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### Details of Filing

Document Lodged: Outline of Submissions  
File Number: NSD136/2021  
File Title: ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850) v  
THE STAGE SHOP PTY LTD (FORMERLY VISINTIN PTY LTD) ACN  
114 449 571  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 19/08/2021 1:12:59 PM AEST

Registrar

### Important Information

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Federal Court of Australia  
District Registry: New South Wales  
Division: General

## **Business Interruption Test Case #2**

### **OUTLINE OF SUBMISSIONS of ALLIANZ AUSTRALIA INSURANCE LIMITED**

#### **Proceedings NSD135/2021 (MAYBERG) and NSD 136/2021 (VISINTIN)**

## **A Introduction**

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- 1 The two test cases involving policies issued by Allianz Australia Insurance Limited (**Allianz**) are proceedings NSD 136/2021 and NSD135/2021. Those test cases concern a stage costume and clothing business operating in Adelaide, South Australia (**Visintin** test case) and a dry-cleaning business operating at four Queensland locations (**Mayberg** test case) respectively. The relevant insuring clauses in each of the two cases are (adopting the taxonomy in the submissions of Insurance Australia Ltd (**IAG**)) a disease extension and a prevention of access extension. The key issues for determination are set out further below, but each of the 'outbreak', 'closure or evacuation' and 'prevention of access' issues arise in these test cases, together with general issues of causation and adjustments.
- 2 Although the wording in each of the policies differs, there is substantial overlap in the legal analysis. Accordingly, while we address the test cases separately below in Parts B and C, we have sought to avoid the repetition of submissions on issues of construction by cross-referencing where possible. Issues relating to causation and to adjustments are addressed only briefly in Part D. Those issues will be subject to further submissions once the insureds have articulated their alleged loss. In Part E, we address the issue of the calculation of interest under s 57 of the *Insurance Contracts Act 1984* (Cth).
- 3 Finally, the general principles that apply to the construction of insurance policies are set out in Part B of IAG's submissions. We gratefully adopt those submissions. To the extent necessary, we address additional principles of construction in the course of our analysis below.

## **B Visintin test case**

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### **B.1 Visintin Policy**

- 4 Allianz insures Visintin under an Allianz Steadfast Business Pack policy of insurance, number 152RN00078COM (**Visintin Policy**). The terms of the Visintin Policy are set out in the product

disclosure statement (**Visintin Wording**) and the insurance schedule issued on 30 July 2019 (**Visintin Insurance Schedule**).

5 The Policy provided cover in respect of two separate Premises of Visintin. The Visintin Wording defines these Premises by reference to the Situations which are listed in the Visintin Insurance Schedule. Of those two Situations, only Situation 1, being 3 Leigh St, Adelaide, is the subject of these Proceedings.

6 The Visintin Policy contains a number of sections and is “multiform” in nature, providing cover in respect of a range of first-party and third-party risks. The “Business Interruption” cover section under which Visintin seeks indemnity, is tied to the “Property Damage”, “Theft”, “Money”, “Glass” and “General property” sections of the policy. The insuring clause in the “Business Interruption” section is relevantly in the following terms (p 62 of the Visintin Wording):

In the event of interruption of or interference with Your Business in consequence of Damage to any Property Insured or any part thereof or used by You at the Premises for the purpose of your business, We will pay You in respect of each item shown in the Schedule, the amount of the loss resulting from such interruption or interference.

Provided that:

- a. the payment is in accordance with “What We Pay” provision for the item;
- b. We have paid for or admitted liability in respect of such Damage under the relevant Section of Your Policy, or another insurer has paid for or admitted liability in respect of such Damage;
- c. We would have paid for or admitted liability in respect of such Damage under the relevant Section of the Policy, or another insurer would have paid for or admitted liability in respect of such Damage but for the application of an Excess; and
- d. Our liability in no case will exceed in respect of each item the Sum Insured shown in the Schedule for that item.

7 For the purpose of that primary insuring clause, “Damage” is defined to mean (on p 60 of the Visintin Wording) *“physical loss, destruction or damage (occurring during the Period of Insurance) from the operation of a peril or Event insured against under the “Property Damage” Section, the “Theft” Section, the “Money” Section, the “Glass” Section or the “General Property” Section of Your Policy.”*

8 The primary cover provided by the Business Interruption section of the Visintin Policy is therefore cover for losses resulting from business interruption caused by damage to property.

9 Visintin does not claim under the primary Business Interruption insuring clause. It relies on extra covers to that Section. The extra covers are set out on pages 65 to 66 of the Visintin Wording, as amended by the Visintin Insurance Schedule. The Wording relevantly provides:

This Section is extended to include the following extra covers. The extra covers 1 to 5 inclusive are payable provided that the Sum Insured expressed against the relevant item(s) in the Schedule is not otherwise exhausted,

...

#### **4. Infectious disease etc.**

We will also pay You for interruption or interference with Your Business due to closure or evacuation of the whole or part of the Premises during the Period of Insurance:

- a. by order of a competent government, public or statutory authority as a result of vermin or pests or defects in the drains or other sanitary arrangements, occurring at the Premises;
- b. as a result of the outbreak of a notifiable human infectious or contagious disease occurring within a 20 kilometre radius of the Premises;
- c. as a result of injury, illness or disease caused by the consumption of food or drink supplies at or from Your Premises during the Period of Insurance;
- d. as a result of a murder or suicide occurring at the Premises; or
- e. as a result of a shark or crocodile attack occurring within a 20 kilometre radius of the Premises during the Period of Insurance.

However, there is no cover under extra cover 4a. and c. due to Highly Pathogenic Avian Influenza in Humans or any other disease declared to be a quarantinable disease under the Quarantine Act 1908 (including amendments).

...

10 The Visintin Insurance Schedule relevantly provides for the following endorsement (on p 6):

#### **Prevention of Access 48 hours minimum interruption**

The Extra cover 6. Prevention of access under the Business Interruption Section is deleted and replaced by following:

We will cover You for interruption to Your Business that is caused by or results from damage to property in the vicinity of the Premises which shall prevent or hinder the use or access to the Premises provided that:

- a. the damage would have been covered under Property Damage if the property in the vicinity of the Premises has been insured under that Section;
- b. the damage prevents or hinders the use of or access to the Premises for a continuous period greater than 48 hours; and
- c. the damage results in the interruption of or interference with Your Business.

We will cover You for interruption to Your Business that is caused by an order of any legal authority which prevents or restricts access to the Premises provided that the order result from the threat of damage to property or persons within a 50 kilometre radius of the Premises and the prevention of access or restricted access to the Premises extends for a continuous period greater than 48 hours.

11 In these submissions, we refer to the extension at item 4 above as the Visintin ID Extension. In summary, it responds to losses resulting from interruption or interference due to closure or evacuation of the Premises as a result of the outbreak of a notifiable human infectious or contagious disease occurring within a 20 kilometre radius of the Premises.

12 We refer to the endorsement at item 6 above as the Visintin POA Endorsement. In summary, that endorsement responds to losses resulting from interruption caused by an order of a legal authority which prevents or restricts access to the Premises, provided the order results from the threat of damage to property or persons within a 50km radius of the Premises.

## **B.2 Visintin's claim**

13 On about 21 March 2020, following certain government directions and announcements (**Authority Response – Visintin**), Visintin closed its shop at 3 Leigh St, Adelaide on certain days and stood down all but one of its casual employees.

14 On 24 April 2020, Visintin made a claim under the Policy for cover under the Visintin ID Extension or the Visintin POA Endorsement. Visintin claimed that the response of the South Australian State and Commonwealth Governments (defined by the insured as the **Authority Response-Visintin**) to COVID-19 caused Visintin to close its shop and that as a result it had suffered a reduction in trade and profit. Copies of the government directions and media releases relied on by the insured are set out in **Annexure 1** to these submissions. Hyperlinks to those documents are at Annexure E to the Statement of Agreed Facts (**SOAF**).

## **B.3 Visintin issues for determination**

15 Allianz contends that the Visintin ID Extension does not respond to Visintin's claim because:

- (a) there was no "closure or evacuation" of the Premises (see **Part B.4**);
- (b) if, contrary to (a) above, there was a relevant "closure or evacuation", it was not as a result of "the outbreak" of a notifiable human infectious or contagious disease occurring within a 20-kilometre radius of the Premises (**Part B.5**).

16 Moreover, the Visintin POA Endorsement does not respond to the Claim because:

- (a) there was no order by a legal authority for the prevention or restriction of access to the Premises (**Part B.6**); and
- (b) if, contrary to (a), there was such an order, it did not result from the threat of damage to property or persons within a 50-kilometre radius of the Premises (**Part B.7**).

17 In the event the Court were to find that either insuring clause responds to the Claim, Visintin is not entitled to a full indemnity because:

- (a) the interruption or interference the subject of the Claim would have occurred regardless of the orders that Visintin relies on, by reason of the other (uninsured) impacts of the COVID-19 pandemic (**Part D.1**); and
- (b) Allianz is entitled to adjust any payment for business interruption to reflect the (uninsured) circumstances affecting the Business arising from the COVID-19 pandemic, so that the payment reflects the result that, but for the insured events, would have obtained during the relevant period (**Part D.2**).

18 We elaborate below.

**B.4 There was no “closure or evacuation” of the Premises**

19 The Visintin ID Extension provided that Allianz would pay for interruption or interference with Visintin’s business “*due to **closure or evacuation** of the whole or part of the Premises ... as a result of the outbreak ...*”.

20 Visintin does not contend that it (or the Premises) was subject to a legal direction requiring it to close. It relies instead on the (asserted) *indirect* effect of the Authority Response-Visintin. Specifically, Visintin claims that there was a “closure or evacuation” for the purpose of the Visintin ID Extension because (CSR, [4], [7(a), (b)], [8(a)]):

- (a) the various directions constituting the Authority Response-Visintin imposed restrictions on Visintin’s customers which had the incidental effect of reducing Visintin’s trade; and/or
- (b) following the Authority Response–Visintin, Visintin closed the business voluntarily.

