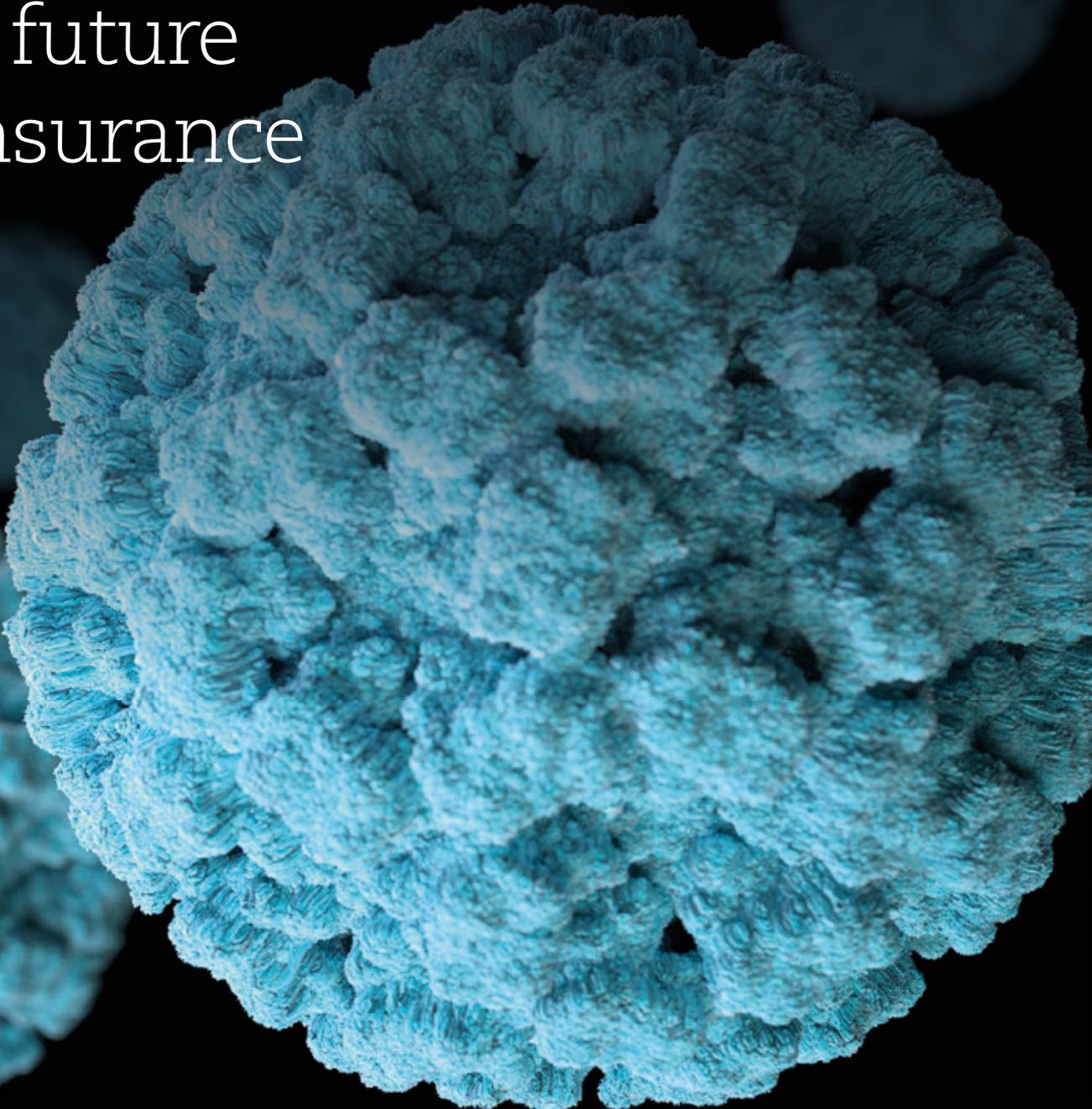




# The future of insurance

Australia

July 2020



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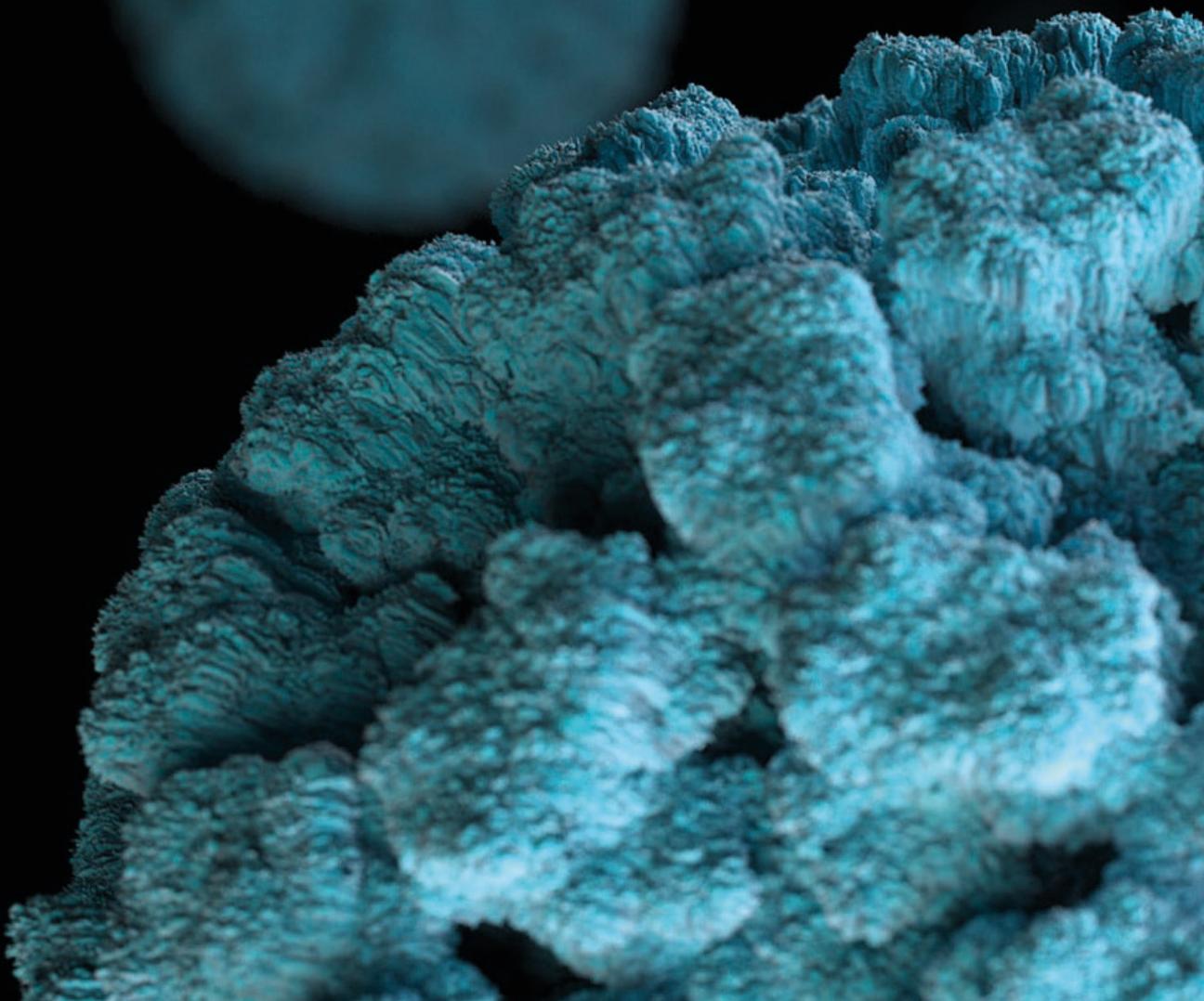
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## Introduction

Around the world, restrictions that were put in place to contain the spread of Coronavirus (COVID-19) have started to relax. For many businesses, including insurers, the focus has shifted from dealing with the immediate crisis to considering how to transform operations, risk management, customer demands and employee safety for the 'new normal'.

