

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/07/2021 2:47:55 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Agreed Facts
File Number:	NSD138/2021
File Title:	CHUBB INSURANCE AUSTRALIA LIMITED (ABN 23 001 642 020) v MARKET FOODS PTY LIMITED (ABN 48 604 308 581)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Dated: 2/07/2021 2:49:05 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 1
Rule 2.13(2)

Statement of Agreed Facts

No. NSD138 of 2021

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations

Chubb Insurance Australia Limited (ABN 23 001 642 020)

Applicant and Cross-Respondent

Market Foods Pty Limited (ABN 48 604 308 581)

Respondent and Cross-Applicant

PART I – FACTS COMMON TO ALL PROCEEDINGS

1. Subject to final review and revision, the parties intend to adopt Part I of the Statement of Agreed Facts to be filed in proceedings NSD132-137 and 144-145 of 2021.

PART II – FACTS COMMON TO SOME PROCEEDINGS

2. Subject to final review and revision, the parties intend to adopt Part II of the Statement of Agreed Facts to be filed in proceedings NSD132-137 and 144-145 of 2021.

PART III – FACTS SPECIFIC TO THE CHUBB v MARKET FOODS PROCEEDING

Note: those facts set out below in red print have not been agreed by the parties and, at present, remain in dispute

The Insured Locations and Market Foods' business

3. The Herston Insured Location contains a medical office building complex directly opposite the Royal Brisbane Women's Hospital (**Herston Building**). On the ground floor of the Herston Building, Market Foods has, at all material times, conducted a café business from a leased premises. An image of the Herston Building is depicted below:



Image of the Herston Building

4. The William Street Insured Location contains a 46-storey, 259.8 metre office building complex, popularly known as the "Tower of Power" (**William Street Building**). Prior to late August 2020, Market Foods conducted a café, restaurant and bar business from a leased premises in the William Street Building. In this regard, within the William Street Building Market Foods operated a café business on the ground floor, a restaurant business on the first floor and a bar business on the second floor. The William Street Building can be seen at the forefront of the below image:



Image of the William St Building

5. The UQ Insured Location is a licenced area in the University of Queensland (**UQ**) Food Court (**Licensed Premises in the UQ Food Court**).¹ Market Foods has, at all material times, conducted its business from that licenced area. An image of the UQ Food Court, with the licenced premises depicted to the right therein, can be seen in the below image:

¹ At present, the parties have not been able to agree on the issue of whether the Licensed Premises in the UQ Food Court forms a part of, or is contained within, a “commercial complex” – said to be the UQ Campus.