21 A summary of the Authority Response-Visintin is at Annexure 1 to these submissions. The Authority Response-Visintin comprises two types of documents: first, declarations and directions made pursuant to specific legislation; and secondly, media releases made by the Premier and the Minister for Health and Wellbeing. We do not understand the media releases to impose any greater restrictions than the declarations (which impose no restrictions at all) and directions. If our understanding is incorrect, we will address the nature and content of those media releases in reply.

22 Putting aside the declarations and the media releases, the directions can be divided into the following categories:

- (a) directions that prohibited “gatherings”, including “mass gatherings”, “prohibited gatherings” or “prescribed gatherings” of a certain size at a premises. In respect of all of those directions, the definition of “mass gathering”, “prohibited gathering” or “prescribed gathering” as the case may be expressly excluded a gathering at a retail

store or shopping centre that is necessary for the normal business of those premises (see Annexure 1, items (c), (e), (l), (o), (p), (q) (**Mass Gathering Directions**);

- (b) directions that certain “defined premises” and “restricted premises” close in accordance with the directions. Amongst others, the “defined premises” included at various times pubs, gyms, cinemas, theatres, restaurants and cafes, function centres, hairdressers, beauty salons and concert venues. None of these directions required the closure of retail premises (see Annexure 1, items (g), (j), (k), (o), (p) (**Business Closure Directions**);
- (c) directions that imposed border restrictions, including by requiring that certain persons arriving in South Australia self-quarantine for 14 days (see Annexure 1, item (h)) (**Border Restrictions**);
- (d) directions that persons attending a gathering use their best endeavours to maintain a distance of 1.5m from other people (see Annexure 1, items (l), (o), (p), (q) (**Social Distancing Rules**); and, finally
- (e) a direction that all South Australians stay at home and all community activities cease for a defined period (see Annexure 1, items (r), (s) and (t) (**Stay-at-home Directions**). We note in passing that this direction was made on 19 November 2020 (and updated on 20 November 2020 and 22 November 2020), after the expiry of the Visintin Policy and so Visintin cannot rely on it to establish interruption or interference with Visintin’s business during the policy period in any event.

23 None of those directions required Visintin to close the Premises. Rather, they imposed restrictions on third parties, possibly including those who would otherwise have been Visintin’s customers, although that will be the subject of evidence that has not been served as at the date of these submissions.

24 Even accepting that directions targeting third parties caused a downturn in Visintin’s trade, Allianz disagrees that this is sufficient to comprise a “*closure or evacuation ... of the Premises*” for the purposes of the Visintin ID Extension. This is so for at least the following reasons:

- (a) **First**, to interpret the clause in the way Visintin contends would be contrary to the plain and ordinary meaning of the words “*closure or evacuation ... of the Premises*”. Those words are not apt to describe restrictions imposed on third parties (including, for example, Visintin’s customers), notwithstanding that the ultimate effect of such restrictions might be a decline in Visintin’s business;
- (b) **Secondly**, the other sub-clauses contemplate events that give rise to a risk of a requirement to physically close or evacuate the Premises. For example, vermin or pests at the Premises, defects with the drains at the Premises, or food poisoning at the

Premises, all create a risk of a requirement (directed towards the Premises and the insured) that the Premises be physically closed;

- (c) **Thirdly**, having regard to the context of the extension as an adjunct to property insurance, it is plain that the “*closure or evacuation ... of the Premises*” contemplates a change to the Premises itself, being the property insured; and
- (d) **Fourthly**, no reasonable insured would have supposed that the “*closure or evacuation*” of the Premises for the purposes of the Visintin ID Extension might be brought about by restrictions imposed on the public at large. If the clause applied in that way, it would mean that any restriction imposed on Visintin’s customers would qualify, irrespective of how remote from the conduct of Visintin’s business, which might produce surprising results.

25 That the words “*closure or evacuation ... of the Premises*” means what it says, and is directed towards the physical Premises, is consistent with *Cat Media Pty Ltd v Allianz Australia Insurance Ltd* (2006) 14 ANZ Ins Cas 61-700; [2006] NSWSC 423 at [60] (**Cat Media**). In that case, Bergin J concluded that the word “*closure*”, where used in a business interruption extension to an industrial risks policy, was not apt to describe the suspension of a manufacturing licence which caused operations at the premises to cease. Her Honour relevantly held (our emphasis):

[60] I am of the view that the term “closure” in the extension clause is the closure of the whole, or part of, the building or buildings comprising the Premises, that is, preventing physical access to the whole or part of the Premises. The word “closure” does not mean the cessation of manufacture pursuant to the suspension of Pan’s Licence.

26 As to Visintin’s contention that the phrase “*closure ... of the Premises*” extends to *voluntary* closures at the discretion of the policyholder, that interpretation is also belied by the text of the clause and the policy as a whole.

27 The extension contemplates the “*closure ... of the Premises*” for five possible reasons: (i) the existence of vermin or pests or defects in the drains or sanitary arrangements (ii) the outbreak of a notifiable human infectious or contagious disease within a 20km radius of the Premises; (iii) an instance of food poisoning from food on the Premises; (iv) murder or suicide on the Premises; and (v) a shark or crocodile attack in the area. In other words, what is contemplated is the closure or evacuation of the Premises for the protection of public interests – indeed, chiefly, if not solely, public health interests: See the observations of Bergin J in *Cat Media*, [54] – [59].

28 Plainly, it is the role of the government and other public authorities to protect the public interest, including by ordering the closure or evacuation of certain premises if necessary. Neither party to the insurance policy would have supposed that the insured was best placed to make decisions as to how best to protect the public interest by closing the premises on which the business was conducted.



29 If the phrase “*closure ... of the Premises ... as the result of an outbreak*” did contemplate voluntary closures at the discretion of the policyholder, the question of whether a given closure was “*as a result of*” an identified COVID-19 outbreak would depend solely on the subjective state of mind of the policyholder. The causation test would be satisfied in every case in which an insured held the opinion that an outbreak of a notifiable disease within the designated area justified the closure of the business. Such an interpretation is implausible. It is most unlikely that an insured would have understood that it was at liberty to close or evacuate the Premises and recover under the policy whenever there was an outbreak within the designated area, even where the government and other authorities permitted the insured to continue operating the business from the Premises.

#### **B.5 There was no ‘outbreak’ of COVID-19 occurring within a 20 km radius of the Premises**

30 Assuming that there had been a direction to close or evacuate the Premises, in order for the Visintin ID Extension to respond to a claim, that direction would need to be, “*as a result of the outbreak of a notifiable human infectious or contagious disease occurring within a 20-kilometre radius of the Premises.*”

31 In considering the scope of the peril insured against by the Visintin ID Extension, the term “outbreak” must be construed having regard, amongst other things, to the context and purpose of the provision. The purpose of the provision was to insure against losses caused by the closure of a business premises, where the closure was imposed by a relevant authority *in an effort to avoid the transmission* of a notifiable human infectious or contagious disease: see *Cat Media*, [56].

32 As to context, “outbreak” appears beside public health terms such as “notifiable human infectious or contagious disease”, “Highly Pathogenic Avian Influenza in Humans” and “quarantinable disease”. Those phrases are terms of art used in the public health context. Also relevant, given the reference in the clause to notifiable human infectious or contagious diseases, is the use of the word “outbreak” in the *National Health Security Act 2007* (Cth). Section 11(2) of that Act provides that the Minister may include a disease on the National Notifiable Disease List “*if the Minister considers that an outbreak of the disease would be a public health risk*” and may remove a disease from the list if the Minister no longer considers an outbreak of the disease would be a public health risk. When construing the term “outbreak”, the Court should have regard to that legislative context and construe the term by reference to its public health meaning: *Vero Insurance Pty Ltd v Australian Prestressing Services Pty Ltd* [2013] NSWCA 181 at [40]. We note that this approach is being adopted in other jurisdictions: see for example, *Hyper Trust Limited trading as The Leopardstown Inn v FBD Insurance plc* [2021] IEHC 78, [178]-[179].

33 What the purpose and context therefore suggest is that an “outbreak” must be capable of giving rise to a public health risk of the kind that would attract government orders to close a premises.