We have surveyed our most senior clients at local and international insurers and intermediaries to understand what implications lie ahead for the insurance industry.

The insurance industry is not immune to the challenges arising from COVID-19, including disruption to traditional methods of consumer engagement and revenue streams.

However, mass disruption brings opportunity - insurers planning for the recovery from COVID-19 should focus on building consumer confidence and consider exploring alternative or unconventional channels to engage with consumers in the post COVID-19 world. This will assist insurers in demonstrating value to consumers and may provide a competitive advantage during the recovery phase.

In Australia, the insurance sector was already under the regulatory microscope before the outbreak of COVID-19.

However, the widespread impact of COVID-19 has certainly tested the social contract between insurers and their customers, which gives regulators a different lens through which to scrutinise the sector.

In the current pandemic context, the value of insurance and the role played by insurers in society is being increasingly questioned by customers and regulators protecting customer interests, which may lead to unprecedented levels of regulatory intervention and supervision of the sector.

We are very grateful to our insurance industry colleagues who took the time to respond to our recent survey. Their willingness to share their valuable experience and insights provided the dataset on which the report is based. Although the report is based on that dataset, the views, any errors and all of the predictions contained in the report are ours alone.

**We very much welcome and encourage your comments and observations on the report. Please feel free to contact Dean or Avryl with your feedback.**



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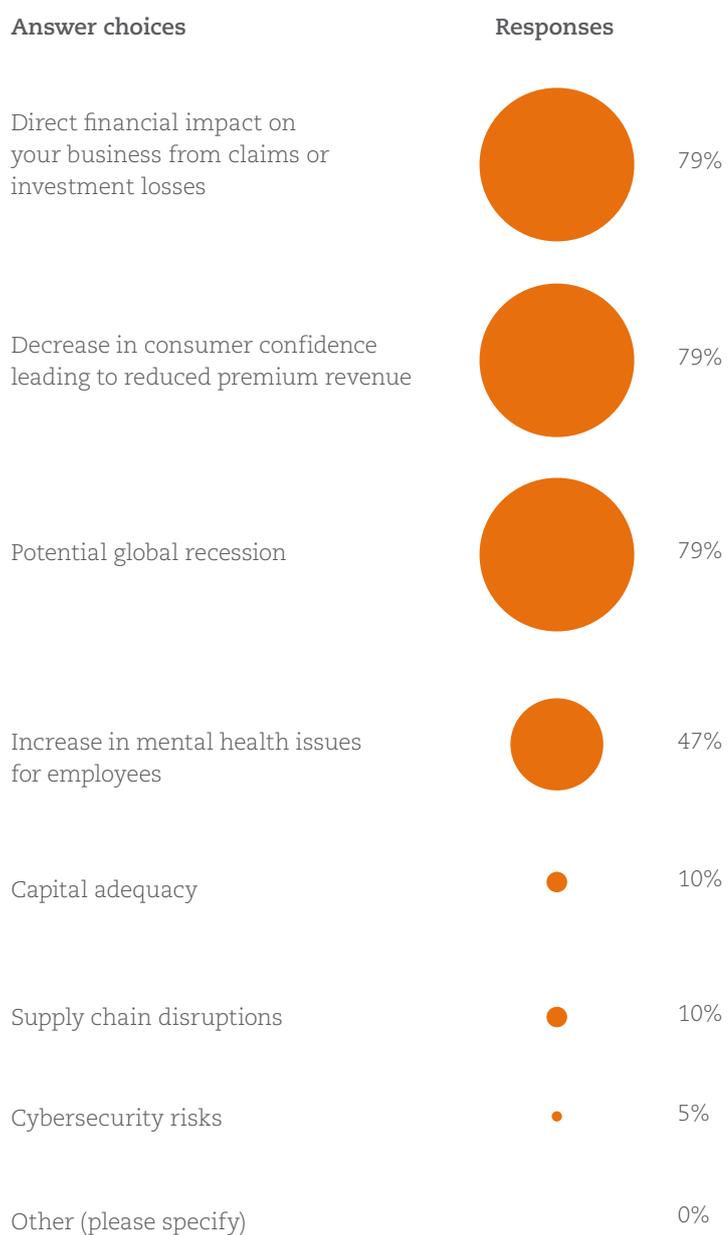
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## Impact on business