Image of the UQ Food Court

Particular locations within 50 kilometres of the Insured Locations

6. A 50 kilometre radius around the William Street Insured Location is shown in the following diagram:

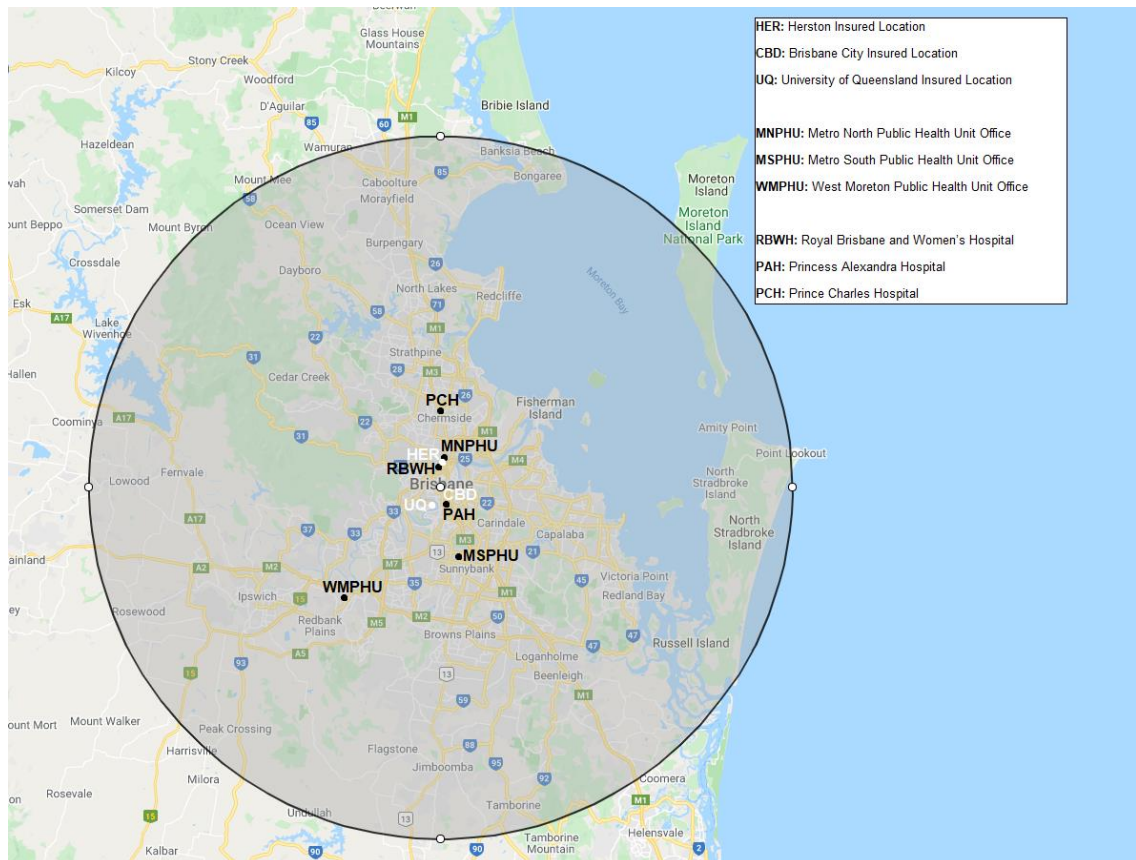


Image of 50 km radius from the William Street Insured Location

7. A 50 kilometre radius around the Herston Insured Location is shown in the following diagram:

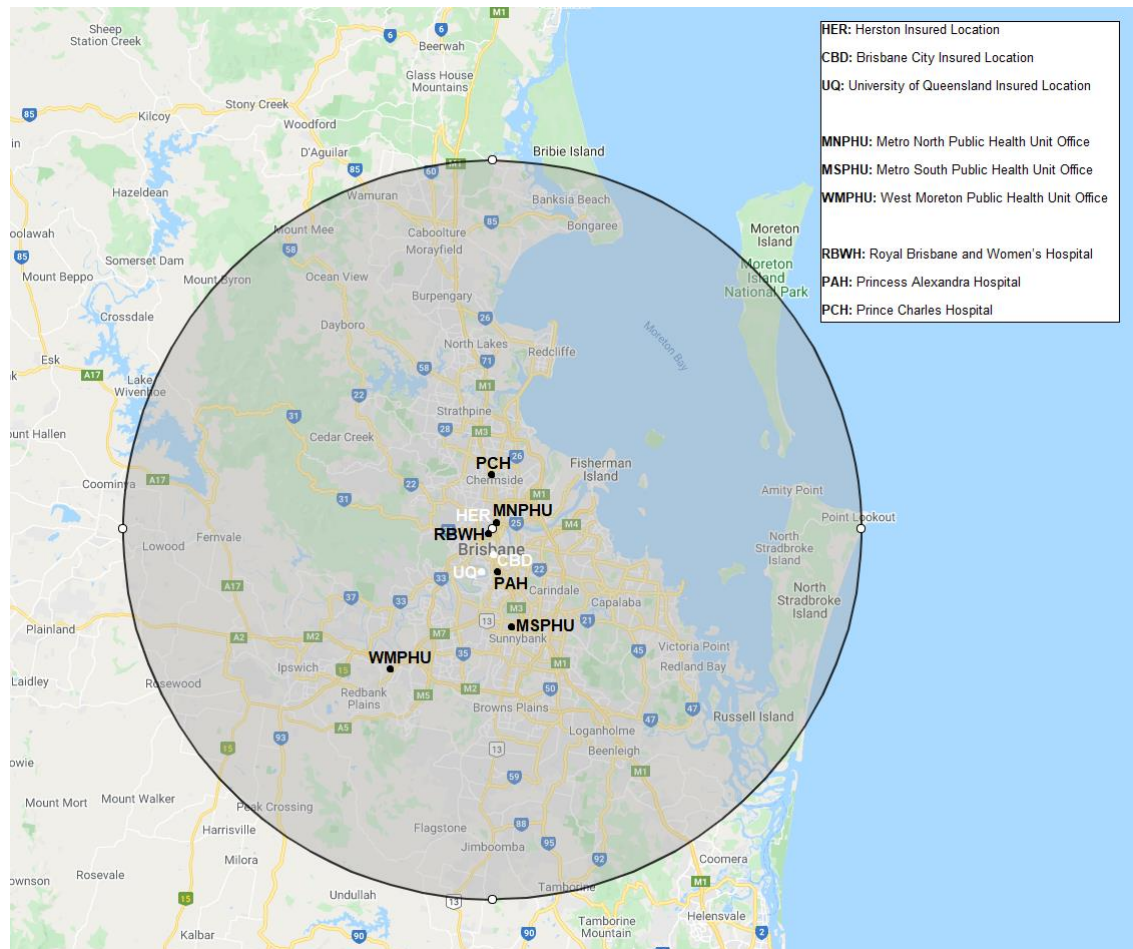


Image of 50 km radius from the Herston Insured Location