- 34 This means that single instances of COVID-19 occurring in a controlled environment where there has been no community transmission do not qualify as “outbreaks”. By way of example only, confirmed cases of COVID-19 that have been acquired overseas or interstate and confirmed cases that have been acquired or are located in hospital, hotel quarantine or self-isolation, would not constitute an “outbreak” unless there had been uncontrolled transmission of COVID-19 within those settings.
- 35 To satisfy the requirement for an “outbreak”, what is required is at least a confirmed community transmission of COVID-19. A community transmission is where one confirmed case of COVID-19 transmits it to another person in an uncontrolled environment. The location of the “outbreak” is the location at which the transmission event occurred. In the context of the Infectious Disease Extension, that transmission location must be within a 20 kilometre radius of Visintin’s Premises.
- 36 An “*outbreak*” would not include the mere presence of one or more confirmed cases of COVID-19 in the community without a transmission event. This is because mere presence of confirmed cases does not pose a risk to public health of the kind likely to attract business closure orders. This is consistent with the *obiter* remarks of Lords Hamblen and Leggatt (with whom Lord Reid agreed) in *The Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] UKSC 1 (**FCA v Arch**) (at [69]) that an “outbreak” of COVID-19 would be comprised of more than one “occurrence”. At best, a single instance of COVID-19 could only be a threat of an outbreak.
- 37 Nor are the words “*outbreak ... occurring within*” apt to describe “*a widespread phenomenon extending to the vicinity of the Premises*” as Visintin contends (CSR, [7(c)]). What we apprehend Visintin hopes to establish by that contention is that it is entitled to indemnity for loss caused by COVID-19 wherever and whenever it occurred, on the condition that there was a confirmed case inside the 20km radius. That argument ought to be rejected. Interpreting the clause in that way requires a rewriting of it so that it refers to the disease “*occurring partly within...[the designated area]*”. It is not the Court’s task to rewrite the bargain between the parties: *Charter Reinsurance Co Ltd v Fagan* [1997] AC 313 at 388 (Lord Mustill). A similar submission was made by the Financial Conduct Authority in *FCA v Arch* and rejected by the United Kingdom Supreme Court (at [64]-[65]). As with the references to geographical limitations considered by the Supreme Court in that case, here, the words “*occurring within 20 kilometres of the Premises*” are adjectival, not conditional: *FCA v Arch*, [85]. Lord Hamblen and Lord Leggatt (Lord Reed agreeing) said (at [86]) that:
- ... [to read in a condition involves] unjustifiable manipulation of the language. It also involves treating the insured peril as subject to no geographical limit at all provided only that at least one person manifests the disease within the specified area. That seems to us an improbable form of cover for insurers to provide, as well as one which would be out of line with all the other limbs of the clause.
- 38 Their Lordships also considered (at [85]) it important that the other sub-clauses of the extension covered something happening at, or a consequence of something happening at, the insured

premises. That is the case here, too. For example, other sub-clauses in the Infectious Disease Extension concern vermin or pests or defects in the drains at the Premises; food poisoning at the Premises; and murder or suicide at the Premises. The only difference between the Visintin ID Extension and these sub-clauses is that the risk covered is not confined solely to something happening at the Premises but extends to something happening within a specified distance from the Premises.

39 Ultimately, the Visintin ID Extension is properly interpreted as providing cover for business interruption caused by community transmissions of COVID-19 occurring within a 20km radius of the Premises from which the business is carried on. The clause does not cover interruption caused by community transmissions of COVID-19 occurring outside that area.

40 Visintin asserts that there has been an “outbreak” within a 20km radius of the Premises because from (at least) 1 February 2020, there were two cases of COVID-19 within that radius: CSR [8(b)].

41 Allianz has admitted all of the facts contained in a Notice to Admit served by Visintin and dated 30 July 2021, including that prior to 18 March 2020, there were two people with COVID-19 within the 20km radius of the Visintin Premises who were not self-isolating during their infectious period. This, however, does not establish an “outbreak”, because there is nothing to say that the two people, or either of them, were infected with COVID-19 by community transmission.

42 Nor do the tables of COVID-19 case numbers at [101] and [102] of the SOAF assist the insured. Both tables are taken from data published by the South Australian Government. They identify cases that have occurred on a cumulative basis across South Australia. The table at [101] shows cumulative cases to date in local government areas. No information is provided as to the dates on which those cases were confirmed. The table at [102] shows cases both cumulatively by date and by reference to new cases occurring by date across South Australia. Those case numbers do not distinguish between cases associated with community transmission, overseas acquisition, interstate acquisition or cases acquired or located in hospital, hotel quarantine or self-isolation. The table at [102] does not identify which, if any, of the cases were within the radius.

43 The Court could not be satisfied on the basis of those facts that an “outbreak” has occurred within a 20km radius of Visintin’s Premises.

#### **B.6 Prevention or restriction of access to the premises by a legal authority (POA Endorsement)**

44 Moving now to the Visintin POA Endorsement, as explained above, that endorsement responds to loss that is (our emphasis) “*caused by an order of any legal authority **which prevents or restricts access to the Premises ...***”.

45 Visintin contends that the Authority Response-Visintin prevented or restricted access to the Premises for the purpose of carrying on Visintin’s business, because it imposed preventions and restrictions on “*Visintin’s customers, the public and the Premises*”: CSR, [10(a)]. As explained above, the directions did not impose preventions or restrictions on Visintin or the Premises. Moreover, contrary to Visintin’s claim, restrictions imposed on third parties do not comprise a prevention or restriction of access to the Premises. This is so for at least the following reasons:

(a) **First**, interpreting the Visintin POA Endorsement in that way ignores the ordinary meaning of “...*access to the Premises*”. In *FCA v Arch*, the United Kingdom Supreme Court considered the words “prevention of access to The Premises” and accepted that (at [149]-[150]), “*Access refers to the means of entry to the premises. If the premises can be entered for the purpose of carrying on business there, then there has been no prevention of access.*” The Supreme Court then upheld the conclusion that (at [153]) (our emphasis):

...the restrictions on free movement by regulation 6 did not in themselves prevent access to the premises which remained open; and to the extent that in consequence of the regulation, fewer people went to the relevant shop or office or only did so for the purposes of buying essential supplies or transacting business which could not be carried out remotely from home, this amounted to hindrance in the use of the premises but not to the “prevention of access to The Premises.”

(b) **Secondly**, to interpret the clause as Visintin contends would be inconsistent with the wider context of the clause as an extension to property cover. That context supports a construction that the words “*an order ... which prevents or restricts access to the Premises*” contemplates an order about the Premises itself, being the property insured. Those words are not apt to describe an order imposing restrictions on third parties (such as Visintin’s customers), which only incidentally results in fewer people visiting the Premises.

#### **B.7 COVID-19 did not constitute a threat of damage to persons within a 50km radius of the Premises**

46 If, contrary to our submissions, there was an order preventing or restricting access to the Premises, still the insured is required to show that the order “***result from threat of damage to property or persons within 50 kilometre radius of the Premises...***”.

47 The word “damage”, when used in the context of the Visintin POA Endorsement, is intended to refer to physical damage as the result of a peril or event of a type that would have been insured under the other primary sections of the Visintin Policy, had the damage occurred on the Premises, rather than merely in the vicinity of the Premises. That interpretation is supported by the following matters:

- 48 **First**, the context of the relevant phrase, “...result from threat of damage ...”, within the Visintin POA Endorsement itself. Specifically, the first half of the clause provides cover in respect of damage of a type that would have been covered by the policy had the relevant property been insured. It states, “We will cover You for Interruption ... that is caused by or results from damage in the vicinity of the Premises which shall prevent or hinder the use or access to the Premises provided that (a) the damage would have been covered under Property Damage if the property in the vicinity of the Premises [had] been insured under that Section...”. The second half of the clause, which is the one we are concerned with, does not repeat the equivalent of (a). However, on a plain reading, it is clear that the only intended difference between the two parts of the clause is that the first half contemplates damage in the vicinity of the Premises, such that it might *physically* hinder access to the Premises, whereas the second half contemplates damage up to 50km away, such that it might hinder access to the Premises indirectly by the medium of a legal order. There is no sensible reason why the concept of “damage” would differ as between each of those two parts of the clause.
- 49 **Secondly**, it would produce surprising results if the concept of “damage” in the context of extra cover *could extend beyond* that applying in the context of the primary cover. For instance, the Visintin Policy does not provide cover for flood damage on the Premises (p 4 of the Visintin Insurance Schedule). It is difficult to see in those circumstances that the parties would have agreed to extend the business interruption cover to respond to damage arising from a flood at some more remote location. Given the fundamental nature of the cover as being directed towards physical loss, destruction or damage to property, the only cover that can be made available for disease under the Visintin Policy is that which is specifically written back into the wording. The Visintin ID Extension provides such a write-back, albeit in an intentionally narrow form, by confining cover to outbreaks of disease limited to a 20km radius of the Premises.
- 50 **Thirdly**, given that the Visintin ID Extension and the Visintin POA Endorsement are both “business interruption” adjuncts to the primary insurance, it is to be expected that those clauses will operate harmoniously one with the other so as not to provide overlapping or inconsistent cover. The Visintin ID Extension provides cover for disease, but only where an outbreak occurs within a 20km radius of the Premises. If the Visintin POA Endorsement responded in respect of an outbreak of any disease occurring inside a 20km radius of the Premises, the Visintin ID Extension (including the exclusion in that clause for Highly Pathogenic Avian Influenza and quarantinable diseases under the Quarantine Act 1908 (Cth)), would be rendered otiose. Moreover, if the Visintin POA Endorsement responded to an outbreak *outside* a 20km radius, but *inside* a 50km radius of the Premises, it would produce a result that was inconsistent with the plain intention of the Visintin ID Extension, including to limit cover for infectious disease geographically to a 20km radii. To interpret the Visintin POA Endorsement in that way would be contrary to the principle that the Court must strive to give meaning and effect to all of the clauses in a contract: *Price v Spoor* [2021] HCA 20 at [60] (Steward J) and to ensure the “*congruent operation to the various components as a whole*”: *Wilkie v Gordian Runoff Ltd* (2005) 221 CLR

522, 529 (Gleeson CJ, McHugh, Gummow and Kirby JJ). It does not make commercial sense for an insurer to limit its exposure to a specific peril in one extension and agree to a much greater exposure to the same peril in another extension.

51 A similar issue was considered by Allsop CJ in *Star Entertainment Group Limited v Chubb Insurance Australia Ltd* [2020] FCA 907. The policy there was an industrial special risks policy combining indemnity in one section for physical loss, destruction or damage to property, and in the second section, providing for indemnity for loss resulting from interruption of business from the physical loss, destruction and damage of the property brought about by the insured perils. The question before his Honour was whether the use of the word “damage” in an extension to a policy in section 2 extended beyond physical damage resulting from an insured peril to damage by loss of use or custom or financial loss resulting from government orders in connection with the COVID-19 pandemic. His Honour found that it did not. His Honour’s analysis is instructive. At [172] – [173], his Honour said:

...the context here is an ISR policy built on physical loss or destruction of or damage to property and an extension to make clear that the consequences of an authority taking steps to retard fire or other catastrophe is to be understood as Damage...