1. What are the top 3 concerns for your business arising from COVID-19? (choose 3)



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## Our insights:

The volatility in international share markets, economic uncertainty and potential global recession arising from COVID-19 are impacting directly on the insurance industry's investment income and claims performance. These issues are key concerns expressed by over 78% of insurance industry participants.

These concerns are compounded by increased prudential regulatory scrutiny from APRA with a focus on investment losses from the erratic share market and capital adequacy of insurers across the sector in light of unprecedented levels of claims. We expect that APRA will maintain a close watch over the industry during the recovery phase following the relaxation of COVID-19 restrictions, to ensure that the industry remains financially stable despite the volatility in other sectors of the economy.

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COVID-19 has driven profound change in almost every facet of society and business. The post COVID-19 environment undoubtedly poses significant challenges to the insurance sector – but also presents unprecedented opportunity for those who are sufficiently flexible and adaptable.

Dean Carrigan, Partner

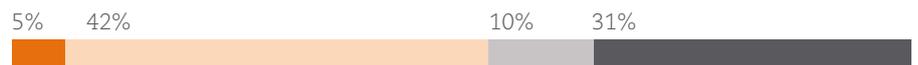
## 2. How worried is your business about the following impacts of COVID-19?

### Answer choices

#### Impact to business operations

Adequacy of risk management strategies, including business continuity plans

### Responses



#### Impact to customers

Ability of your customers to continue to purchase insurance



#### Impact on workforces

Need to stand down employees



#### Impact on employees

Keeping your workforce engaged and safe



#### Impact on continued operations

Ability to resume normal business as usual operations



## Our insights:

Over 52% of insurance industry participants expressed concern about the impact that COVID-19 is likely to have on their employees. This is understandable, as COVID-19 has created new risks to health and safety, or intensified previously existing risks, including the risks to mental health. Employees are simultaneously worrying about their job security and struggling with a prolonged period of social isolation. Previously established habits and routines for physical and mental well-being, such as going to the gym or social outings with friends, have also been disrupted. Obviously, employees are also highly concerned about the risk of themselves, or their loved ones, contracting COVID-19.

In addition, COVID-19 has created additional risks to physical health and safety. In particular, non-ergonomic set-ups which were cobbled together in the abrupt and unplanned move to working from home are relatively widespread and may result in physical injury. Of further concern is the potential for increased domestic violence.

Work related claims for compensation for injury and occupational violence may well result from the increased number of employees working from home.

Many of the above impacts on employees are exacerbated by the fact that many businesses did not plan for a sudden and major disruption to the physical working

environment. Across all industries, we expect that the engagement between employers and employees, and the design of the workplace, over the short term will be significantly affected. We are likely to see all office-based industries continue with work from home arrangements and a reversal of the hot desking/agile working trend. The longer that these arrangements remain in place and with further staff movements across business teams and employers, there will also be a struggle to maintain team cohesiveness and ensure adequate supervision is provided in the era of remote working.

The COVID-19 experience has also demonstrated that workforces can remain engaged and productive in a work from home context and many employees have easily and quickly adjusted to remote working.

Over the long term, and subject to the development and success of COVID-19 vaccine programs, we expect that office-based industries will see a greater demand for increased flexible working arrangements. Employers are likely to both permit and encourage employees to work from home on an ongoing, part time basis. For employers this may allow them to reduce office real estate expenses and the associated costs of maintaining those offices. These moves by the insurance sector will present additional regulatory challenges with a need to reconsider their processes to effectively supervise and monitor the conduct of their sales, underwriting and claims handling staff.

