

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST



No. S ECI 2022 02887

Case: S ECI 2022 02887

Filed on: 20/08/2026 06:52 PM

B E T W E E N

DAMIAN CHRISTOPHER NORRIS

Plaintiff

-and-

INSURANCE AUSTRALIA GROUP LIMITED (ACN 090 739 923)

Defendant

DEFENCE

(Filed pursuant to paragraph 1 of the orders of Watson J made on 3 August 2026)

Date of Document: 20 August 2026 ~~18 October 2022~~

Filed on behalf of: the Defendant

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As to the allegations in the amended statement of claim indorsed on the amended writ filed 26 June 2026 ~~29 July 2022~~ (ASOC), the Defendant, Insurance Australia Group Limited (ACN 090 739 923) (**IAG**) says as follows:

Except where otherwise noted, IAG has adopted the definitions used in the ASOC but does not, by doing so, admit any allegation implied by the defined terms so used.

A. THE PLAINTIFF AND GROUP MEMBERS

1. In answer to paragraph 1, IAG:

- a. admits that the proceeding had been commenced by the Plaintiff on his own behalf and on behalf of the Group Members identified in that paragraph;
- b. denies that the Plaintiff or Group Members have suffered any loss or damage by reason of the conduct of IAG; and
- c. otherwise does not admit the paragraph.

2. IAG refers to paragraph 1 above and otherwise does not admit paragraph 2.
3. In answer to paragraph 3, IAG:
 - a. admits that the Plaintiff acquired 6,000 Shares on 8 September 2020; and
 - b. otherwise does not admit the paragraph.

B THE DEFENDANT

I. IAG's business and relevant obligations

4. IAG admits ~~In answer to paragraph 4, IAG:~~
 - ~~a. admits paragraph (a);~~
 - ~~b. denies paragraph (b); and~~
 - ~~c. says that, at all material times, IAG was a non-operating holding company within the meaning of the Insurance Act 1973 (Cth).~~
5. IAG admits paragraph 5.
6. IAG admits paragraph 6.
7. IAG admits paragraph 7.
8. IAG admits paragraph 8, save that:
 - a. s 1041H only applies to conduct in this jurisdiction; and
 - b. s 12DA only applies to conduct in trade or commerce.

II. Relevant personnel

a. Directors

9. IAG admits paragraph 9, save that Ms Bryan ceased to be Chairman on 22 October 2021.
10. IAG admits paragraph 10.
11. IAG admits paragraph 11.
12. IAG admits paragraph 12.
13. IAG admits paragraph 13.

14. IAG admits paragraph 14.
15. IAG admits paragraph 15.
16. IAG admits paragraph 16.
17. IAG admits paragraph 17.
18. IAG admits paragraph 18.
19. IAG admits paragraph 19.

b. Group Leadership Team

20. IAG admits paragraph 20.
21. IAG admits paragraph 21.
22. IAG admits paragraph 22.
23. IAG admits paragraph 23.
24. IAG admits paragraph 24.
25. IAG admits paragraph 25.
26. As to paragraph 26, IAG:
 - a. admits the paragraph; and
 - b. says further that Mr Morgan was a member of the Group Leadership Team from 21 February 2018 to 23 February 2020 in his capacity ~~of~~as Group Executive Technology.
27. IAG admits paragraph 27.
28. IAG admits paragraph 28.
29. IAG admits paragraph 29.
30. As to paragraph 30, IAG:
 - a. admits the paragraph; and
 - b. says further that Ms Whiting was an acting member of the Group Leadership Team between 2 November 2020 and 9 March 2021, and was formally appointed to the Group Leadership Team on 10 March 2021.

31. IAG admits paragraph 31, save that Mr Milliner ceased his role of CEO, Australia and membership of the Group Leadership Team in November 2020.

ba Senior employees

31A. As to paragraph 31A, IAG:

- a. admits sub-paragraph (a), save that Mr Ward commenced as IAG's Chief Actuary in 2008, and was not IAG's Chief Actuary between April 2010 and September 2014, during which time Mr Ward held various operational and strategy roles within IAG;
- b. says that throughout the Relevant Period Mr Ward was responsible for fulfilling the requirements set out in IAG's Actuarial Advice Framework and Prudential Standard CPS 320, and otherwise denies sub-paragraph (b);

Particulars

Actuarial Advice Framework dated 26 May 2020

[IAG.013.001.0409]

- c. admits sub-paragraph (c);
- d. says that during the Relevant Period Mr Ward:
 - i. attended three meetings of IAG's Board in August, October and November 2020;
 - ii. attended one meeting of the IAG Board Risk Committee in November 2020;
 - iii. attended four meetings of the IAG Board Audit Committee in June, July, August and November 2020;
 - iv. regularly attended meetings of the Business Interruption EGM SteerCo; and
 - v. attended at least two meetings of the Asset & Liability Committee in July and October 2020;

and otherwise denies sub-paragraph (d); and

- e. says that Mr Ward attended, as a guest, one monthly Group Leadership Team meeting and one Group Leadership Team Risk Committee, both of which occurred in October 2020, and otherwise denies sub-paragraph (e).