Also, not insignificantly, the pandemic or disease of COVID-19 is not an insured peril. There is every commercial reason to extend cover for the consequences of the actions of a lawfully constituted authority in connection with or to retard conflagration or catastrophe which may physically destroy property and lead to indemnity such as that which can be described as the events in the qualification to perils exclusion 3, if sufficiently serious. Such a conflagration or catastrophe if not retarded will be an insured peril. But if “other catastrophe” is to include catastrophic disease in the nature of a pandemic, memorandum 7 is available to provide consequential loss cover for the actions of the authority to retard the peril, but that peril is not itself an insured peril.

52 It is submitted that the concept of “damage” in the Visintin POA Endorsement therefore means physical damage of the type that would be covered under the primary cover were it to occur on the Premises.

## **C Mayberg claim**

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### **C.1 Mayberg Policy**

53 Allianz insures Mayberg under an Allianz Insurance Advisernet Business Pack policy of insurance, number 141AN06566COM (**Mayberg Policy**). The terms of the Mayberg Policy are set out in the product disclosure statement (**Mayberg Wording**) and the insurance schedule issued on 24 November 2019 (**Mayberg Insurance Schedule**).

54 Mayberg operated a dry cleaning business across four different Queensland locations (**Situations 1 to 4**). The Mayberg Policy provided cover in respect of each of those Situations.

55 The Mayberg Policy contains several sections and is “multiform” in nature, providing cover in respect of a range of first-party and third-party risks. The “Business Interruption – Income” cover

section under which Mayberg seeks indemnity is tied to the “Fire – Gold”, “Burglary”, “Money”, “Glass”, “Business Special Risks”, and “Electronic Equipment” sections of the policy. The insuring clause in the “Business Interruption – Income” section is relevantly in the following terms (p 58 of the Mayberg Wording):

**Cover**

We will pay in accordance with the Basis of Settlement, for Loss of Income that results from an Interruption of Your Business caused by any Insured Damage that happens on the Premises.

Provided that this Insured Damage happens during the Period of Insurance shown for this Business Interruption-Income Cover Section.

56 “Insured Damage” was relevantly defined to mean (p 57 of the Mayberg Wording):

1. in relation to Your property, Damage to Your property when both the property that is Damaged and the cause of the Damage is covered by:
  - a. Your Policy under one or more of the following Cover Sections:
    - i. Fire – Gold;
    - ii. Burglary;
    - iii. Money;
    - iv. Glass;
    - v. Business Special Risks;
    - vi. Electronic Equipment – Part A (Material Loss or Damage); or
  - b. ...
2. a. in relation to property referred to in this Cover Section under the heading Extensions of Cover, Damage to such property located in Australia; and  
b. ...

Provided that this Damage would have been covered under one of the Cover Sections shown in 1.a. above had such property been insured under that Cover Section as part of Your Policy when the Damage happened.

57 “Damage” is in turn defined to mean accidental physical damage, destruction or loss and “Damaged” has a corresponding meaning.

58 As with the Visintin Policy, the primary cover provided by the Business Interruption-Income section of the Mayberg Policy is therefore cover for losses resulting from business interruption caused by physical damage to property.

59 Mayberg does not claim under the primary Business Interruption-Income insuring clause. It relies on an extension and an endorsement to that Section. The Extensions of Cover are set

out on pages 59 to 60 of the Mayberg Wording, as amended by the Mayberg Insurance Schedule. The Wording relevantly provides:

**6. Murder, Suicide, Infectious Disease**

We will pay for Loss of Income that results from an Interruption of Your Business that is caused by:

- a. any legal authority closing or evacuating all or part of the Premises as a result of:
  - i. the outbreak of an infectious or contagious human disease occurring within a 20-kilometre radius of Your Premises, however, there is no cover for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Quarantine Act 1908 (as amended) irrespective of whether discovered at the location of Your Premises, or out-breaking elsewhere;
  - ii. vermin or other animal pests at the Premises; or
  - iii. hygiene problems associated with drains or other sanitary arrangements at the Premises;
- b. poisoning directly caused by the consumption of food or drink provided on the Premises; or
- c. murder or suicide occurring at or near the Premises.

The definition Insured Damage does not apply to this Extension of Cover.

60 That provision is referred to in these submissions as the **Mayberg ID Extension**. In summary, it responds to loss resulting from interruption caused by the closure or evacuation of all or part of the Premises by legal authority as a result of the outbreak of an infectious or contagious human disease occurring within a 20 kilometre radius.

61 The Mayberg Insurance Schedule includes the following endorsement (p 10 to 11):

**Prevention of Access 48 hours minimum interruption**

The Extensions of Covers 8, Prevention of Access and 9. Prevention of Access by a Public Authority under Business Interruption Income Cover Section ... are deleted and replaced by following:

**Prevention of Access**

We will pay for Loss of Income that results from an Interruption of Your Business that is caused by Insured Damage:

- (a) to any property within a retail complex when Your Business is located within a multi-tenanted retail complex; or
- (b) to property in the vicinity of the Premises which shall prevent or hinder the use or access the the [sic] Premises, for a continuous period greater than 48 hours.



## Prevention of Access by Public Authority

We will pay for Loss of Income that results from an Interruption of Your Business that is caused by legal authority preventing or restricting access to Your Premises or ordering the evacuation of the public as a result of Damage to or threat of Damage to property or persons within a 50 kilometer [sic] radius of Your Premises provided the prevention of access or restricted access to the Premises extends for a continuous period greater than 48 hours.

62 “Interruption” is defined to mean interruption or interference (p 57 of the Mayberg Wording).

63 We refer to that endorsement as the **Mayberg POA Endorsement**. In summary, that endorsement responds to losses resulting from interruption caused by an order of a legal authority which prevents or restricts access to the Premises, provided the order results from the threat of physical damage to property or persons within a 50km radius of the Premises.

### C.2 Mayberg’s claim

64 Mayberg contends that its dry-cleaning business specialises in the cleaning of corporate, casual and formal wear as well as alterations (CSR, [1]). Mayberg made a claim under the Mayberg Policy on 24 March 2020. It claimed that the Commonwealth and Queensland government directions caused it to suffer a reduction in trade. More specifically, Mayberg contends that it is entitled to indemnity under the Mayberg ID Extension because: (a) the governments’ stay-at-home orders “closed off” the Premises to Mayberg’s customer base and the public; (b) the social distancing rules caused a “closure” of part of the Premises; and (c) the border closures had the effect of “*disabling Mayberg from servicing its customer base*”, and there were cases of COVID-19 within a 20km radius of each of the Premises.

65 In addition, Mayberg contends that it is entitled to indemnity under the Mayberg POA Endorsement because the Authority Response-Mayberg prevented or restricted access to the Premises, in that the social distancing orders: (a) imposed preventions and restrictions on Mayberg’s customers and the public; and (b) imposed preventions and restrictions on the Premises.

66 A summary of the directions and media releases relied on by the insured is set out at **Annexure 2** to these submissions. Hyperlinks to those documents are included in Annexures A and E to the SOAF.

### C.3 Mayberg issues for determination

67 Allianz contends that the Mayberg Disease Extension does not respond to the Claim because:

- (a) the Premises was not closed or evacuated by a legal authority (see **Part C.4**);
- (b) if, contrary to (a) above, there was a relevant “closure or evacuation”, it was not as a result of “the outbreak” of an infectious or contagious human disease within a 20-kilometre radius of the Premises (**Part C.5**).

- 68 The Mayberg POA Endorsement does not respond to the Claim because:
- (a) the orders comprising the Authority Response-Mayberg did not prevent or restrict access to the Premises, nor was there any order to evacuate (**Part C.6**); and
  - (b) if, contrary to (a), there was such an order, it did not result from Damage to or the threat of Damage to property or persons within a 50-kilometre radius of the Premises (**Part C.7**).

69 Furthermore, if the Court were to find that either extension responds to the Claim, Mayberg is not entitled to a full indemnity because:

- (a) the interruption or interference the subject of the Claim would have occurred regardless of the orders that Mayberg relies on, by reason of the other (uninsured) impacts of the COVID-19 pandemic (**Part D.1**); and
- (b) Allianz is entitled to adjust any payment for business interruption to reflect the (uninsured) circumstances affecting Mayberg's business arising from the COVID-19 pandemic, so that the payment reflects the result that, but for the insured events, would have obtained during the relevant period (**Part D.2**).

#### **C.4 The Premises was not closed or evacuated**

70 The Mayberg ID Extension provided that Allianz would pay for interruption or interference with Mayberg's business, "*caused by any legal authority closing or evacuating all or part of the Premises.*"

71 The insured's Authority Response-Mayberg sets out the directions and media releases upon which Mayberg relies as establishing an entitlement under this clause. The effect of each document has been summarised in Annexure 2 to these submissions. For the reasons set out above in respect of the Visintin test case (see paragraph 21 above), we have focussed our attention on the directions made pursuant to law. We will address the media releases in reply if they become relevant.