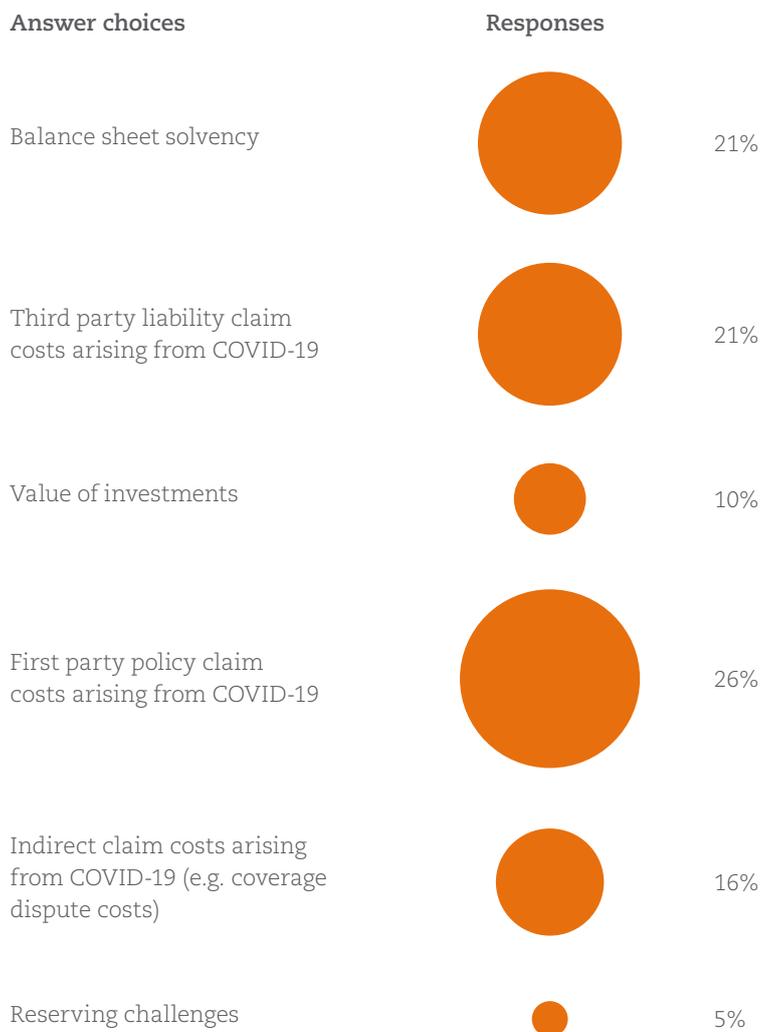
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Issues arising out of work, including lack of support and supervision, blurred boundaries between work and home life, and absence of rapport and interaction between colleagues, also create risks to employees' psychological health and safety.

Michael Tooma, Partner

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### 3. What will be the most critical financial issue facing your business in the next 12 months?



## Our insights:

With a number of unpredictable variables at play across all sectors of the economy, all businesses are likely to face continued difficulty in the preparation of their accounts. Listed entities will also face continued difficulty in preparing market forecasts of their projected earnings.

While the Australian Government has introduced temporary changes that restrict the ability for shareholders to bring claims against ASX listed companies, and their directors and officers in relation to their continuous disclosure obligations, these relief measures will only apply until 26 November 2020 (unless repealed earlier or extended). The Australian Government also introduced a range of other temporary relief measures under the Corporations Act 2001 (Cth) (Corporations Act) for companies which may be experiencing financial distress during the COVID-19 crisis. These measures include relief for directors of companies from their duty to prevent insolvent trading with respect to any debts incurred in the ordinary course of the company's

business. These relief measures under the Corporations Act will apply until 25 September 2020 (unless repealed earlier or extended). Should businesses continue to be impacted by global market uncertainties after these relief measures expire in late 2020, businesses are likely to be exposed to an increased risk of shareholder class actions driven by litigation funders and plaintiff firms looking to capitalise on COVID-19 by pursuing claims against companies (including their directors and officers) for failure to properly manage their businesses during the COVID-19 crisis.

