claims costs, after reinsurance, will be approximately \$220 million and \$150 million, respectively. In comparison with ANZ's total rebuilding estimate of \$20 billion for Queensland, this leaves a considerable shortfall to be met by a combination of re-insurers, the Federal and State Governments, impacted businesses and a possible public levy. The true extent and the costs of such widespread damage may not be known for many months, or possibly years.

In the aftermath of such major catastrophic events, concentration of efforts understandably leans towards the clean-up and ensuring that impacted businesses quickly implement plans for short term survival and longer term prosperity. Many insurance policyholders are now starting to contemplate and examine their insurance coverage to determine the scope of cover available to them for losses they have suffered, are continuing to suffer, or will likely suffer in the future.

If your own business or clients businesses have been adversely impacted by the floods, you will need to consider and understand the following:

1. What type of insurance coverage exists? For example, is it business interruption cover, coverage for damage to specific items (such as computers, plant and machinery), or both? Does your policy extend to covering losses arising from prevention of access to business premises, even though your own business premises may not have been directly affected by flooding? Are you insured for supply chain losses, which may be caused by your normal suppliers being unable to supply you with inventory, in which case you are unable to fulfil orders or your customers reducing or cancelling orders?
2. It can be bewildering to work your way through and understand the extent of the coverage provided by a particular policy, yet alone commence the process of estimating any loss suffered. It is therefore vitally important that you address these coverage issues with your advisors immediately, whether that be your insurance broker, lawyer, accountant or directly with your insurer.
3. The most common form of business insurance cover will likely be business interruption. However, some business interruption policies may not cover all losses associated with flooding, and in some cases policies expressly exclude coverage for losses associated with flooding. Where a business interruption policy does provide coverage, it will generally require three "triggers" for a claim to be upheld. These must all be satisfied, and occur in the order given below:



- a. The occurrence of an insured event (i.e. a flood), which leads to
- b. Damage to insured property, which leads to
- c. An interruption in business.

A key question will be whether an interruption has been caused by damage to insured property arising as a consequence of the flood. The policy will define “insured property”. An interruption that cannot be causally connected with damage to insured property will probably not be covered by the business interruption policy.

4. You must comply with the notification requirements of your policy. Check the timeframes for notifying your Insurer of potential claims, or if you have a broker, your broker who in turn will contact your insurer.
5. Document everything, including any loss mitigation strategies that may be implemented. Your policy will likely contain provisions in relation to mitigating loss and it is important that you comply with these. Documenting the occurrence of a business interrupting event is critical to ensuring you can later prove the occurrence, notification and steps taken in responding to the event. Particularly when books and records may be damaged, contemporaneous file notes and documented correspondence can be critical.
6. Each businesses situation is going to be different depending on the type of the coverage available, the causes of any loss and the extent of any loss. While many of the principles for calculating business interruption losses are fairly well established and supported by case-law, their application can be complex.
7. You should consider seeking independent advice and assistance with the compilation of claims, and ensure you distinguish between advisers acting for the insurance company and those acting for you. In so doing, you should be aware that in most business interruption policies the costs associated with the preparation of claims will be covered by the policy.

About McGrathNicol Forensic

McGrathNicol provides legal firms, corporates and Government with hands-on solutions to complex problems. Our firm has six dedicated Forensic partners, with more than 300 people across Australia and New Zealand.

Our Forensic team is among the most experienced in Australia, which has been obtained from a leading involvement in many of Australia’s most high profile corporate collapses, complex disputes, corporate investigations and business interruption claims.

Disclaimer

The information contained in this publication provides only a general overview of subjects covered and is not intended to be advice regarding any individual situation and should not be relied upon as such. The information contained in this publication is based on sources we understand to be reliable, but we give no guarantee as to its accuracy. This information is intended to provide only a general overview of the subjects covered.