72 The Queensland directions can be categorised broadly the same way as the South Australian directions referred to above. The directions included:

- (a) directions that prohibited "gatherings", including either "non-essential mass gatherings" or "non-essential indoor gatherings" of a certain size at a premises. In respect of those directions, the definition of "non-essential mass gathering" and "non-essential indoor gathering" excluded a gathering at a retail store, shopping centre or workplace necessary for the normal business of those premises (see Annexure 2, items (b), (c), (n)) (**Mass Gathering Directions**);

- (b) directions that certain “non-essential businesses” not operate, or “restricted businesses” operate to the extent permitted in the direction. None of these directions required the closure of dry cleaners (see Annexure 2, items (e), (h), (i), (j), (k), (l), (m) **(Business Closure Directions)**);
- (c) directions that imposed border restrictions, including by requiring that certain persons arriving in Queensland self-quarantine for 14 days (see Annexure 2, item (f)) **(Border Restrictions)**;
- (d) directions that persons who operated “non-restricted businesses” or businesses that were not a “restricted business”, and persons who left their residence, were required to observe and practice ‘physical distancing’ including by remaining 1.5m away from other people where possible. “Restricted businesses” of which Mayberg was not one, were required to observe the 4 square metre rule (see Annexure 2, items (i), (j), (k), (l), (m), (n) **(Social Distancing Rules)**). We note that the direction at Annexure 2 (n) was made on 8 January 2021, after the expiry of the Mayberg Policy, and so Mayberg cannot rely on it to establish interruption or interference with Mayberg’s business during the policy period in any event; and
- (e) a direction that persons residing in Queensland stay at home except for, and only to the extent necessary to accomplish, “permitted purposes”. “Permitted purposes” included obtaining essential goods or services and performing work on behalf of employers engaged in essential business where the work could not reasonably be done at home. “Essential goods or services” were defined to include services needed for the necessities of life and operation of society. An “essential business, activity or undertaking” was defined as any business, activity or undertaking that was not prohibited as being non-essential. Such businesses did not include dry cleaning businesses. Therefore, Mayberg’s business was considered an essential business (see Annexure 2, items (g), (n) **(Stay-at-home Directions)**).

73 None of those directions were imposed directly on Mayberg, and indeed Mayberg does not contend that it was ordered by the government to close or evacuate the Premises. Rather, it claims that there was a “closing or evacuating” of “all or part of the Premises” in that the Stay-at-home Directions “closed off” the Premises to Mayberg’s customer base and the public; the Social Distancing Rules caused a “closure” of part of the Premises; and the Border Restrictions had the effect of “disabling Mayberg from servicing its customer base” (CSR, [8(a)]).

74 That is a tortured interpretation of the Mayberg ID Extension and contrary to the ordinary meaning of the words “closing ... **the Premises**”. The reasoning set out above at paragraph 24 in relation to the Visintin Policy also applies here. In summary, having regard to the other subclauses within the Mayberg ID Extension (which all concern events occurring at the Premises) and the context of the Mayberg ID Extension as an extension to property insurance,

it is plain that the phrase “closing ... the Premises” contemplates a change in the character of the Premises itself, being the property insured, and is not apt to describe restrictions imposed on third parties, who might otherwise have been Mayberg’s customers. This is so notwithstanding that the ultimate effect of such restrictions might have been a decline in Mayberg’s trade. That construction is consistent with Cat Media at [60] (discussed above at paragraph 25).

**C.5 There was no ‘outbreak’ of COVID-19 occurring within a 20 km radius of the Premises**

75 Assuming that there had been a direction to close or evacuate the Premises, in order for the Infectious Disease Extension to respond to a claim, that direction would need to be, “*as a result of the outbreak of an infectious or contagious human disease occurring within a 20-kilometre radius of Your Premises.*”

76 As to the construction of the word “outbreak”, we refer to our submissions on that question in respect of the Visintin Policy at section B.5 above.

77 Mayberg asserts that there has been an “outbreak” within a 20 kilometre radius of Situation 1 since at least 22 February 2020 and within the 20 kilometre radii of Situations 2-4 since at least 16 March 2020: CSR [8(b)].

78 In respect of Situations 1 and 4, Allianz has admitted by a response to the insured’s Notice to Admit dated 30 July 2021 that (amongst other things) there were at least two people within the relevant radii who were not self-isolating during their infectious periods. No similar admission is made in respect of Situations 2 and 3. Allianz’s admissions do not establish an “outbreak” because there is no information as to whether there was community transmission within the relevant areas.

79 Mayberg also relies upon a table of COVID-19 case numbers at [87] of the SOAF. This table identifies cases that have occurred on a cumulative basis across all of Queensland (that is, not necessarily within the 20 kilometre radii) since 22 February 2020. The table also identifies new confirmed cases of COVID-19 that were reported by the Queensland government on specific dates within the Queensland Metro North Hospital Health Service (**HHS**) and Metro South HHS areas.

80 The case numbers do not distinguish between cases associated with community transmission, overseas acquisition, interstate acquisition or cases acquired or (for the most part) located in hospital, hotel quarantine or self-isolation, and so do not establish an “outbreak” within the designated areas surrounding each Premises.

**C.6 Prevention or restriction of access to the premises by a legal authority (Mayberg POA Endorsement)**

81 Moving now to the Mayberg POA Endorsement, as explained above, that endorsement responds to loss that is (our emphasis) *“caused by legal authority preventing or restricting access to Your Premises ...”*.

82 None of the directions had the effect of preventing or restricting access to the Premises. This is so for the reasons set out in our submissions in respect of the Visintin Policy at section B.6.

**C.7 COVID-19 did not constitute a threat of damage to persons within a 50km radius of the Premises**

83 If, contrary to our submissions, there was an order preventing or restricting access to the Premises, still the insured is required to show that the order was *“**as a result of Damage to or threat of Damage to property or persons within a 50-kilometer [sic] radius of Your Premises...**”*.

84 The same position pertains here as it does for the Visintin Policy, addressed in section B.7 above, notwithstanding some textual differences between the two policies which we address below.

85 The word “Damage”, which is defined to mean *“accidental physical damage, destruction or loss”* when used in the context of the Mayberg POA Endorsement, is intended to refer to damage resulting from a peril or event of a type that would have been insured under the other primary sections of the Mayberg Policy, had the damage occurred on the Premises, rather than more remotely.

86 This is plain from the context of the relevant phrase, *“...as a result of ... threat of Damage to property or persons ...”*, within the endorsement itself, which indicates it is directed towards damage of a type the subject of the primary insurance. The first half of the clause, headed “Prevention of access” provides cover in respect of “Insured Damage” to properties in the same retail complex as the insured premises and otherwise in the vicinity of the insured premises. “Insured Damage” is relevantly defined to mean (at [2a.] of the definition, p 57 of the Mayberg Wording) (our emphasis):

Damage to such property located in Australia ... Provided that this Damage would have been covered under one of the Cover Sections shown in 1.a. above [Fire-Gold; Burglary; Money; Glass; Business Special Risks; Electronic Equipment – part A] had such property been insured under that Cover Section as part of Your Policy when the Damage happened.

87 The second half of the clause, which is the one we are concerned with, does not use the defined term “Insured Damage”. However, it is plain that the only intended difference between the two parts of the clause is that the first half contemplates damage in the vicinity of the Premises, such that it might *physically* hinder access to the Premises, whereas the second half contemplates

damage up to 50km away, such that it might hinder access to the Premises indirectly by the medium of a legal order. There is no sensible reason why the concept of “Damage” would differ as between each of those two parts of the clause.

88 In addition, the reasons set out above at paragraphs 49 to 51 in respect of the Visintin Policy apply *mutatis mutanda* here.

## **D Causation and adjustments**

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### **D.1 Causation**

89 Causation arises in multiple ways in each of the insureds’ claims. First, there are at least two causation elements in each of the insuring clauses. For instance:

- (a) the Visintin ID Extension provides that the interruption or interference must be *due to* closure or evacuation, which is *as a result of* the outbreak;
- (b) the Visintin POA Endorsement provides that the interruption must be *caused by* an order of a legal authority, which itself *results from* the threat of damage;
- (c) the Mayberg ID Extension provides that the interruption must be *caused by* a legal authority closing or evacuating the Premises *as a result of* the outbreak; and
- (d) the Mayberg POA Endorsement provides that the interruption is *caused by* a legal authority preventing or restricting access *as a result of* Damage or threat of Damage.

90 In addition, the insureds will be required to show that their loss “results from” that interruption.

91 The insureds have not yet served any evidence on questions of causation and loss and it is not useful to parse the various formulae in a factual vacuum.

92 It suffices to say here that in the event that the insureds establish that a government direction had the effect of closing or restricting access to the Premises and that this occurred as a result of a local outbreak of COVID-19, the insureds must show that the dominant proximate cause of their loss was the interruption flowing from that order. It is not the case that once the requirements of the insuring clauses have been satisfied, the insureds may recover the whole of the loss suffered as a result of the COVID-19 pandemic during the period of insurance.

### **D.2 Adjustments Clause**

93 Further, in the event that the insureds are successful in establishing Allianz’s liability under one or more of the indemnities, adjustment should be made to reflect the broader effects of the COVID-19 pandemics on each of the businesses during the indemnity periods.

94 Each of the Visintin Policy and the Mayberg Policy includes an adjustment clause which provides for the method of calculation of the loss payable under the relevant indemnities.

95 The Visintin Wording provides (at p 63) (our emphasis):

**What We pay**

**Item 1. Gross Profit**

...

The amount payable as indemnity under this item will be:

- (a) in respect of reduction in Turnover: the Sum produced by applying the Rate of Gross Profit to the Shortage in Turnover during the Indemnity Period, and
- (b) ...

less any sum saved during the indemnity Period in respect of such charges and expenses of Your Business payable out of Gross Profit as may cease to be reduced in consequence of the Damage.

96 "Rate of Gross Profit" is defined to mean (our emphasis):

... the Rate of Gross Profit, expressed as a percentage, earned on the Turnover during the financial year immediately before the date of the Damage to which such adjustments will be made as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Damage or which would have affected Your Business had the Damage not occurred, so that the adjusted figures will represent as nearly as may be reasonably practicable the results which, but for the Damage, would have been obtained during the relative period after the Damage.

97 The Mayberg Wording adjustment clause (at p 58) (our emphasis):

**Basis of Settlement**

**1. Loss of income**

Loss of income will be calculated by subtracting the Income earned through the Indemnity Period from the Income You would have earned during the Indemnity Period had the Damage not occurred.