31B. As to paragraph 31B, IAG:

- a. admits sub-paragraph (a);
- b. in answer to sub-paragraph (b) admits that throughout the Relevant Period Mr Maher was responsible for developing and maintaining the Insurance Risk Framework and Insurance Risk Principles and otherwise denies the sub-paragraph;
- c. in answer to sub-paragraph (c) says that Mr Maher, during the Relevant Period:
 - i. did not attend any meetings of IAG's Board;
 - ii. attended two meetings of the IAG Board Risk Committee in September and November 2020;
 - iii. attended at least two meetings of the Group Insurance Risk Committee in June and September 2020;
 - iv. attended three meetings of the Group Leadership Team Risk Committee in July and October 2020; and
 - v. regularly attended meetings of the Business Interruption EGM SteerCo;and otherwise denies sub-paragraph (c);
- d. says that during the Relevant Period Mr Maher attended at least:
 - i. two meetings of the Asset & Liability Committee (ALCo) in July and October 2020; and
 - ii. one meeting of the Insurance Council of Australia Special Underwriting Committee in July 2020;and otherwise denies sub-paragraph (d).

c. Officers of IAG

32. In answer to paragraph 32 IAG:

- a. repeats paragraphs 9 to 19 and 21 to 31B above;
- b. denies that Brett Ward was an "officer" of IAG within the meaning of s 9 of the Corporations Act or the ASX Listing Rules;
- c. denies that Darren Maher was an "officer" of IAG within the meaning of s 9 of the Corporations Act or the ASX Listing Rules; and

- d. otherwise admits the paragraph ~~32~~.

III. IAG's policies concerning disclosure

a. Continuous disclosure policy

33. In answer to paragraph 33, IAG:

- a. says that at all material times it had a "ASX Disclosure Policy" which was published on its website (**ASX Disclosure Policy**); and
- b. otherwise denies the paragraph.

34. In answer to paragraph 34, IAG:

- a. refers to paragraph 33 above;
- b. relies on the terms of the ASX Disclosure Policy as published on its website during the Relevant Period; and
- c. otherwise denies the paragraph.

b. Code of Conduct

35. IAG admits paragraph 35.

36. IAG admits paragraph 36.

c. Board Charter

37. IAG admits paragraph 37.

38. In answer to paragraph 38, IAG:

- a. relies on the terms of each version of the Board Charter in force during the Relevant Period for their full force and effect;
- b. denies paragraphs (f) and (g) in respect of the Board Charter dated 29 April 2019; and
- c. otherwise admits the paragraph.

IV. IAG's risk management

39. IAG admits paragraph 39.

40. IAG admits paragraph 40.

41. IAG admits paragraph 41.

V. IAG's internal controls

42. IAG admits paragraph 42.

43. IAG admits paragraph 43.

44. IAG admits paragraph 44.

C. BUSINESS INTERRUPTION INSURANCE

I. The nature of business interruption cover

45. In answer to paragraph 45, IAG:

a. says that:

- i. insurance policies providing business interruption cover (**BI Policies**) provide cover for losses arising from interruption of or interference with an insured's business as a result of a defined insured peril;
- ii. the extent of the cover under a given BI Policy depends upon the terms of the policy agreed with the insured; and

b. otherwise denies the paragraph.

II. Bird Flu and APRA pandemic stress testing

46. IAG admits paragraph 46.

47. IAG admits paragraph 47.

48. IAG admits paragraph 48.

49. IAG admits paragraph 49.

50. In answer to paragraph 50, IAG:

a. admits that APRA stated that its stress testing showed that:

- i. the largest amount of additional gross claims arose from business interruption and industrial special risk policies; and

- ii. as the normal level of claims in this business line is small, the percentage increase in claims for business interruption averaged more than 400 per cent;

Particulars

APRA's "Insight" publication (Issue 3, 2007) entitled "Results of pandemic stress test of insurance industry" at p6.

- b. says that APRA's "Insight" publication (Issue 3, 2007) further stated:

"Coverage for infectious disease under business interruption and other commercial policies is considered to be somewhat unique to Australia. While some insurers do not include infectious disease coverage, or cover losses only if the insured business is closed by order of public authority or have relatively low sub-limits, others provide fairly liberal coverage for closure or disease reported anywhere within a specified radius of the insured business. However, APRA's understanding is that as a result of analysis conducted in 2006, most general insurers are reducing their coverage of pandemic infectious disease in new business interruption policies. As a result, the figures estimated in the pandemic scenario are likely to be significantly lower now than at the time of the stress test." (p. 6); and

- c. otherwise denies the paragraph.

51. In answer to paragraph 51, IAG:

- a. refers to and repeats paragraph 50 above; and
- b. otherwise denies the paragraph.

III. BI Insurance Policies offered by IAG and its subsidiaries

52. IAG admits ~~In answer to paragraph 52, IAG:~~

- ~~a. refers to and repeats paragraph 4 above;~~
- ~~b. admits that at all material times its subsidiary Insurance Australia Limited (IAL) issued BI Policies; and~~
- ~~c. otherwise denies the paragraph.~~

a. The Quarantinable Disease Exclusion

53. IAG admits paragraph 53.

54. In answer to paragraph 54, IAG:

- a. says that it (through its subsidiaries) received letters from APRA containing the request referred to in paragraph 49 of the ASOC in or around October 2006, and became aware of the matter pleaded in that paragraph of the ASOC at that time; and

Particulars

Letters from APRA to IAG subsidiaries dated 12 October 2006.

- b. otherwise denies the paragraph.

55. In answer to paragraph 55, IAG:

- a. admits the paragraph;
- b. says further that the terms of the exclusion differed between different classes of BI Policy, including as follows:
 - i. some policies referred to “quarantinable diseases under the *Quarantine Act 1908* (Cth)”;
 - ii. some policies referred to “quarantinable diseases under the *Quarantine Act 1908* (Cth) (as amended)”;
 - iii. some policies referred to “quarantinable diseases under the *Quarantine Act 1908* (Cth) and subsequent amendments”;
 - iv. some policies referred to "Quarantinable Disease as defined in and declared under the *Quarantine Act 1908* (Cth) and subsequent amendments",

(the **Quarantinable Diseases Exclusions**).

b. Repeal of the *Quarantine Act* and impact on the Quarantinable Disease Exclusions

56. IAG admits paragraph 56.

57. In answer to paragraph 57, IAG:

- a. admits that the *Quarantine Act* and *Biosecurity Act* differed in the respects pleaded in paragraphs (a) to (f); and
- b. otherwise denies the paragraph.