8. A 50 kilometre radius around the Licensed Premises in the UQ Food Court is shown in the following diagram:

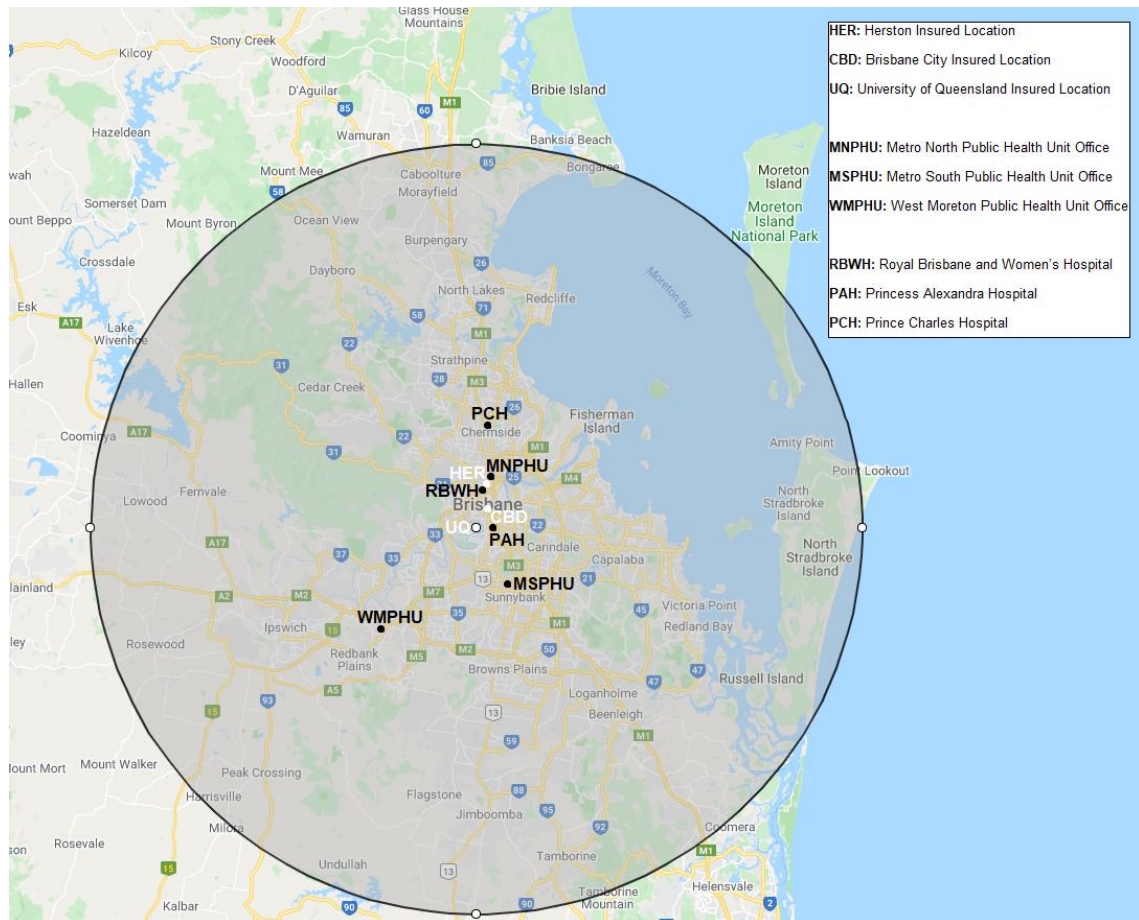


Image of 50 km radius from the UQ Insured Location

9. At all material times, there was at least one person infected with the COVID-19 disease within 50 kilometres of the Market Foods Insured Locations.²

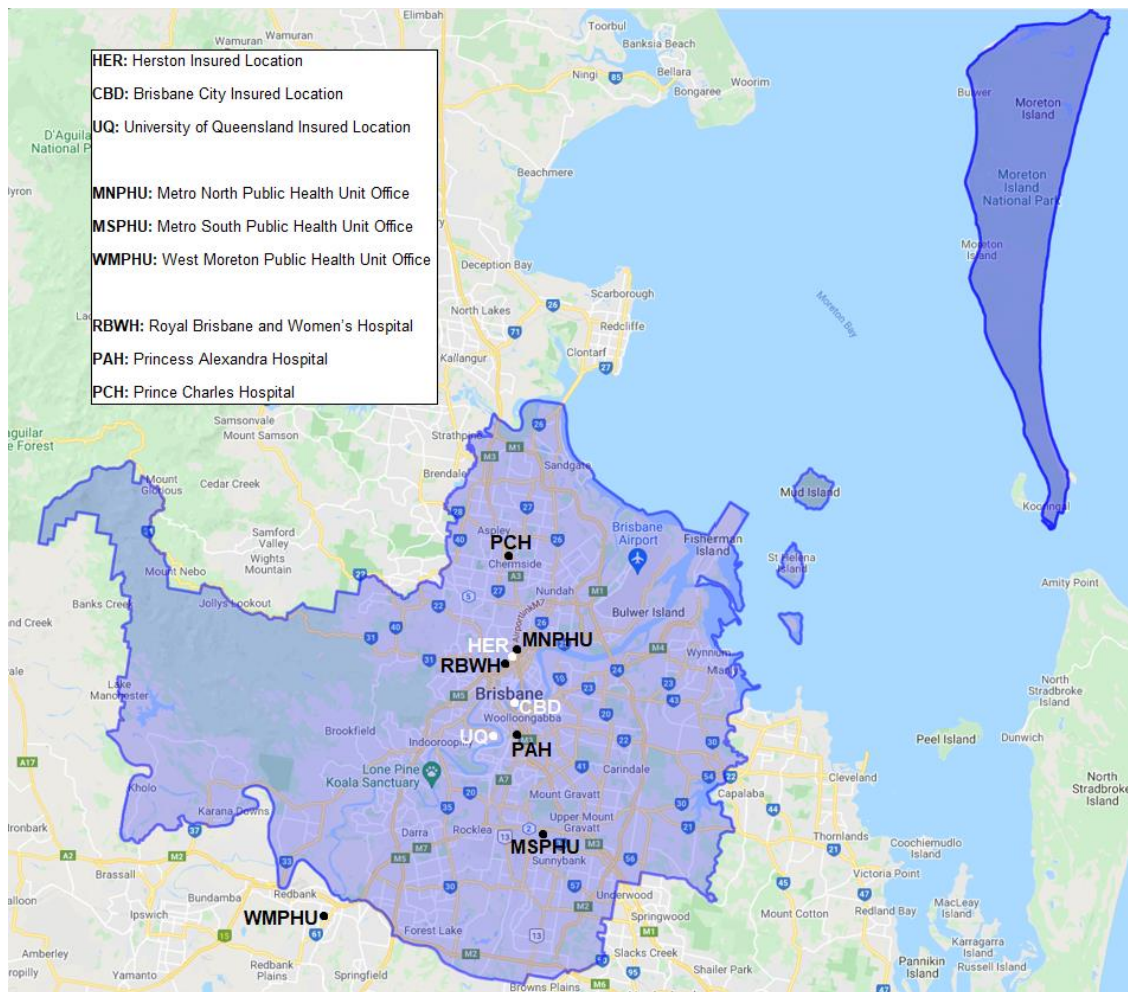
Particular locations in the City of Brisbane, Brisbane Metropolitan Area and South-East Queensland