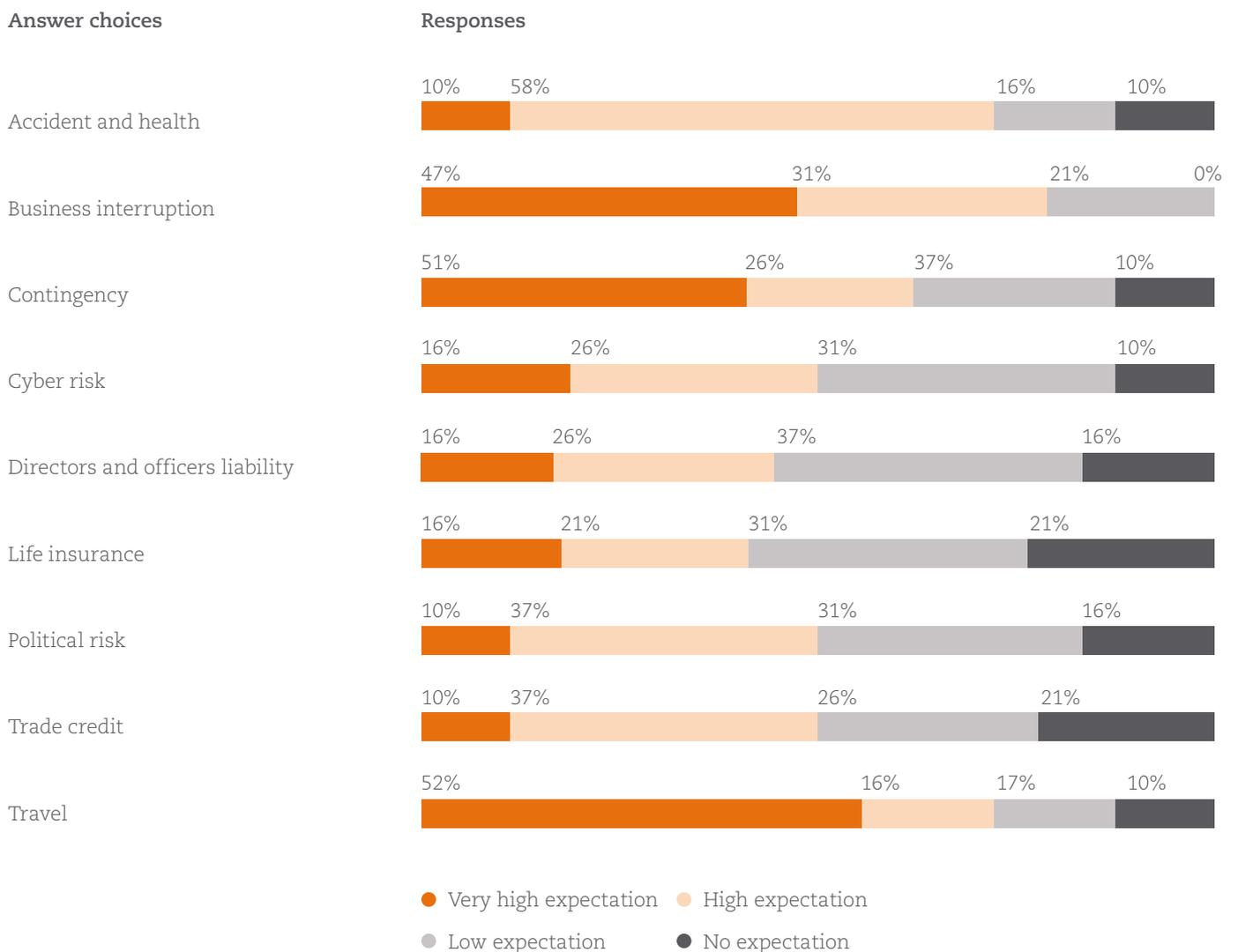
Until the strength of pandemic and infectious diseases exclusions are tested in Australian Courts, insurers will need to continue to pay close attention to their reserving and coverage positions on claims. The market is likely to see an increase in coverage disputes with insureds disputing declinatures on the basis of bullish legal and broker advice. A number of those claims are likely to involve complex technical legal issues on the interpretation of the wordings in exclusions and in the application of loss adjustment clauses.