58. IAG admits paragraph 58.

c. Amendments to BI Policies

59. In answer to paragraph 59, IAG:

- a. admits that following the repeal of the *Quarantine Act*:
 - i. certain BI Policies issued by IAL included an exclusion for interruption or interference to businesses in respect of any disease determined to be a listed human disease under the *Biosecurity Act* (as opposed to a disease declared to be a quarantinable disease under the *Quarantine Act*);
 - ii. certain BI Policies issued by IAL continued to include a Quarantinable Diseases Exclusion (the **Unamended BI Policies**); and
- b. otherwise denies the paragraph.

60. In answer to paragraph 60, IAG:

- a. admits that the Unamended BI Policies did not expressly exclude claims arising out of business interruption caused by an outbreak of a disease classified as a “listed human diseases” under the *Biosecurity Act*;
- b. says that whether IAL would be required to indemnify an insured for any claim made under an Unamended BI Policy arising out of business interruption caused by an outbreak of a disease depended upon a number of factors including:
 - i. the terms of the Unamended BI Policies;
 - ii. the proper construction of the Unamended BI Policy terms, including (but not limited to) the Quarantinable Diseases Exclusions;
 - iii. the location of the outbreak and the circumstances, nature, timing and extent of any interruption to policyholders’ businesses as a result of the outbreak;
 - iv. the circumstances, nature, timing and extent of any loss suffered by the insured as a result of any business interruption, taking into account (amongst other relevant factors) rebates, relief or government payments that may reduce any such loss,

(the **Coverage Considerations**); and
- c. otherwise denies the paragraph.

- 61. IAG admits paragraph 61.
- 62. IAG refers to and repeats paragraph 60 above, and otherwise denies paragraph 62.
- 63. IAG refers to and repeats paragraph 62 above, and otherwise denies paragraph 63.
- 64. IAG refers to and repeats paragraphs 59 to 63 above, and denies paragraph 64.

D. THE COVID-19 PANDEMIC

I. Key events related to the COVID-19 pandemic

- 65. IAG admits paragraph 65.
- 66. IAG admits paragraph 66.
- 67. IAG admits paragraph 67.
- 68. IAG admits paragraph 68.
- 69. IAG admits paragraph 69.
- 70. IAG admits paragraph 70.
- 71. IAG admits paragraph 71.
- 72. IAG admits paragraph 72.
- 73. IAG admits paragraph 73.
- 74. IAG admits paragraph 74.
- 75. IAG admits paragraph 75.
- 76. IAG admits paragraph 76.
- 77. IAG admits paragraph 77.
- 78. IAG admits paragraph 78.
- 79. IAG admits paragraph 79.
- 80. IAG admits paragraph 80.
- 81. IAG admits paragraph 81.
- 82. IAG admits paragraph 82.

83. IAG admits paragraph 83.
84. IAG admits paragraph 84.
85. IAG admits paragraph 85.
86. IAG admits paragraph 86.
87. IAG admits paragraph 87.
88. IAG admits paragraph 88.
89. In answer to paragraph 89, IAG:
 - a. admits the paragraph; and
 - b. says further that the economic support package referred to in that paragraph (amongst other mitigants) had the potential to reduce any losses suffered by insureds that would otherwise be recoverable under their Unamended BI Policies.
90. IAG admits paragraph 90.
91. IAG admits paragraph 91.
92. IAG admits paragraph 92.
93. IAG admits paragraph 93.
94. IAG admits paragraph 94.
95. In answer to paragraph 95, IAG:
 - a. admits the paragraph; and
 - b. says that the measures referred to in that paragraph did not affect all businesses and the extent to which businesses were affected (if at all) depended on the nature of the business' operations.
96. In answer to paragraph 96, IAG:
 - a. admits the paragraph;
 - b. refers to and repeats paragraph 89.b above; and

- c. says that the measures referred to in that paragraph did not affect all businesses and the extent to which businesses were affected (if at all) depended on the nature of the business' operations.

97. In answer to paragraph 97, IAG:

- a. admits the paragraph; and
- b. says that the measures referred to in that paragraph did not affect all businesses and the extent to which businesses were affected (if at all) depended on the nature of the business' operations.

98. In answer to paragraph 98, IAG:

- a. admits the paragraph; and
- b. says that the measures referred to in that paragraph did not affect all businesses and the extent to which businesses were affected (if at all) depended on the nature of the business' operations.

99. In answer to paragraph 99, IAG:

- a. admits the paragraph; and
- b. says that the measures referred to in that paragraph did not affect all businesses and the extent to which businesses were affected (if at all) depended on the nature of the business' operations.

100. In answer to paragraph 100, IAG:

- a. admits the paragraph; and
- b. says that the measures referred to in that paragraph did not affect all businesses and the extent to which businesses were affected (if at all) depended on the nature of the business' operations.

101. In answer to paragraph 101, IAG:

- a. admits the paragraph; and
- b. says that the measures referred to in that paragraph did not affect all businesses and the extent to which businesses were affected (if at all) depended on the nature of the business' operations.