Provided that the Income You would have earned during the Indemnity Period had the Damage not occurred:

(a) will be calculated by reference to the Income for:

(i) a period of the same duration as the Indemnity Period that starts a year prior to the date of the Damage; or

(ii) a period of Your normal Business operations that corresponds most closely to the Indemnity Period if Your Business has operated for less than a year at the start of the Indemnity Period; and

(b) will be adjusted to take account any:

(i) trends of the Business and other influences that would vary the Income;

(ii) variation of normal trading whereby Income is maintained during the indemnity Period from increased sales of low margin stock;

(iii) changes to how Stock, materials, finished goods or partially finished goods are used, purchased or sold including salvage sales of Stock following Insured Damage; and

(iv) savings made during the Indemnity Period that reduce the cost of running Your Business.

98 We will address the precise adjustments that will need to be made once the insureds have articulated their loss, but by way of example, it will at least be necessary to take into account:

(a) JobKeeper payments and any other grants, subsidies or scheme (government or otherwise); and

(b) Rental abatements,

as a combination of savings made, other financial benefits obtained during the Indemnity Period and additional Turnover and/or Income received during the indemnity periods, and to ensure that the adjusted figures represent as nearly as practicable the results which, but for the interruption, would have been obtained.

## **E Interest**

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99 Section 57 of the *Insurance Contracts Act 1984* (Cth) requires insurers to pay interest on unpaid claims. Interest is paid from the date on which it would be unreasonable to withhold payment on a claim to the day on which payment is actually made or posted, whichever is earlier.

100 Visintin and Mayberg made their claims on the respective policies nearly 18 months ago in March and April 2020. They have had ample time since making their claims to quantify their loss. As at the date of these submissions, they have made no attempt to do so.

101 Further, the Visintin Policy (pg 64) contained a Claims Preparation and Proving Expenses benefit for the preparation and negotiation of claims under the "Business Interruption" section. This was in addition to a general Claims Preparation Expenses benefit (pg 15) which was available to Visintin where Allianz agreed to indemnify Visintin under the policy and provided that Allianz provided its written approval to incur those costs.

102 The Mayberg Policy (pg 61) contained a Claims Preparation Expenses optional extension of cover under the "Business Interruption – Income" section which Mayberg selected. Under that



optional benefit, costs incurred in processing and certifying details of claims were available to Mayberg with Allianz's written approval.

- 103 Notwithstanding that Allianz has denied indemnity to Visintin and Mayberg, it proposed in May 2021 to make a contribution towards claims preparation expenses, with the support of a recognised claims preparer, to provide further particulars of their loss. Following negotiations between Allianz and Visintin and Mayberg as to the form of that contribution, Visintin and Mayberg have been provided with an indemnity for that work.
- 104 As at the date of these submissions, neither Visintin nor Mayberg have provided Allianz with all the information required for the purposes of the claims preparation process. Visintin and Mayberg are yet to articulate their loss and how such loss is claimed (with reference to heads of cover) under their respective policies.
- 105 It is not unreasonable, for the purposes of s 57 of the *Insurance Contracts Act 1984*, for Allianz to have withheld payment of the claims made by Visintin and Mayberg in circumstances where those claims have not been fully articulated, or the loss submitted. Having regard to the claims preparation process recognised in the policies, it is also not unreasonable for Allianz to have withheld payment on the claims until such time as the claims preparation process has been completed and it has had an opportunity to consider and verify the loss once submitted with the support of a recognised claims preparer.

Date: 19 August 2021

**Edward Muston**  
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## Annexure 1 - Authority Response-Visintin

Item	Date	Release/Order	Effect
(a)	15 March 2020	<i>Declaration of a Public Health Emergency</i> under the <i>South Australian Public Health Act 2011 (SA)</i> made by the Chief Executive of the Department for Health and Wellbeing in the State of South Australia (SOAF Annexure E item 1) <sup>1</sup>	<p>This declaration was made pursuant to section 87 of the <i>South Australian Public Health Act 2011 (SA)</i>. It declared that an “<i>emergency threatening to cause the death of, or injury or other damage to the health of any person is occurring in relation to the transmission of COVID-19</i>” and declared that emergency to be a public health emergency.</p> <p>This declaration empowered the Chief Executive of the Department for Health and Wellbeing to take any necessary action to implement the public health emergency management plan. It further operated to engage a number of provisions of the <i>Emergency Management Act 2004 (SA)</i>.</p> <p>This declaration did not include directions towards the operation, closure, evacuation or access to businesses.</p>
(b)	18 March 2020	Media release by the South Australian Premier and Minister for Health and Wellbeing on 18 March 2020 (SOAF Annexure E item 2) <sup>2</sup>	<p>This media release announced that SA Health had issued a legal direction requiring people coming to Australia to comply with self-isolation requirements.</p> <p>This media release did not include directions towards the operation, closure, evacuation or access to businesses.</p>
(c)	18 March 2020	<i>Direction of the Chief Executive of the Department of Health and Wellbeing in relation to Mass Gatherings</i> under the <i>South Australian Public Health Act 2011 (SA)</i> made by the Chief Executive	<p>This direction provided that a person who is in a position to do so in relation to a place or premises in South Australia must not allow a ‘mass gathering’ to occur on or at the place</p>

<sup>1</sup> Outline Document [7].

<sup>2</sup> Outline Document [8(a)].

Item	Date	Release/Order	Effect
		of the Department for Health and Wellbeing in the State of South Australia (SOAF Annexure E item 3) <sup>3</sup>	<p>or premises. Persons were also prohibited from organising and attending a ‘mass gathering’.</p> <p>Clause 4 defined a ‘mass gathering’ as any gathering of 500 or more persons in an outdoor space or any gathering of 100 or more persons in an indoor space. A ‘mass gathering’ did not include any gathering at a retail store or shopping centre that is necessary for the normal business of those premises.</p> <p>This direction did not include directions towards the operation, closure, evacuation or access of Visintin’s Premises.</p>
(d)	19 March 2020	Media release by the South Australian Premier and Minister for Health and Wellbeing on 22 March 2020 (SOAF Annexure E item 4) <sup>4</sup>	<p>This media release announced that the South Australian government required all people entering South Australia to isolate for 14 days from their arrival.</p> <p>This media release did not include directions towards the operation, closure, evacuation or access to businesses.</p>
(e)	22 March 2020	<i>Mass Gathering Directions (No 2) (SA)</i> made by the Chief Executive of the Department for Health and Wellbeing in the State of South Australia (SOAF Annexure E item 5) <sup>5</sup>	<p>This direction provided that a person who owns, controls or operates premises in South Australia must not allow a ‘mass gathering’ to occur on the premises. Persons were also prohibited from organising and attending ‘mass gatherings’.</p> <p>Clause 9 provided that a ‘mass gathering’ did not include a gathering at a retail store or shopping centre that is necessary for the normal business of those premises.</p>

<sup>3</sup> Outline Document [8(b)].

<sup>4</sup> Outline Document [9(a)].

<sup>5</sup> Outline Document [9(b)].

Item	Date	Release/Order	Effect
			This direction did not include directions towards the operation, closure, evacuation or access of Visintin's Premises.
(f)	22 March 2020	<i>Declaration of a Major Emergency</i> made by the State Coordinator for the State of South Australia (SOAF Annexure E item 6) <sup>6</sup>	<p>This declaration was made pursuant to section 23(1) of the <i>Emergency Management Act 2004</i> (SA) and declared that a major emergency was occurring.</p> <p>This declaration did not include directions towards the operation, closure, evacuation or access of Visintin's Premises.</p>
(g)	23 March 2020	<i>Non-Essential Business (and Other Gatherings) Closure Direction</i> (SA) made by the State Coordinator for the State of South Australia (SOAF Annexure E item 9) <sup>7</sup>	<p>This direction required any person who owns, controls or operates a 'defined premises' to close those premises in so far as it is necessary to prohibit access to the members of the public. Members of the public were also prohibited from entering 'defined premises'.</p> <p>Clause 2 defined a 'defined premises' by reference to a list contained in that clause. That list did not include retail stores or clothing retail stores.</p> <p>As such, this direction did not include directions towards the operation, closure, evacuation or access of Visintin's Premises.</p>
(h)	24 March 2020	<i>Cross Border Travel Direction</i> (SA) made by the State Coordinator for the State of South Australia (SOAF Annexure E item 7) <sup>8</sup>	This direction required persons that were subject to the direction to, <i>inter alia</i> , self-quarantine for 14 days at suitable premises. Clause 3 provided that this direction applied to all

<sup>6</sup> Outline Document [9(c)].

<sup>7</sup> Outline Document [11].

<sup>8</sup> Outline Document [12A].

Item	Date	Release/Order	Effect
			<p>people who arrive in South Australia from a place outside of South Australia.</p> <p>This direction did not include directions towards the operation, closure, evacuation or access to businesses.</p>
(i)	25 March 2020	Media release by the South Australian Premier and Minister for Health and Wellbeing on 25 March 2020 (SOAF Annexure E item 8) <sup>9</sup>	This media release announced the establishment of health accommodation for doctors, nurses, SA Ambulance and other health care workers involved in the direct on-going clinical care of COVID-19 patients.
(j)	25 March 2020	<i>Non-Essential Business (and Other Gatherings) Closure Direction (No 2) (SA)</i> made by the State Coordinator for the State of South Australia (SOAF Annexure E item 10) <sup>10</sup>	<p>This direction required any person who owns, controls or operates a 'defined premises' to close those premises in so far as it is necessary to prohibit access to consumer and members of the public. Consumers and members of the public were also prohibited from entering 'defined premises'. Further, any person who conducted 'defined work or operations' was directed to stop that work or operations and consumers and members of the public were directed not to participate in that work or operation.</p> <p>Clause 3(1) defined a 'defined premises' by reference to a list contained in that clause. Clause 3(2) defined 'defined work or operations' by reference to a list contained in that clause. Neither of those lists included retail stores or clothing retail stores.</p> <p>As such, this direction did not include directions towards the operation, closure, evacuation or access of Visintin's Premises.</p>

<sup>9</sup> Outline Document [13(a)].