“

Insurers will need to continue to pay close attention to their reserving on claims arising from COVID-19. The market is likely to see an increase in complex coverage disputes.

Avryl Lattin, Partner

#### 4. Do you expect there to be more legal and regulatory oversight of the insurance sector as a result of COVID-19?



## Our insights:

As part of their response to COVID-19, Australian regulators have provided the insurance industry with a brief reprieve from certain ongoing regulatory reform initiatives.

The timeframe for implementation of a number of the reforms arising from the Financial Services Royal Commission has been deferred for 6 months to enable the industry to focus on its response to, and recovery from, COVID-19.

However, despite this temporary reprieve, it is clear that Australian regulators are still closely monitoring the industry during this unprecedented period, by ramping up their intervention in regulatory matters associated with COVID-19. ASIC has written to both general and life insurers reiterating its expectations that insurers will handle insurance claims with utmost good faith and flexibility. AFCA has released specific travel insurance guidance outlining its expectations for insurers dealing with COVID-19 related requests for refunds and insurance claims.

Looking ahead, over 60% of insurers predict that despite the 6 month deferral of implementation timeframes for certain regulatory reforms, COVID-19 will ultimately result in an increase to the legal and regulatory oversight of the sector.

Such increased oversight of the industry could include enhanced protections for consumers as indicated by the House of Representatives Standing Committee on Economics recently during insurance sector hearings. For example, the introduction of standard pandemic and infectious diseases exclusion wordings and the regulation of travel insurance policy wordings. As the interpretation of pandemic and infectious diseases exclusions are considered by the Courts in the coming months, we could also see legislative intervention from governments regarding the payment of business interruption claims and availability of cover resulting from COVID-19. In the past, one way the Australian government has responded to crises in the industry is through the establishment of a reinsurance pool. For example, in light of the withdrawal of cover for terrorism after the September 11 terrorist attacks, the Australian Reinsurance Pool Corporation was established. At this stage there is no indication from the Australian government that it will introduce a similar pandemic reinsurance pool, but these types of issues may arise if the market hardens considerably for these types of events.