10. The parties are in dispute about whether, at all material times, there was an occurrence or outbreak of the COVID-19 disease:
- (a) at one or more of the Market Foods Insured Locations;
 - (b) at, or within, the City of Brisbane;
 - (c) at, or within, the Brisbane Metropolitan Area;
 - (d) at, or within, South-East Queensland; or
 - (e) elsewhere in Queensland.

² At this time, the parties have been unable to reach agreement with respect to this matter. The dispute is around the timeframe “at all material times”.

11. A diagram of the City of Brisbane is contained below:

City of Brisbane



*Source: <https://www.ecq.qld.gov.au/electoral-boundaries/where-is-my-electorate/location>

12. A diagram of the Brisbane Metropolitan Area (which the city of Brisbane is subsumed within) is contained below:

Brisbane Metropolitan Area

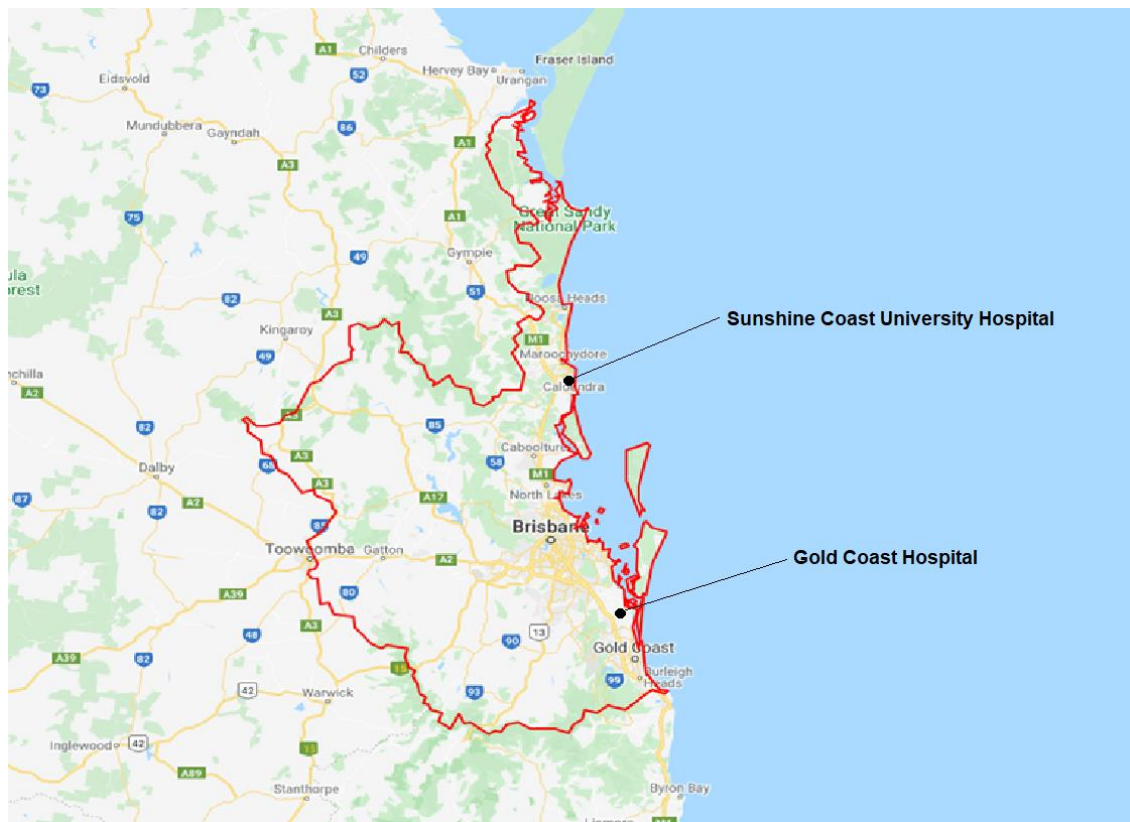


*Source:

https://www.google.com/search?q=brisbane+metropolitan+area&rlz=1C1GCEU_enAU904AU904&og=brisbane+met&aqs=chrome.0.69i59l2j69i57j0j0i20i263i457j0l5.1900j0j15&sourceid=chrome&ie=UTF-8

13. A diagram of South-East Queensland (which the Brisbane Metropolitan Area is subsumed within) is contained below:

South-East Queensland



*Source: <https://wetlandinfo.des.qld.gov.au/wetlands/assessment/assessment-methods/aca/south-east-queensland.html>