II. Business interruption by reason of the COVID-19 pandemic

102. In answer to paragraph 102, IAG:

- a. admits that there was a risk that IAL would be required to provide indemnity for losses suffered by insureds with Unamended BI Policies if the Quarantinable Diseases Exclusions and other exclusions did not apply;
- b. says that the likelihood of that risk eventuating and quantum of that risk depended on, amongst other things, each of the Coverage Considerations; and
- c. otherwise denies the paragraph.

Particulars

The "other things" referred to at paragraph 102(b) included:

- (i) whether or not an insured brought a claim;
- (ii) whether or not an insured suffered any loss as a result of an insured peril;
- (iii) whether or not an insured had complied with their duty of disclosure;
- (iv) whether or not an insured had complied with their duty of utmost good faith;
- (v) whether some other exclusion in an insured's policy applied;
- (vi) whether any underinsurance provision in an insured's policy applied;
- (vii) whether an insured had the benefit of other insurance in respect of the same loss; and
- (viii) whether any other mitigant(s), including of the kind referred to at paragraphs 60(b)(iv) and 89(b) above, operated to reduce any recoverable loss.

103. In answer to paragraph 103, IAG:

- a. admits that as at 11 March 2020 and/or 23 March 2020 there was a risk that IAL would be required to provide indemnity for claims made under Unamended BI Policies arising out of business interruption caused by the COVID-19 pandemic;
- b. says that the likelihood of that risk eventuating and the quantum of that risk depended on, amongst other things, each of the Coverage Considerations; and
- c. otherwise denies the paragraph.

Particulars

The Defendant refers to and repeats the particulars to paragraph 102 above.

III. The Test Case

104. In answer to paragraph 104, IAG:

- a. says that the summons filed in the Test Case sought declarations that the words "*declared to be quarantinable diseases under the Australian Quarantine Act 1908*" should be read as "*which are listed human diseases under the Biosecurity Act 2015 (Cth)*" and that the relevant exclusions in each insurer's policy were enlivened; and
- b. otherwise admits the paragraph.

105. In answer to paragraph 105, IAG:

- a. refers to and repeats paragraph 55 above;
- b. admits that the Contested Exclusion was in materially the same terms as one form of the Quarantinable Disease Exclusions; and
- c. otherwise denies the paragraph.

106. IAG admits paragraph 106.

107. IAG admits paragraph 107.

108. IAG admits paragraph 108.

109. In answer to paragraph 109, IAG:

- a. says that the application for special leave was filed on 16 December 2020; and
- b. otherwise admits the paragraph.

110. IAG admits paragraph 110.
- 110A. On 26 February 2021, a number of insurers, including IAL, filed proceedings in the Federal Court of Australia seeking declarations in respect of other Coverage Considerations arising from the terms of BI Policies to the COVID-19 pandemic (the **Second Test Cases**), including (amongst other matters):
- a. the responsiveness of “prevention of access” clauses to business interruption losses caused by the COVID-19 pandemic;
 - b. whether Commonwealth and State government responses to the COVID-19 pandemic were as a result of an outbreak of COVID-19 within the radius specified in certain terms of the policies which were potentially engaged in respect of business interruption losses caused by the COVID-19 pandemic;
 - c. the application of s 61A of the *Property Law Act 1958* (Vic) to Quarantinable Diseases Exclusions in policies governed by Victorian law;
 - d. issues of causation; and
 - e. whether government payments (including JobKeeper) reduced the losses claimable by insureds under the policies.
- 110B. On 6 to 15 September 2021, the Second Test Cases were heard by Jagot J.
- 110C. On 8 October 2021, Jagot J delivered judgment in the Second Test Cases, upholding the insurers’ arguments on certain of the Coverage Considerations.
- 110D. On 15 October 2021, appeals to the Full Court of the Federal Court from Jagot J’s decision were filed.
- 110E. On 8 to 12 November 2021, the Full Court heard the appeal in the Second Test Cases.
- 110F. On 21 February 2022, the Full Court delivered judgment on the appeal in the Second Test Cases, and largely upheld Jagot J’s decision.
- 110G. Between 21 and 23 March 2022, applications for special leave from parts of the Full Court’s decision were filed in the High Court.
- 110H. On 14 October 2022, the applications for special leave referred to in paragraph 110G above were refused by the High Court.

E. RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES BY IAG

I. 2020 Half Year Report

111. IAG admits paragraph 111.

112. IAG admits paragraph 112.

II. 30 March 2020

113. IAG admits paragraph 113.

114. IAG admits paragraph 114.

III. 24 July 2020

115. IAG admits paragraph 115.

116. In answer to paragraph 116, IAG:

- a. admits the paragraph;
- b. says that the 24 July 2020 announcement further described the estimated \$100 million provision as at 30 June 2020~~2~~ as "*potential COVID-19 claim cost impacts that are highly uncertain, sit within a wide range and are estimated on a probability-weighted basis*", and "[spanning] potential business interruption, landlords' and other insurance class impacts, including the estimated impact an economic downturn will have on the settlement of long tail claims".