<sup>10</sup> Outline Document [13(b)].

Item	Date	Release/Order	Effect
(k)	28 March 2020	<i>Emergency Management (Non-Essential Business and Other Activities) (COVID-19) Direction 2020 (SA)</i> made by the State Coordinator for the State of South Australia (SOAF Annexure E item 11) <sup>11</sup>	<p>This direction required any person who owns, controls or operates a ‘defined premises’ to close those premises and keep them closed in so far as it is necessary to prohibit access to consumers and members of the public. Consumer and members of the public were also prohibited from entering ‘defined premises’. This direction further required persons not to conduct ‘defined work or operations’ and consumers and members of the public were directed not to participate in that work or operation.</p> <p>Clause 3(1) defined a ‘defined premises’ by reference to a list contained in that clause. Clause 3(2) defined ‘defined work or operations’ by reference to a list contained in that clause. Neither of those lists included retail stores or clothing retail stores.</p> <p>As such, this direction did not include directions towards the operation, closure, evacuation or access of Visintin’s Premises.</p>
(l)	28 March 2020	<i>Emergency Management (Gatherings) (COVID-19) Direction 2020 (SA)</i> made by the State Coordinator for the State of South Australia (SOAF Annexure E item 12) <sup>12</sup>	<p>This direction provided that a person who owns, controls or operates a place in South Australia must not allow a ‘prohibited gathering’ to occur at the place. Persons were also prohibited from organising or attending ‘prohibited gatherings’ in South Australia. Persons present at a gathering (whether or not a prohibited gathering) were directed to use “their best endeavours to comply with the social distancing principles (having regard to the all the circumstances)”.</p>

<sup>11</sup> Outline Document [14(a)].

<sup>12</sup> Outline Document [14(b)].

Item	Date	Release/Order	Effect
			<p>Clause 2(1) defined a 'prohibited gathering' as a gathering of more than 10 persons or a gathering of 10 or less persons that did not comply with the 'density requirement'. A prohibited gathering was defined not include a gathering at a retail store or shopping centre that is necessary for the normal business of those premises.</p> <p>Clause 2(1) further defined 'density requirement' as being that the total number of persons present in a gathering must not exceed one person per 4 square metres. Clause 2(3) defined 'social distancing principles' as requiring a person "to attempt to" maintain a space of at least 1.5 metres between themselves and others.</p> <p>As such, this direction did not include directions towards the operation, closure, evacuation or access of Visintin's Premises.</p>
(m)	28 March 2020	Media release by the South Australian Premier on 28 March 2020 (SOAF Annexure E item 13) <sup>13</sup>	<p>This media release advised of an increase in penalties for individuals that failed to self-isolate as required and businesses "flouting laws to control the pandemic".</p> <p>This media release did not include directions towards the operation, closure, evacuation or access to businesses.</p>
(n)	4 April 2020	Media release by the South Australian Premier on 4 April 2020 (SOAF Annexure E item 16) <sup>14</sup>	<p>This media release asked people to put their "plans on hold" for the Easter break, school holidays and weekend trips with South Australians asked to stay home in their family or household groups over Easter.</p>

<sup>13</sup> Outline Document [14(c)].

<sup>14</sup> Outline Document [17].

Item	Date	Release/Order	Effect
			This media release did not include directions towards the operation, closure, evacuation or access to businesses.
(o)	1 June 2020	<i>Emergency Management (Public Activities) (COVID-19) Direction 2020</i> (SA) made by the State Coordinator for the State of South Australia (SOAF Annexure E item 26) <sup>15</sup>	<ul style="list-style-type: none"> <li>• Clause 6 provided that a person must not allow a 'defined public activity' to be conducted at a place occupied by the person. It also provided that persons must not conduct such activities and consumers and members of the public must not participate in 'defined public activities'.</li> <li>• Clause 7 provided that a person who owns, controls or operates 'restricted premises' must close those premises and keep them closed in so far as it is necessary to prohibit access to consumers or members of the public. Consumers and members of the public were directed not to enter 'restricted premises'.</li> <li>• Clause 4 defined 'defined public activity' and 'restricted premises' by reference to lists contained in that clause. Those lists did not include retail stores or clothing retail stores.</li> <li>• Clause 8 provided that a person must not allow a 'prohibited gathering' to occur at a place occupied by the person. It further provided that persons were not to organise or attend a 'prohibited gathering'.</li> <li>• Clause 4 defined a 'prohibited gathering' as a gathering of more than 20 people at any place other than those occurring as part of a 'defined public activity' or a gathering listed in Schedule 1. Schedule 1 provided that a gathering at a retail store or</li> </ul>

<sup>15</sup> Outline Document [19].



Item	Date	Release/Order	Effect
			<p>shopping centre that is necessary for the normal business of those premises was excluded from the 'prohibited gatherings' definition.</p> <ul style="list-style-type: none"> <li>• Clause 11(1) provided that persons present at a place where any gathering of people is occurring (whether or not a prohibited gathering) "must use their best endeavours (having regard to the all the circumstances, including the nature of the activity) to comply with the physical distancing principle." Clause 4 defined the 'physical distancing principle' as maintaining a distance of at least 1.5 metres from other people.</li> </ul> <p>This direction did not include directions towards the operation, closure, evacuation or access of Visintin's Premises.</p>
(p)	19 June 2020	<i>Emergency Management (Public Activities No 2) (COVID-19) Direction 2020 (SA) made by the State Coordinator for the State of South Australia (SOAF Annexure E item 29)</i> <sup>16</sup>	Same as (o) above, save that the definition of 'prohibited gathering' was amended to be a gathering of more than 75 people at any place other than those occurring as part of a 'defined public activity' or a gathering listed in Schedule 1.
(q)	29 June 2020	<i>Emergency Management (Public Activities No 3) (COVID-19) Direction 2020 (SA) made by the State Coordinator for the State of South Australia (SOAF Annexure E item 31)</i> <sup>17</sup>	<p>Same as (o) above subject to the following:</p> <ul style="list-style-type: none"> <li>• The concept of 'restricted premises' was no longer used and the concept of 'prohibited gathering' was amended to 'prescribed gathering' as specified in clause 7. A 'prescribed gathering' was also permitted if a COVID Management Plan had been approved for the 'prescribed gathering'.</li> </ul>

<sup>16</sup> Outline Document [20].

<sup>17</sup> Outline Document [21].

Item	Date	Release/Order	Effect
			<ul style="list-style-type: none"> <li>• Clause 4 defined a ‘prescribed gathering’ as a gathering of more than 1,000 people at any place other than those occurring as part of a ‘defined public activity’ or a gathering listed in Schedule 1. Schedule 1 provided that a gathering at a retail store or shopping centre that is necessary for the normal business of those premises was excluded from the ‘prescribed gatherings’ definition.</li> <li>• The requirement to use best endeavours to comply with the physical distancing principle was now set out in clause 9(1).</li> </ul>
(r)	19 November 2020	<i>Emergency Management (Stay at Home) (COVID-19) Direction 2020 (SA)</i> made by the State Coordinator for the State of South Australia (SOAF Annexure E item 51) <sup>18</sup>	<p>As this direction came into force at 12:01am 19 November 2020, after the expiration of the Policy, Visintin cannot rely on it to establish that it has caused an interruption or interference with Visintin’s Business during the policy period.</p> <p>This direction provided that all persons in South Australia must stay at home for the duration of the ‘defined period’ unless they have a reason to leave home under Part 3 of the direction. It further directed that “all community activities, including business, professional, educational, academic and government activities, must cease operations during the defined period, unless the activity may be carried out in accordance with this direction or does not involve leaving home”.</p> <p>Clause 3 defined ‘defined period’ as 12:01am 19 November 2020 to 12:01am 25 November 2020.</p> <p>Clause 6(1) provided that persons may leave home to obtain essential goods or services as specified in that clause, with</p>

<sup>18</sup> Outline Document [23].

Item	Date	Release/Order	Effect
			<p>clause 6(3) providing that only 1 person per household per day may leave their premises. The list of essential goods or services did not include retail stores or clothing retail stores. Clause 8 provided that a person may leave home for the purpose of undertaking duties as an 'essential worker'. 'Essential worker' was defined by reference to a list contained in clause 3. That list did not include retail stores or clothing retail stores.</p> <p>This direction did not include directions towards the operation, closure, evacuation or access of Visintin's Premises.</p>
(s)	20 November 2020	<i>Emergency Management (Stay at Home No 2) (COVID-19) Direction 2020 (SA)</i> made by the State Coordinator for the State of South Australia (SOAF Annexure E item 52) <sup>19</sup>	We repeat (r) above, save that clause 3 was amended to be clause 4, clause 6 was amended to be clause 7 and clause 8 was amended to be clause 9 in this direction.
(t)	22 November 2020	<i>Emergency Management (Stay at Home No 3) (COVID-19) Direction 2020 (SA)</i> made by the State Coordinator for the State of South Australia (SOAF Annexure E item 53) <sup>20</sup>	We repeat (r) above, save that clause 3 was amended to be clause 4, clause 6 was amended to be clause 7 and clause 8 was amended to be clause 9 in this direction. 'Defined period' was amended to be the period of 12:01am 19 November 2020 to 12:01am 22 November 2020.

<sup>19</sup> Outline Document [24].

<sup>20</sup> Outline Document [25].