HHS (Hospital and Health Service) regions

14. The following HHS (Hospital and Health Service) regions are in the City of Brisbane and the Brisbane Metropolitan Area:
- (a) Metro North Hospital and Health Service;
 - (b) Metro South Hospital and Health Service; and
 - (c) West Moreton Hospital and Health Service.
15. Additionally, the following HHS regions are in South-East Queensland:
- (a) Gold Coast Hospital and Health Service; and
 - (b) Sunshine Coast Hospital and Health Service.
16. A diagram of the relevant HHS regions is contained below:



Inset B

*Source:

https://www.health.qld.gov.au/data/assets/pdf_file/0010/144100/hhs_facilities.pdf

Prevalence

17. The table³ below compiles COVID-19 case data that has been published on the Queensland Health website.⁴ The figures reflect the running total number of cases as at particular dates.

Date	Total cases in Qld	Total cases attribute-d to Metro North HHS (approx.)	Total cases attribute-d to Metro South HHS (approx.)	Total cases attribute-d to West Moreton HHS (approx.)	Total cases attribute-d to Gold Coast HHS (approx.)	Total cases attribute-d to Sunshine Coast HHS (approx.)
29-Jan-20 ⁵	1	0	0	0	1	0
30-Jan-20 ⁶	2	0	0	0	2	0
15-Mar-20 ⁷	61	18	11	3	18	7
17-Mar-20 ⁸	78	29	17	3	19	9
19-Mar-20 ⁹	144	46	35	5	38	12
23-Mar-20 ¹⁰	319	58	48	5	64	29
24-Mar-20 ¹¹	397	111	97	13	79	46
25-Mar-20 ¹²	443	124	104	15	87	52

³ The parties agree that the first two columns accurately reflect data published on the Queensland Health Website. The parties have not been able to agree the figures in the last five columns as this data is not fully available on the Queensland Health Website. The parties will endeavour to accurately complete these columns with data to be subpoenaed from Queensland Health.

⁴ According to Queensland Health, a case may be attributed to a HHS based on the patient's residential address, the Public Health Unit managing the case, or the location where the test was ordered.

⁵ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-coronavirus-update-290120>

⁶ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-coronavirus-update2>

⁷ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-coronavirus-update-2020-03-15>

⁸ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update2>

⁹ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update4>

¹⁰ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update8>

¹¹ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update9>

¹² <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update10>

Date	Total cases in Qld	Total cases attribute- d to Metro North HHS (approx.)	Total cases attribute- d to Metro South HHS (approx.)	Total cases attribute- d to West Moreton HHS (approx.)	Total cases attribute- d to Gold Coast HHS (approx.)	Total cases attribute- d to Sunshine Coast HHS (approx.)
26-Mar-20 ¹³	493	144	123	17	91	56
27-Mar-20 ¹⁴	555	165	132	17	106	64
28-Mar-20 ¹⁵	625	178	152	31	114	69
29-Mar-20 ¹⁶	656	180	163	33	121	70
30-Mar-20 ¹⁷	689	183	169	35	136	71
31-Mar-20 ¹⁸	743	205	180	36	147	72
07-Apr-20 ¹⁹	934	284	219	37	177	84
14-Apr-20 ²⁰	998	305	236	37	186	89
21-Apr-20 ²¹	1024	314	248	37	190	89
28-Apr-20 ²²	1034	314	252	37	192	92
31-May-20 ²³	1058	317	264	38	193	94

¹³ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update12>

¹⁴ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update13>

¹⁵ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update14>

¹⁶ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update15>

¹⁷ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update-2020-03-30>

¹⁸ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update17>

¹⁹ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update-2020-04-07>

²⁰ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update-2020-04-14>

²¹ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update30>

²² <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update-2020-04-28>

²³ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update-2020-05-31>

Date	Total cases in Qld	Total cases attribute- d to Metro North HHS (approx.)	Total cases attribute- d to Metro South HHS (approx.)	Total cases attribute- d to West Moreton HHS (approx.)	Total cases attribute- d to Gold Coast HHS (approx.)	Total cases attribute- d to Sunshine Coast HHS (approx.)
26-Jun-20 ²⁴	1067	318	266	39	196	95
31-Jul-20 ²⁵	1083	319	269	39	196	97
31-Aug-20 ²⁶	1122	319	269	43	196	97
30-Sep-20 ²⁷	1157	321	269	48	196	98
31-Oct-20 ²⁸	1171	321	269	48	196	98
30-Nov-20 ²⁹	1202	322	270	48	196	98
31-Dec-20 ³⁰	1253	322	270	48	198	102
31-Jan-21 ³¹	1310	322	270	48	198	102
28-Feb-21 ³²	1329	322	270	48	198	102
31-Mar-21 ³³	1467	329	272	48	198	102
30-Apr-21 ³⁴	1559	329	272	48	198	102

²⁴ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-novel-coronavirus-covid-19-update51>

²⁵ <https://www.health.gov.au/sites/default/files/documents/2020/08/coronavirus-covid-19-at-a-glance-31-july-2020.pdf>

²⁶ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/three-new-covid-19-cases-identified-in-queensland>

²⁷ <https://www.health.gov.au/sites/default/files/documents/2020/10/coronavirus-covid-19-at-a-glance-30-september-2020.pdf>