117. IAG admits paragraph 117.

IV. 7 August 2020

a. Annual Report

118. IAG admits paragraph 118.

119. In answer to paragraph 119, IAG:

- a. admits paragraphs (a) to (o) and (q);
- b. denies paragraph (p); and
- c. says that the statement in paragraph (p) was made by KPMG in its Independent Auditor's Report.

b. IAG FY20 Investor Report

120. IAG admits paragraph 120.

121. IAG admits paragraph 121.

c. FY20 Results Announcement

122. IAG admits paragraph 122.

123. In answer to paragraph 123, IAG:

- a. admits paragraphs (a) and (b);
- b. denies paragraph (c); and
- c. says that page 4 of the FY20 Results Announcement attributed a lower underlying margin (14.9% as compared with 15.5% in FY19) to a number of factors being:
 - i. a small net negative impact on underwriting profit, which impact included a provision for potential COVID-19 claim impacts;
 - ii. poor performance in agri and commercial long tail portfolios;
 - iii. significantly lower running yield on technical reserves; and
 - iv. reported margin decline from mix of adverse reserving, peril and credit spread effects.

d. FY20 Financial Results Presentation

124. IAG admits paragraph 124.

125. In answer to paragraph 125, IAG:

- a. admits paragraphs (b) and (c);
- b. denies paragraph (a); and
- c. says that page 2 of the FY20 Financial Results Presentation referred to a "*Softer 2H20 underlying margin of 15.1%*" and "*Largely offsetting COVID-19 impacts on underwriting profit*".

e. FY20 IAG Earnings Presentation

126. IAG admits paragraph 126.
127. IAG admits paragraph 127.
128. IAG admits paragraph 128.
129. In answer to paragraph 129, IAG:
- a. admits paragraphs (a) to (c);
 - b. denies paragraph (d);
 - c. says that the reference to putting “*all of that into the mix when we look at our position at 31 December*” was an express reference to:
 - i. the outcome of the Test Case; and
 - ii. the potential for the Second Test Cases to be commenced, including in relation to “prevention of access” clauses.
130. IAG admits paragraph 130.
131. In answer to paragraph 131, IAG:
- a. admits the paragraph; and
 - b. says further that in his response to the question asked, Mr Hawkins referred to both the outcome of the Test Case and the potential Second Test Cases.

V. 23 October 2020

a. 23 October 2020 Announcement

132. IAG admits paragraph 132.
133. IAG admits paragraph 133.

b. 2020 Chairman’s Address

134. IAG admits paragraph 134.
135. IAG admits paragraph 135.

c. 2020 AGM transcript

136. In answer to paragraph 136, IAG:

- a. admits that on 23 October 2020 it published a document entitled “2020 AGM transcript”;
- b. denies that it published the document to the ASX; and
- c. says that the document was published on its website.

137. IAG admits paragraph 137.

F. ALLEGED REPRESENTATIONS MADE BY IAG

I. Alleged Continuous Disclosure Representation

138. IAG denies paragraph 138.

139. IAG denies paragraph 139.

II. Alleged COVID-19 Risk Representations

140. IAG denies paragraph 140.

140A IAG denies paragraph 140A.

141. In answer to paragraph 141, IAG:

- a. denies the paragraph; and
- b. says that the 24 July 2020 Announcement:
 - i. stated that the potential impacts of COVID-19 were “*highly uncertain, sit within a wide range and are estimated on a probability-weighted basis*” (as pleaded at paragraph 116 above);
 - ii. stated that the presentation was based on a preliminary view of IAG’s FY20 results which remained subject to finalisation of audit and Board approval; and
 - iii. included a section entitled “Important information”, which stated, inter alia:
 - 1. the document contained general information current as at the date of the announcement;
 - 2. no representation or warranty, express or implied, was made as to the accuracy, adequacy, completeness or reliability of any statements (including forward-looking statements or forecasts), estimates or

opinions, or the accuracy or reliability of the assumptions on which they are based;

3. any forward-looking statements, opinions and estimates in the 24 July 2020 Announcement were based on assumptions and contingencies which were subject to change without notice;
4. to the maximum extent permitted by law, IAG disclaimed all liability and responsibility for any direct or indirect loss which may be suffered by any recipient of the 24 July 2020 Announcement through use of or reliance on anything contained in, implied by or omitted from it

(Disclaimers).

142. In answer to paragraph 142, IAG:

- a. denies the paragraph;
- b. says that the FY20 Annual Report contained statements and qualifications regarding the information provided, including:

There is considerable uncertainty attached to IAG's financial outlook for the 2021 financial year, stemming from specific ongoing business impacts associated with the COVID-19 pandemic and from broader economic repercussions.

...

The ongoing COVID-19 pandemic has increased the estimation uncertainty in the preparation of these financial statements. The Group has developed various accounting estimates in these financial statements based on forecasts of economic conditions which reflect expectations and assumptions as at 30 June 2020 about future events that the Directors believe are reasonable in the circumstances. There is a considerable degree of judgement involved in preparing these forecasts. The underlying assumptions are also subject to uncertainties which are often outside the control of the Group. Accordingly, actual economic conditions may be different from those forecast since anticipated events may not occur as expected, and the effect of those differences may significantly impact accounting estimates included in these financial statements.

The significant accounting estimates particularly impacted by these associated uncertainties are predominantly related to the valuation of the outstanding claims liability, recoverable amount assessments of non-financial assets, fair value measurement of investments and expected credit losses for both non-insurance and insurance-related receivables.

The impact of the COVID-19 pandemic on each of these accounting estimates is discussed further below. Readers should carefully consider these disclosures in light of the inherent uncertainty described above; and

- c. says further that the FY20 Investor Report and FY20 Financial Results Presentation each included a section entitled "Important information", which included the Disclaimers.

143. IAG denies paragraph 143.

III. Alleged Accounting Standards Representation

144. IAG admits paragraph 144.

G. ALLEGED CORRECTIVE DISCLOSURE

145. IAG admits paragraph 145.

I. Content of alleged Corrective Disclosure

146. In answer to paragraph 146, IAG:

- a. denies that the announcement on 20 November 2020 was a "Corrective Disclosure"; and
- b. otherwise admits the paragraph.

147. In answer to paragraph 147, IAG:

- a. denies that the announcement on 20 November 2020 was a "Corrective Disclosure";
- b. otherwise admits the paragraph.

