



Potential Rights of a Lessee under a Landlord's Property Insurance Policy

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APRIL 2021

A lessee who is not otherwise insured under an insurance policy with its own insurer may nevertheless be covered for loss or damage sustained to its **goods** within the landlord's premises if those premises are damaged by fire, storm or other risks to which the landlord's own insurance policy for the premises responds.

This protection is provided by section 48(1) of the [Insurance Contracts Act 1984](#) (Cth) ("**ICA**") which states:

"A third party beneficiary under a contract of general insurance has a right to recover from the insurer, in accordance with the contract, the amount of any loss suffered by the third party beneficiary even though the third party beneficiary is not a party to the contract"

Section 48 is to be read with section 11 of the ICA which states:

"(third party beneficiary) is a person who is not a party to the contract but is specified or referred to in the contract,

whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the contract extends"

Importantly however, the extent of protection in any particular factual situation depends on the actual wording of the insurance policy which the landlord has in place.

Not all insurance policies will contain the necessary wording and not all lessees will necessarily be able to receive the benefit which the ICA provides.

Is the Lessee covered?

Whether or not a lessee will be covered by the effect of section 48(1) will initially



be determined by the extent to which the landlord's insurance policy defines, either in the policy or in any separate endorsement to the policy, just who the insured entity is under the policy.

Many insurance policies will also contain provisions referring to 'Other Parties' and the extent to which their insurable interest in any property, which they own or have some legal interest in, is within the scope of the policy.

Recent Decision

These issues were the subject of a decision by Allsop J. in the Federal Court of Australia in [*MOS Beverages Pty Ltd v Insurance Australia Ltd trading as CGU Insurance \[2020\] FCA 1716*](#) delivered on 1 December 2020 although this decision is currently on appeal.

The decision canvases many of the previous cases dealing with section 48(1) of the ICA and is a very useful reference for its application in any given circumstance.

Key takeaway for Lessees and Landlords

The nature and extent of the business relationship between the landlord and the lessee and the extent of record keeping of the lessee's property and/or interest therein within the premises by the landlord will also affect the extent to which the policy responds to any given circumstance.

The lessee must have an identifiable and specific interest in the lost or damaged property to gain the benefit of the ICA.

This article is not intended to be an exhaustive analysis of any parties' rights and entitlements under sections 11 and 48 of the ICA but is intended to demonstrate that a lessee's interest in any property situated in leased premises which is not otherwise insured by the lessee, may not be lost in the event of loss or damage to the subject premises and/or the lessee's property alone, provided of course that the landlord has an insurance policy in force relating to the subject premises at the time of loss or damage.

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