²⁸ <https://www.health.qld.gov.au/news-events/doh-media-releases/releases/public-health-alert-cairns-townsville-brisbane-20201014>

²⁹ <https://www.health.gov.au/sites/default/files/documents/2020/12/coronavirus-covid-19-at-a-glance-30-november-2020-coronavirus-covid-19-at-a-glance-30-november-2020.pdf>

³⁰ https://www.health.gov.au/sites/default/files/documents/2020/12/coronavirus-covid-19-at-a-glance-31-december-2020_0.pdf

³¹ <https://www.health.gov.au/sites/default/files/documents/2021/02/coronavirus-covid-19-at-a-glance-31-january-2021-coronavirus-covid-19-at-a-glance-31-january-2021.pdf>

³² https://www.health.gov.au/sites/default/files/documents/2021/03/coronavirus-covid-19-at-a-glance-28-february-2021_0.pdf

³³ https://www.health.gov.au/sites/default/files/documents/2021/04/coronavirus-covid-19-at-a-glance-31-march-2021_0.pdf

³⁴ <https://www.health.gov.au/resources/publications/coronavirus-covid-19-at-a-glance-30-april-2021>

18. Without limitation, the following COVID-19 cases occurred in the City of Brisbane and the Brisbane Metropolitan Area between 22 February 2020 and 21 March 2020:

Date	Event/s
22.02.20	On about 22 February 2020, two Queensland women, aged 54 and 55, who had been passengers aboard the vessel <i>Diamond Star</i> , were medically evacuated to the PC Hospital with the COVID-19 disease
03.03.20	A 20-year-old male from the suburb of Toowong, Brisbane, being a student at the UQ campus, was confirmed with the COVID-19 disease and transferred to isolation at the RBW Hospital
04.03.20	A 26-year-old male from Logan was confirmed with the COVID-19 disease and transferred to isolation at the PA Hospital
05.03.20	A 29-year-old female from Brisbane with a confirmed case of the COVID-19 disease commenced self-isolation
06.03.20	A 28-year-old male from Brisbane was confirmed with the COVID-19 disease and transferred to the PA Hospital
10.03.20	A 22-year-old male was confirmed with the COVID-19 disease on the UQ campus and placed in isolation at the PC Hospital
	A 46-year-old female from Brisbane with confirmed COVID-19 disease was placed in isolation at the RBW Hospital
12.03.20	One COVID-19 disease case (case) at the RBW Hospital
	Two cases at the PC Hospital
	Two cases at the PA Hospital
14.03.20	Three cases managed by the Brisbane Metro North PHU
	One case was managed by Brisbane Metro South PHU
15.03.20	Three cases managed by the Brisbane Metro North PHU
	Three cases managed by the Brisbane Metro South PHU
	One further case managed by the Brisbane Metro North PHU or the Brisbane Metro South PHU
16.03.20	Three cases managed by the Brisbane Metro North PHU on about 16 March 2020
	Three cases managed by the Brisbane Metro South PHU
17.03.20	One case managed by the Brisbane Metro North PHU
	Six cases managed by the Brisbane Metro South PHU
18.03.20	Three cases managed by the Brisbane Metro South PHU
19.03.20	Seventeen cases managed by the Brisbane Metro North PHU
	Fifteen cases managed by the Brisbane Metro South PHU
20.03.20	Twelve cases managed by the Brisbane Metro North PHU
	Thirteen cases managed by the Brisbane Metro South PHU
21.03.20	Sixteen cases managed by the Brisbane Metro North PHU
	Six cases managed by the Brisbane Metro South PHU

19. In addition to those COVID-19 cases outlined in paragraph 18 above, and without limitation, the following COVID-19 cases occurred in the Greater Brisbane Area between 12 March 2020 and 21 March 2020:

Date	Event/s
14.03.20	One case managed by the West Moreton PHU
15.03.20	One case managed by the West Moreton PHU
18.03.20	One case managed by the West Moreton PHU

20. In addition to those COVID-19 cases outlined in paragraphs 18 and 19 above, and without limitation, the following COVID-19 cases occurred in South-East Queensland between 29 January 2020 and 10 March 2020:

Date	Event/s
29.01.20	A 44-year-old male Chinese national from Wuhan, in isolation at the GCU Hospital, was confirmed to have the disease then called “ <i>novel coronavirus</i> ”
30.01.20	A 42-year-old female Chinese national from Wuhan, in isolation at the GCU Hospital, was confirmed to have the disease then called “ <i>novel coronavirus</i> ”
04.02.20	An 8-year-old male Chinese national from Wuhan, in isolation at the GCU Hospital, was confirmed to have the disease then called “ <i>novel coronavirus</i> ”
05.02.20	A 37-year-old male Chinese national from Wuhan, in isolation at the GCU Hospital, was confirmed to have the disease then called “ <i>novel coronavirus</i> ”
06.02.20	A 37-year-old female Chinese national from Wuhan, in isolation at the GCU Hospital, was confirmed to have the disease then called “ <i>novel coronavirus</i> ”
24.02.20	A 57-year-old woman was admitted to the SCU Hospital with a confirmed case of the COVID-19 disease
29.02.20	A 63-year-old woman was placed in isolation at the GCU Hospital with a confirmed case of the COVID-19 disease
05.03.20	An 81-year-old male was admitted to the SCU Hospital with a confirmed case of the COVID-19 disease
08.03.20	A 38-year-old female from the Gympie region with a confirmed case of the COVID-19 disease was transferred to isolation at the SCU Hospital
10.03.20	A 42-year-old female from the Sunshine Coast region with confirmed COVID-19 disease was placed in isolation at the SCU Hospital
11.03.20	Two cases at the GCU Hospital
12.03.20	Two cases at the GCU Hospital
14.03.20	One case managed by the Gold Coast PHU
	Three cases managed by the Sunshine Coast PHU
15.03.20	Six cases managed by the Gold Coast PHU
16.03.20	One deceased case, with contact tracing managed by the Sunshine Coast PHU
17.03.20	One case managed by the Gold Coast PHU
	One case managed by the Sunshine Coast PHU
18.03.20	Seven cases managed by the Gold Coast PHU
	One case managed by the Sunshine Coast PHU
20.03.20	Nine cases managed by the Gold Coast PHU
	Three cases managed by the Sunshine Coast PHU
21.03.20	Five cases managed by the Gold Coast PHU
	Five cases managed by the Sunshine Coast PHU