148. IAG admits paragraph 148.

II. Effect of alleged Corrective Disclosure

149. IAG admits paragraph 149.

150. As to paragraph 150, IAG:

- a. denies the paragraph; and
- b. says that shares in IAG opened at \$5.05 upon resumption of trading on 23 November 2020, having previously closed at \$5.46 on 18 November 2020.

H. ALLEGED CONTINUOUS DISCLOSURE CONTRAVENTION

I. BI Exposure Information

150A In answer to paragraph 150A, IAG:

- a. says that, as at 25 June 2020, it sought to calculate a central estimate for its outstanding insurance liabilities under Unamended BI Policies, certain prevention of access clauses and policies referencing the *Biosecurity Act*, in 'BI QuikModelV6' (IAG.067.001.0398), under five different scenarios, which were recorded in tabs named "Scenario Low", "Scenario Med", "Scenario Med 1", "Scenario Med 2", Scenario High", and within which assumptions were applied to:
 - i. the proportion of policies impacted;
 - ii. turnover reduction;
 - iii. lockdown times;
 - iv. recovery period;
 - v. loss years; and
 - vi. reduction in insured liability based on the probability of legal success.
- c. admits that adding up the figures in the column headed 'Potential Loss' in the "Scenario Med" tab of 'BI QuikModelV6' for rows capturing products referring to the Quarantine Act but not to the Biosecurity Act or AON ISR products with prevention of access clauses results in a figure of \$748 million;
- d. says that this was not a scenario that IAG estimated as at 25 June 2020, because it did not estimate the potential quantum of its outstanding insurance liabilities under Unamended BI Policies on the assumption that IAG had no probability of legal success on those policies;
- e. refers to and repeats paragraphs 151(a)-(e) below; and

f. otherwise denies the paragraph.

151. In answer to paragraph 151, IAG denies the paragraph and says further:

- a. that pursuant to Prudential Standard GPS 340:
 - i. it was relevantly required, for the purpose of calculating its prescribed capital amount in accordance with the applicable capital standards and for the purpose of completing its yearly statutory accounts, to value its insurance liabilities, comprising:
 - A. outstanding claims liabilities, being liabilities relating to claims (whether made or not) incurred prior to the valuation date (which, in the case of IAG, was 30 June each year);
 - B. premiums liabilities, being liabilities relating to future claim payments arising from events post the valuation date insured under its existing and unexpired policies;

Particulars

Prudential Standard GPS 340, paragraphs 6 to 12.

- ii. it was obliged to calculate and report to APRA outstanding claims liabilities and premium liabilities, comprising a central estimate and risk margin for each class of business, where:
 - A. the central estimate is intended to reflect the mean value in the range of possible values for the outcome and must be based on assumptions as to future experience which reflect the experience and circumstances of the insurer and which are:
 - 1. made using judgement and experience;
 - 2. made having regard to available statistics and other information;
and
 - 3. neither deliberately overstated nor understated;
 - B. the risk margin, being the component of the value of insurance liabilities that relates to the inherent uncertainty that outcomes will differ from the central estimate, must be determined on a basis that reflects the experience of the insurer and must in any event be valued so that the

insurance liabilities of the insurer, after any diversification benefit, are not less than the greater of a value that is:

1. determined on a basis that is intended to value the insurance liabilities of the insurer at a 75 per cent level of sufficiency; and
2. the central estimate plus one half of a standard deviation above the mean for the insurance liabilities of the insurer;

Particulars

Prudential Standard GPS 340, paragraphs 13 and 16 to 27.

b. that pursuant to Accounting Standard AASB 1023: General Insurance Contracts:

- i. it was relevantly required to calculate and recognise in its financial statements an outstanding claims liability comprising:
 - A. the central estimate of the present value of the expected future payments for claims incurred (that is, claims that have occurred, but may be reported or unreported, as at the reporting date, which was, in the case of IAG, 30 June each year), where the central estimate was an estimate of the probability-weighted expected cost of settling claims incurred, calculated in accordance with the provisions of the standard;
 - B. a risk margin to reflect the inherent uncertainty in the central estimate, which was also to be determined in accordance with the provisions of the standard,

and the application of an appropriate discount rate determined in accordance with clause 6 of the standard;

Particulars

AASB 1023, clause 5.

- ii. it was also required to calculate and recognise in its financial statements unearned premium liability, being (relevantly) the costs of meeting future claims that will arise under existing general insurance contracts, in accordance with clause 7 of the standard;
- c. that from around May to July 2020, IAG's actuarial team undertook the calculations required by each of Prudential Standard GPS 340 and AASB 1023 for the financial year ending on 30 June 2020;

- d. that on around 23 July 2020, IAG's Chief Actuary:
- i. estimated IAG's outstanding insurance liabilities arising from the COVID-19 pandemic, including liabilities in respect of potential business interruption claims, as follows (after accounting for reinsurance):
 - A. a net central estimate of \$135 million;
 - B. a risk margin for the purposes of AASB 1023 of \$129.9 million,
 (the **COVID-19 Estimate**);
 - (ia) estimated the component of the COVID-19 Estimate arising from potential business interruption claims only as follows (before accounting for reinsurance and risk margin diversification):
 - A. a central estimate of \$180 million;
 - B. a risk margin of \$180 million;
 (the **BI Estimate**)
 - ii. recommended to the Audit Committee of IAG that it recommend to the Board of IAG that it recognise in IAG's accounts:
 - A. a provision of \$106 million, representing around 40% of the total COVID-19 Estimate, as claim liabilities as at 30 June 2020;
 - B. the balance of \$159 million as (unearned) premium liabilities;

Particulars

The estimates and the recommendations were set out in a memorandum to the Audit Committee of IAG dated 23 July. The memo also stated that the Chief Actuary calculated a risk margin of \$65 million for the purposes of Prudential Standard GPS 340.