## Annexure 2 - Authority Response-Mayberg

Item	Date	Release/Order	Effect
(a)	13 March 2020	Media release by the Prime Minister, Minister for Health and Chief Medical Officer on 13 March 2020 providing advice against non-essential, organised public gatherings of more than 500 people (SOAF Annexure A item 8) <sup>21</sup>	This media release advised the public against the holding of “ <i>non-essential, organised public gatherings of more than 500 people</i> ”. That advice did not apply to essential services such as workplaces, public transient places and shopping centres.
(b)	19 March 2020	<i>Mass Gatherings Direction</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 5) <sup>22</sup>	<p>This direction provided that a person who owns, controls or operates premises in Queensland must not allow a ‘non-essential mass gathering’ of 500 persons or more to occur on the premises. This direction further provided that persons must not organise or attend such a gathering.</p> <p>Clauses 5, 14 and 15 of this direction provided that a ‘non-essential mass gathering’ did not include a gathering at a retail store, shopping centre or a workplace that is necessary for the normal business or operation of those premises.</p>
(c)	19 March 2020	<i>Non-Essential Indoor Gatherings Direction</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 4) <sup>23</sup>	<p>This direction provided that a person who owns, controls or operates premises in Queensland must not allow a ‘non-essential indoor gathering’ of 100 persons or more to occur on the premises. This direction further provided that persons must not organise or attend such a gathering.</p> <p>Clauses 5(i)-(j) of this direction provided that a ‘non-essential indoor gathering’ did not include a gathering at a retail store,</p>

<sup>21</sup> Outline Document [7].

<sup>22</sup> Outline Document [8].

<sup>23</sup> Outline Document [9].

Item	Date	Release/Order	Effect
			shopping centre or a workplace that is necessary for the normal business or operation of those premises.
(d)	20 March 2020	Media release by the Prime Minister, Minister for Foreign Affairs, Minister for Women and Minister for Home Affairs on 19 March 2020 announcing the closure of Australian borders to all noncitizens and non-residents (SOAF Annexure A item 13) <sup>24</sup>	This media release advised the public that Australia was “closing its borders to all non-citizens and non-residents.” This border closure was a reference to Australia’s international borders.
(e)	23 March 2020	<i>Non-Essential Business Closure Direction</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 9) <sup>25</sup>	This direction provided that a person who owns, controls or operates a ‘non-essential business or undertaking’ in Queensland must not operate the business or undertaking.  Clause 5 defined a ‘non-essential business or undertaking’ by reference to a list of businesses contained in that clause. That list did not include dry cleaning businesses.
(f)	25 March 2020	<i>Border Restrictions Direction</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 12) <sup>26</sup>	This direction required persons arriving in Queensland from interstate to self-quarantine for 14 days unless they were an exempt person.  This direction did not include directions towards the operation, closure, evacuation or access to businesses.

<sup>24</sup> Outline Document [10].

<sup>25</sup> Outline Document [12].

<sup>26</sup> Outline Document [13].

Item	Date	Release/Order	Effect
(g)	29 March 2020	<i>Home Confinement Direction</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 17) <sup>27</sup>	<p>This direction provided that persons residing in Queensland could not leave their residence except for, and only to the extent reasonably necessary to accomplish, 'permitted purposes'. This direction further provided that persons that leave their residence for a 'permitted purpose' could be accompanied by members of their household, or alternatively, by no more than one person that is not from their household.</p> <p>'Permitted purposes' were defined by clause 6 to include, inter alia, obtaining 'essential goods or services' and performing work on behalf of employers engaged in an 'essential business, activity or undertaking' where the work was of a nature that cannot reasonably be performed from the person's residence.</p> <p>'Essential goods or services' were defined as including services needed for the necessities of life and operation of society.</p> <p>An 'essential business, activity or undertaking' was defined as any business, activity or undertaking that was not prohibited by the Non-Essential Business, Activity and Undertaking Closure Directions (No. 3) (Qld). Relevantly, that direction prohibited the operation of 'non-essential businesses, activities or undertakings'. Clause 7 defined such businesses by reference to a list of businesses contained in that clause. That list did not include dry cleaning businesses. Therefore, Mayberg's Premises were considered an 'essential business, activity or undertaking' under the Home Confinement Direction (Qld).</p>

<sup>27</sup> Outline Document [15].

Item	Date	Release/Order	Effect
(h)	15 May 2020	<i>Non-Essential Business, Activity and Undertakings Direction (No. 10)</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 38) <sup>28</sup>	<p>This direction provided that a person who owns, controls or operates a ‘non-essential business, activity or undertaking’ in Queensland must not operate the business, activity or undertaking. However, such businesses were permitted to operate via online activities.</p> <p>Clause 8 defined a ‘non-essential business, activity or undertaking’ by reference to a list of businesses contained in that clause. That list did not include dry cleaning businesses.</p>
(i)	1 June 2020	<i>Restrictions on Businesses, Activities and Undertakings Direction</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 41) <sup>29</sup>	<p>This direction provided that a person who owns, controls or operates a ‘restricted business, activity or undertaking’ in Queensland may operate that business to the extent permitted by the direction. Clause 14 defined a ‘restricted business, activity or undertaking’ by reference to a list of businesses contained in that clause. That list did not include dry cleaning businesses.</p> <p>All other businesses, activities or undertakings (such as dry cleaners) were permitted under clause 9 to operate as normal subject to other public health directions and observing social distancing. Social distancing required that persons were to remain at least 1.5 metres away from others where possible, regular hand washing and avoid handshaking.</p>
(j)	3 July 2020	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 3)</i> (Qld) made by	This direction provided that a person who owns, controls or operates a ‘restricted business, activity or undertaking’ in Queensland may operate that business to the extent

<sup>28</sup> Outline Document [16].

<sup>29</sup> Outline Document [17].

Item	Date	Release/Order	Effect
		the Queensland Chief Health Officer (SOAF Annexure D item 46) <sup>30</sup>	permitted by the direction. Clause 16 defined a 'restricted business, activity or undertaking' by reference to a list of businesses contained in that clause. That list did not include dry cleaning businesses.  All other businesses, activities or undertakings (including dry cleaners) were permitted under clause 13 to operate as normal subject to other public health directions and observing physical distancing. Physical distancing required that persons were to remain at least 1.5 metres away from others where possible.
(k)	24 July 2020	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 5)</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 50) <sup>31</sup>	We repeat our submissions at [(j)] above save that the list of 'restricted business, activity or undertaking' was contained at clause 17.
(l)	1 October 2020	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 6)</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 60) <sup>32</sup>	We repeat our submissions at [(j)] above save that the list of 'restricted business, activity or undertaking' was contained at clause 17.
(m)	17 November 2020	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 9)</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 69) <sup>33</sup>	This direction provided that a person who owns, controls or operates a 'restricted business, activity or undertaking' in Queensland may operate that business to the extent permitted by the direction. Clause 6 defined a 'restricted business, activity or undertaking' by reference to a list of

<sup>30</sup> Outline Document [19].

<sup>31</sup> Outline Document [20].

<sup>32</sup> Outline Document [21].

<sup>33</sup> Outline Document [22].



Item	Date	Release/Order	Effect
			<p>businesses contained in schedule 1. That list did not include dry cleaning businesses.</p> <p>Clause 19 provided that a ‘non-restricted business, activity or undertaking’ (defined to include those businesses not listed in schedule 1) was permitted to operate as normal subject to other public health directions and observing physical distancing. Physical distancing required that persons were to remain at least 1.5 metres away from others where possible.</p>
(n)	8 January 2021 <sup>34</sup>	<i>Restrictions for Impacted Areas Direction</i> (Qld) made by the Queensland Chief Health Officer (SOAF Annexure D item 77) <sup>35</sup>	<p>This direction applied to a list of defined ‘impacted areas’ which included the local government areas of Mayberg’s Premises.</p> <p>Clause 3 provided that persons who reside in an impacted area must not leave their residence except for, and only to the extent reasonably necessary to accomplish, ‘permitted purposes’, within the impacted areas. ‘Permitted purposes’ was defined to include, obtaining ‘essential goods or services’ and performing work, or carry out or conduct an ‘essential business, activity or undertaking’ that is of a nature that cannot reasonably be performed from the person’s residence.</p> <p>‘Essential goods or services’ were defined to mean goods or services obtained from an ‘essential business, activity or undertaking’. An ‘essential business, activity or undertaking’ was defined to include those businesses which were not prohibited from operating under schedule 3 of this direction.</p>

<sup>34</sup> This direction came into force at 6:00pm 8 January 2021 (that is, after the expiration of the Policy). In the premise, Mayberg cannot rely upon this direction to establish that it has caused an Interruption to Mayberg’s Business during the policy period.

<sup>35</sup> Outline Document [23].

Item	Date	Release/Order	Effect
			<p>That list of businesses did not include dry cleaning businesses.</p> <p>Clause 4 provided that persons who left their residence for a 'permitted purpose' may be accompanied by members of their household or, alternatively, by no more than one person from outside their household.</p> <p>Clause 11 provided that a person who owns, controls or operates premises that were not a residence could not organise or allow a 'gathering' to occur on the premises. A 'gathering' did not include gatherings at an 'essential business, activity or undertaking' nor at a workplace that was necessary for the normal operation of the premises.</p> <p>Clause 12 provided that a person who left their residence must practice 'physical distancing', to the extent reasonably practicable. 'Physical distancing' required persons to remain at least 1.5 metres away from other persons where possible.</p> <p>Clause 15 provided that a person who owns, controls or operates a 'non-essential business, activity or undertaking' in an impacted area must not operate that business. Clause 6 defined a 'non-essential business, activity or undertaking' by reference to a list of businesses contained in schedule 3. That list did not include dry cleaning or general retail businesses.</p> <p>Clause 19 provided that persons must not enter an 'impacted area' except if an exception applied. Those exceptions in clause 19 included, inter alia, to perform work in an impacted area, or carry out or conduct an 'essential business, activity or undertaking' in an impacted area that is of a nature that cannot reasonably be performed from the person's residence or outside the impacted area.</p>