21. The parties are presently in dispute about whether, at all material times, there was at least one person infected with COVID-19 disease:³⁵

- (a) at, or within, the City of Brisbane;
- (b) at, or within, the Brisbane Metropolitan Area;
- (c) at, or within, South-East Queensland; and

³⁵ At this time, the parties have been unable to reach agreement with respect to this matter. The dispute is around the timeframe “at all material times”.

(d) elsewhere in Queensland.

The SARS-CoV-2 virus and its subsistence on property

22. The SARS-CoV-2 virus subsists on property for varying durations of time and, if a person comes into contact with the SARS-CoV-2 virus while it is subsisting on property, there is a risk that the person could become infected with the COVID-19 disease. **The risk of infection presented by the existence of the SARS-CoV-2 virus subsisting on property is a matter of scientific controversy.**³⁶ A number of reports and publications in respect of these matters are referred to in Annexure “A” hereto.³⁷
23. **The parties are presently in dispute about whether, at all material times since at least 10 March 2020, there was at least one instance of the SARS-CoV-2 virus subsisting on property within 50 kilometres of each Insured Location.**

The impact of issue of the public health directions

24. Market Foods complied with each of measures promulgated at the Queensland level contained in Annexure D (to the extent that such measures applied to Market Foods).
25. The Non-Essential Business Closure Direction made by the Queensland Chief Health Officer on 23 March 2020 (**Initial Business Closure Direction**) caused the closure of the businesses conducted from the Market Foods Insured Locations for the period of time that direction remained in force (subject to the provision of take-away food in accordance with the provisions of that direction). The same consequence applied in respect of subsequently issued business closure public health directions which mandated the closure of Market Foods’ business.
26. The Initial Business Closure Direction, Subsequent Business Closure Directions and Business Operation Directions involved the restriction or denial of the use of the Insured Location on the order or advice of the local health authority or competent authority.³⁸
27. The Initial Business Closure Direction, Subsequent Business Closure Directions and Business Operation Directions had the direct consequence of interrupting or interfering with the Insured Location.³⁹
28. **The parties are presently in dispute about whether, with respect to the public health directions issued by the Chief Health Officer of Queensland (Qld CHO) that are pleaded in Market Foods’ statement of cross-claim (Queensland Government Directions) and the UQ Direction that is pleaded in Market Foods’ statement of cross-claim (UQ Direction), such directions had a number of consequences for Market Foods’ business – including (without limitation) that such directions had the**

³⁶ The parties are in dispute about if, and to what extent, such a scientific controversy exists.

³⁷ The parties have been unable to agree on the duration of time the SARS-CoV-2 virus subsists on varying items property or the degree of likelihood of a person becoming infected with the COVID-19 disease by coming into contact with the SARS-CoV-2 virus while it subsists on property.

³⁸ Aside to the extent admitted, the parties have been unable to agree on whether the Initial Home Confinement Direction, Subsequent Home Confinement Directions and the UQ Directions involved the “restriction or denial of the use of the Insured Location on the order or advice of the local health authority or competent authority”.

³⁹ Aside to the extent admitted, the parties are otherwise unable to agree on whether the other directions had such an effect.

consequence of a reduction in the number of Market Foods' customers, its gross revenue and its net profits.

The Queensland Government Directions

29. With respect to the Queensland Government Directions:⁴⁰
- (a) at the time they were issued, the CHO Qld was aware (among other things):
 - (i) of the known COVID-19 disease cases at that time (by number and location) by reference to the data published on the Queensland Health website and the Queensland media releases;
 - (ii) that the SARS-CoV-2 virus subsisted on property for varying durations of time and that, if a person came into contact with the SARS-CoV-2 virus while it was subsisting on property, there was a risk that the person could become infected with the COVID-19 disease (**fomite transmission**);⁴¹ and
 - (iii) that the subsistence of the SARS-CoV-2 virus on property was (at least) possible in locations that had been frequented by COVID-19 infected persons;⁴²
 - (b) the considerations which informed the making of the Queensland Government Directions included the considerations outlined in paragraphs 29(a)(i) to 29(a)(iii) above;
 - (c) the purpose of the Queensland Government Directions was to assist in containing, or to responding to, the spread of COVID-19 within the community – including containing, and responding to, the spread of COVID-19 via both fomite and person-to-person transmission; and
 - (d) the directions were issued due to persons who had acquired the COVID-19 disease at the time of issue or were at risk of acquiring the COVID-19 disease.⁴³
30. The Queensland Government Directions were actions of a legal authority within the meaning of Extension B(4) of the policy.
31. The Initial Business Closure Direction, Subsequent Business Closure Directions and Business Operation Directions:

⁴⁰ Aside to the extent admitted, the parties have been unable to agree on: (a) what the CHO Qld's state of mind or knowledge was from time-to-time; and (b) whether the subsistence of the SARS-CoV-2 virus on property (either at the Insured Locations (or commercial complexes which they formed a part of) or within 50 kilometres of the Insured Locations) caused the Queensland Government Directions.