- e. that, in accordance with the Chief Actuary's COVID-19 Estimate and recommendations, IAG recognised in its published statutory accounts for the period ended 30 June 2020 total COVID-19 insurance liabilities of \$265 million, comprising provisions for net outstanding claims liabilities of \$106 million and for net (unearned) premium liabilities of \$159 million (the **COVID-19 Provisions**).

Particulars

FY20 Annual Report, published 7 August 2020, at pages 8, 56, 57. The provision in respect of claim liabilities was also referred to in publications concerning IAG's FY20 financial results, including 24 July 2020 Announcement.

- f. that on 14 October 2020 IAG updated the BI Estimate based on the information available to it as at 30 September 2020, which included the following new information:
 - i. a review of exposure data at a more granular level leading to an adjustment of exposures categorised as Biosecurity Act, Quarantine Act or Prevention of Access;
 - ii. economic data which indicated turnover reductions were less than had been estimated for the purpose of the BI Estimate as at 30 June 2020;
 - iii. the effects of further lockdowns in Victoria, considered separately from national lockdowns;
- g. that having regard to the new information described in sub-paragraph (f) above, IAG's BI Estimate as at 30 September 2020 was as follows (before accounting for reinsurance and risk margin diversification):
 - i. a central estimate of \$230 million;
 - ii. a risk margin of \$230 million;

Particulars

The Chief Actuary's estimate was set out in:

- (i) a spreadsheet titled 'BI QuikModel Sep20 V8 Contingency' (IAG.013.002.8884); and
 - (ii) a memorandum to the IAG Board dated 14 October 2020 (IAG.005.001.0231).
- h. that in addition to the revised estimate in sub-paragraph (g) above, on 14 October 2020 the Chief Actuary also estimated IAG's outstanding business interruption insurance liabilities as at 30 September 2020 on the assumption that the Test Case was determined against insurers, as follows (before accounting for reinsurance and diversification):
 - i. a central estimate of \$1,200 million;
 - ii. a risk margin of \$800 million,

which yielded a post-reinsurance, post-tax and post-risk margin diversification provision of \$832 million.

Particulars

The Chief Actuary's estimate was set out in:

- (i) a spreadsheet titled 'BI QuikModel Sep20 V8 Contingency' (IAG.013.002.8884); and
- (ii) a memorandum to the IAG Board dated 14 October 2020 (IAG.005.001.0231).

- i. that on 19 November 2020, IAG updated the estimate referred to in sub-paragraph (h) to take into account new information available to it as at that date, which included the following new information:

- i. a breakdown at the level of each individual insured of the applicable sum insured or sub-limit for business interruption and an industry description for each insured;
- ii. the impact of government Jobkeeper payments; and
- iii. the NSW Court of Appeal's decision in the Test Case;

- j. that having regard to the new information described in sub-paragraph (i), IAG's update to the estimate referred to in sub-paragraph (h) was as follows :

- i. a central estimate of \$1,357 million (before accounting for reinsurance);
- ii. a diversified risk margin of \$320 million (after accounting for reinsurance);

which yielded a post-reinsurance, post-tax and post-risk margin diversification provision of \$865 million.

Particulars

This updated estimate was set out in a memorandum to the IAG Board on 19 November 2020 (IAG.005.001.1297).

151A. IAG denies paragraph 151A and refers to and repeats paragraphs 150A and 151 above.

151B. In answer to paragraph 151B, IAG:

- a. denies that it was required to disclose to the market the quantum of the BI Exposure in the Relevant Period;
- b. admits that any disclosure of the quantum of the BI Exposure would have needed to be adjusted to account for the effect of reinsurance and tax, and to include risk

margins, and says further that risk margins would need to take into account the matters pleaded at paragraph 150A(a)(i) to (vi); and

c. otherwise denies the paragraph.

152. IAG denies ~~In answer to paragraph 152, IAG:~~

~~a. refers to paragraph 151 above and says that the BI Exposure Information pleaded by the Plaintiff did not exist;~~

~~b. otherwise denies the paragraph.~~

153. [Not used] ~~In answer to paragraph 153, IAG:~~

~~a. admits that one or more officers of IAG knew:~~

~~i. by or around 11 March 2020, the matters referred to in paragraph 103 above;~~

~~ii. at or around the time each of the announcements referred to in paragraph 153(a)(ii)(1) to (3) of the SOC were made, the contents of those announcements;~~

~~iii. at or around the time the first such claims were made, that claims for business interruption arising from the COVID-19 pandemic were being made under BI Policies (including Unamended BI Policies);~~

~~b. refers and repeats to paragraphs 151 and 152 above; and~~

~~c. otherwise denies the paragraph.~~

154. IAG denies paragraph 154.

155. ~~In answer to paragraph 155, IAG~~ denies paragraph 155 and:

~~a. says that the BI Exposure Information pleaded by the Plaintiff did not exist and therefore admits that it was not generally available;~~

~~b. otherwise denies the paragraph;~~

c. says further that, ~~even if the BI Exposure Information existed (which is denied), it would~~ was ~~not be~~ information that a reasonable person would expect to have a material effect on the price or value of the Shares within the meaning of Listing Rule 3.1 and/or s 674(2)(d) of the *Corporations Act* as:

- i. IAG was a non-operating holding company of subsidiaries carrying on a general insurance business;
- ii. as pleaded in paragraph 151 above, IAG was required to estimate its outstanding insurance liabilities in accordance with Prudential Standard 340 and AASB 1023: General Insurance Contracts, and to include its estimate in its statutory accounts;
- iii. a reasonable investor in a listed general insurer:
 - A. would, by virtue of the matters pleaded in (c)(ii) above, expect IAG to make public its estimate of outstanding insurance liabilities determined in accordance with the foregoing standards;
 - B. would not expect IAG to disclose an estimate of its insurance liabilities calculated on some basis other than in accordance with those standards;
- iv. further or alternatively, at all material times:
 - A. there was information generally available to the effect that IAG, through its subsidiaries which carried on substantial general insurance businesses, was exposed to the risk that it would be required to pay out claims arising out of the COVID-19 pandemic in a potentially very significant amount;
 - B. there was information generally available to the effect that the Australian general insurance industry was exposed to the risk that insurers would be required to pay out claims arising out of the COVID-19 pandemic in potentially very significant amounts;
 - C. from at least 7 August 2020, when IAG published FY20 Investor Report, there was information generally available to the effect that, while IAG's view was that the intent to exclude pandemics from business interruption cover was clear, there was a risk that IAG would in fact be exposed to such claims, in a potentially very significant amount, if the insurers in the Test Case were unsuccessful.

156. In answer to paragraph 156, IAG:

- a. denies the paragraph;
- b. says further that even if ~~the BI Exposure Information existed (which is denied)~~ and if IAG was aware of the BI Exposure Information during the Relevant Period (which is

denied) then IAG would not have been obliged to disclose that information during the Relevant Period pursuant to Listing Rule 3.1 as Rule 3.1A applied, by reason of the following matters:

- i. at least until the Court of Appeal's decision in the Test Case was delivered, such information would have comprised matters of supposition or which were insufficiently definite to warrant disclosure;
- ii. such information would be of a kind generated for an internal management purpose of the entity, for example as a step in preparing an estimate of its outstanding insurance liabilities in accordance with Prudential Standard 340 and AASB 1023: General Insurance Contracts;
- iii. information of that kind would be confidential; and
- iv. a reasonable person would not expect the information to be disclosed; and
- c. further or alternatively, even if IAG was aware of the BI Exposure Information during the Relevant Period (which is denied) then IAG would not have been obliged to disclose that information during the Relevant Period pursuant to Listing Rule 3.1 because the BI Exposure Information was not information that a reasonable person would expect to have a material effect on the price or value of IAG shares, including because:
 - i. the BI Exposure Information was incomplete and/or misleading and/or not in a form that was appropriate for disclosure; and/or
 - ii. relevant matters of context made the alleged information immaterial.

Particulars

IAG refers to and repeats paragraphs 151 and 151A above.

157. In answer to paragraph 157, IAG:

- a. admits that it did not tell the ASX the BI Exposure Information at any time prior to 20 November 2020;
- b. denies that it told the ASX the BI Exposure Information on 20 November 2020;
- c. will rely on its 20 November 2020 announcement for its full terms and effect.

158. IAG admits paragraph 158.

159. IAG admits paragraph 159.

160. In answer to paragraph 160, IAG:
- a. refers to and repeats paragraph 155 above;
 - b. otherwise denies the paragraph.
161. In answer to paragraph 160, IAG:
- a. refers to and repeats paragraphs 155 and 160 above;
 - b. otherwise denies the paragraph.

162. IAG denies paragraph 162.

163. IAG denies paragraph 163.

I. ALLEGED MISLEADING OR DECEPTIVE CONDUCT

164. In answer to paragraph 164, IAG:
- a. admits that the Accounting Standards Representation was made in relation to Shares, being financial products for the purposes of s 1041H of the *Corporations Act*; and
 - b. otherwise denies the paragraph.

I. Alleged misleading conduct contraventions in relation to the alleged COVID-19 Risk Representations

165. IAG denies paragraph 165.

166. IAG denies paragraph 166.

167. IAG denies paragraph 167.

II. Alleged misleading conduct contraventions in relation to the Accounting Standards Representations

168. IAG denies paragraph 168.

169. IAG denies paragraph 169.

170. IAG denies paragraph 170.

III. Alleged misleading conduct contraventions in relation to the Continuous Disclosure Representation

171. IAG denies paragraph 171.

172. IAG denies paragraph 172.

173. IAG denies paragraph 173.

J. CAUSATION

I. Acquisition of shares

174. IAG does not admit paragraph 174.

II. Market-based causation

175. IAG denies paragraph 175.

176. IAG denies paragraph 176.

176A. IAG denies paragraph 176A.

176B. IAG denies paragraph 176B.

176C. In answer to paragraph 176C, IAG:

a. refers to and repeats paragraph 156 above; and

b. otherwise denies the paragraph.

177. IAG denies paragraph 177.

178. IAG denies paragraph 178.

179. IAG denies paragraph 179.

III. Reliance

180. IAG denies paragraph 180.

IV. Loss and damage

181. IAG denies paragraph 181 and says further that ~~says~~ if, which is denied, IAG has contravened any of s 674(2) or s 1041H of the *Corporations Act*, s 12DA of the *ASIC Act* or s 18 of the ACL, the matters pleaded by the Applicant in paragraphs 174 to 181 of the ASOC would not, even if established, constitute any causal nexus sufficient to support a claim for

compensation pursuant to any of s 1317HA or s 1041I of the *Corporations Act*, s 12GF of the *ASIC Act* or s 236 of the *ACL* (respectively) in respect of such contraventions.

W Harris

K Loxley

J Entwisle

Counsel for the Defendant

Amendments settled by D Batt, K Loxley and C Mintz



Dated: ~~18 October 2022~~ 20 August 2026

Allens
Solicitors for the Defendant