⁴¹ The parties have been unable to agree on what the CHO Qld's state of mind or knowledge was from time-to-time with respect to the duration of time the SARS-CoV-2 virus subsists on varying items property or the degree of likelihood of a person becoming infected with the COVID-19 disease by coming in to contact with the SARS-CoV-2 virus while it subsisted on property.

⁴² The parties have been unable to agree on the Qld CHO's state of mind or knowledge was from time-to-time concerning the probability of the SARS-CoV-2 virus subsisting on property in locations that had been frequented by COVID-19 infected persons from time-to-time.

⁴³ At this time, the parties have been unable to reach factual agreement with respect to this matter.

- (a) involved the interventions of a public body authorised to restrict or deny access to the Insured Location;⁴⁴
- (b) involved the restriction or denial of the use of the Insured Location on the order or advice of the local health authority or competent authority;⁴⁵ and
- (c) had the direct consequence of interrupting or interfering with the Insured Location.⁴⁶

32. The Queensland Government Directions were taken in response to the number of COVID-19 cases which had occurred in Queensland by the date of the issue of the directions.⁴⁷

The UQ Direction

33. At the time the UQ Direction was issued the UQ Vice-Chancellor was aware that:⁴⁸
- (a) on about 3 March 2020, a 20-year-old UQ student was confirmed with the COVID-19 disease and transferred to isolation at the Royal Brisbane Women's Hospital;
 - (b) on about 10 March 2020, a 22-year-old male was confirmed with the COVID-19 disease on the UQ campus and placed into isolation at the Prince Charles Hospital;
 - (c) the number of COVID-19 cases in Queensland (and, in particular, in the Brisbane City and Brisbane Metropolitan areas) were increasing each day; and
 - (d) the direction was issued due to (at least) UQ students or staff who had acquired the COVID-19 disease or were at risk of acquiring the COVID-19 disease.
34. The considerations which informed the making of the UQ Direction included (without limitation) the considerations outlined in paragraphs 33(a) to 33(d) above.

⁴⁴ Aside to the extent admitted, the parties have been unable to agree on whether the Initial Home Confinement Direction, Subsequent Home Confinement Directions and the UQ Directions involved the "*interventions of a public body authorised to restrict or deny access to the Insured Location*".

⁴⁵ Aside to the extent admitted, the parties have been unable to agree on whether the Initial Home Confinement Direction, Subsequent Home Confinement Directions and the UQ Directions involved the "*restriction or denial of the use of the Insured Location on the order or advice of the local health authority or competent authority*".

⁴⁶ Aside to the extent admitted, the parties are otherwise unable to agree on whether the other directions had such an effect.

⁴⁷ Further, the parties have been unable to agree on: (a) whether each of the COVID-19 cases referred to was a separate and equally effective cause of the response; and (b) whether the issue of the directions was caused by an occurrence or outbreak of the COVID-19 disease at the premises.

⁴⁸ Aside to the extent admitted, the parties have been unable to agree on: (a) what the UQ Vice-Chancellor's state of mind or knowledge was from time-to-time; and (b) whether the subsistence of the SARS-CoV-2 virus on property (either at the Licensed Premises in the UQ Food Court, the UQ Food Court, the UQ Campus or within 50 kilometres of the Licensed Premises in the UQ Food Court) caused the UQ Direction.

35. The purpose of the UQ Direction was to assist in containing the spread of the COVID-19 disease to UQ staff and students by (at least) person-to-person transmission.⁴⁹
36. The UQ Direction was an action of a legal authority within the meaning of Extension B(4) of the policy.
37. The UQ Direction was taken in response to the number of COVID-19 cases involving UQ students and the number of COVID-19 cases in the Brisbane Metropolitan Area.⁵⁰

Other policy matters

38. The COVID-19 disease is a human infectious or human contagious disease within the meaning of “*Notifiable Disease*” in Extension C of the policy.
39. As at the date this document is filed, at no time was Market Foods aware, nor was it ever made aware by any relevant public body or health authority, of a person with a confirmed case of COVID-19 attending any Insured Location.
40. The subsistence of the SARS-CoV-2 virus on property does not physically alter or change the property.⁵¹

⁴⁹ Aside to the extent admitted, the parties have been unable to agree on whether the UQ Direction was also to assist in containing the spread of the COVID-19 disease to UQ staff and students by fomite transmission.

⁵⁰ Further, the parties have been unable to agree on: (a) whether each of the COVID-19 cases referred to was a separate and equally effective cause of the response; and (b) whether the issue of the direction was caused by an occurrence or outbreak of the COVID-19 disease at the premises.

⁵¹ At this time, the parties have been unable to reach agreement with respect to this fact.

Annexure “A”

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