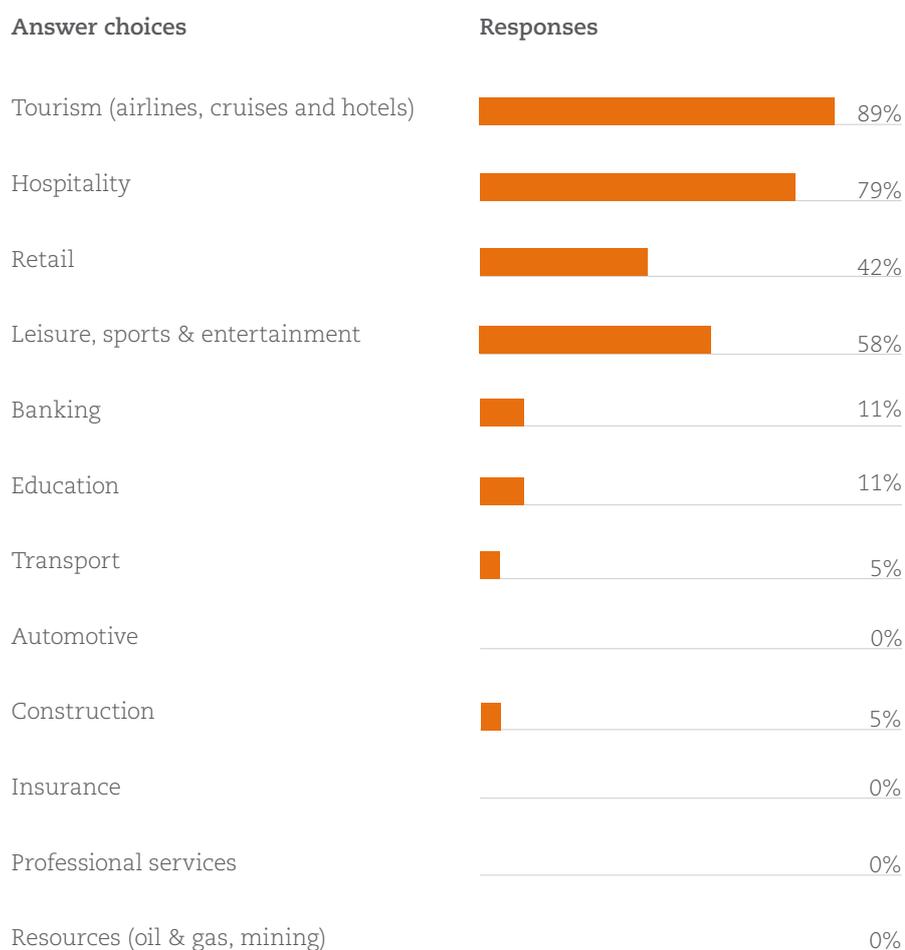
APRA is likely to continue to pay particular attention to the capital reserves of banks and insurers once the COVID-19 outbreak subsides. Prior to the emergence of COVID-19, APRA had introduced benchmark capital targets for banks well above the minimum prudential requirements. As the COVID-19 outbreak emerged, APRA removed this additional benchmark to allow the banks to draw upon these additional capital reserves while remaining well above the minimum requirements. Post COVID-19, APRA is likely to reapply the benchmarks for banks and could consider introducing similar prudential benchmarks for the insurance sector to ensure that insurers have access to significant capital buffers for when the next catastrophe event hits.

As the outbreak eases, ASIC has also signalled to the industry that it will increase its data and information collection efforts regarding the COVID-19 responses of insurers. Depending on the outcome of that exercise, we could see an increase in regulatory and prosecutorial action by ASIC to demonstrate to government and the public that it has no inhibition in implementing its post Financial Services Royal Commission mantra of 'why not litigate'.

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## Impact on customers

5. Which 3 sectors do you think will be most affected in the long term by COVID-19?



## Our insights:

Tourism has emerged as one of the sectors hardest hit by the COVID-19 outbreak in the short term and according to our survey, this is also likely to be the sector which is most affected in the long term. Globally the sector has experienced a drastic drop in demand and surging job losses as stay at home orders around the world, and the closure of borders across countries and states, have effectively prevented travel by consumers.

Once major restrictions on travel and tourism are lifted, we expect to see the tourism sector start its recovery. In Australia, domestic tourism will lead the recovery in advance of international tourism which some predict may take at least 5 years to recover. However, with consumers potentially completely changing their attitude to travel as a response to COVID-19, the tourism sector may face a long term drop in demand and increased expectations from consumers in relation to hygiene and social distancing. This is likely to impact revenues for the industry during and after the period of economic recovery.

Across other industries, a roll back of macroeconomic policy support measures by the Australian Government, such as the JobKeeper programme, could see a continued reduction in consumer demand, and

the impacts of increased job losses could lengthen the time it takes for the economy to recover. Job losses, which have already been especially high in the hospitality and entertainment industries, will likely continue to rise sharply in these industries and in the retail industry which is experiencing a drastic shift from bricks and mortar stores to online shopping in the wake of the COVID-19 lockdown orders. As the restrictions lift on the operation of public venues, such as hotels, bars, clubs and restaurants, we expect that there will be a rise in public liability claims, which were dampened during the height of the COVID-19 crisis. Similarly, motor vehicle claims, which reduced significantly with substantially fewer persons on the road during the period of the crisis, will likely increase as people return to their daily commutes and attending outside locations. While many commuters may choose to drive rather than catch public transport, if we see an increase in work from home and flexible work arrangements in offices, motor vehicle claims may never return to the pre COVID-19 peak.

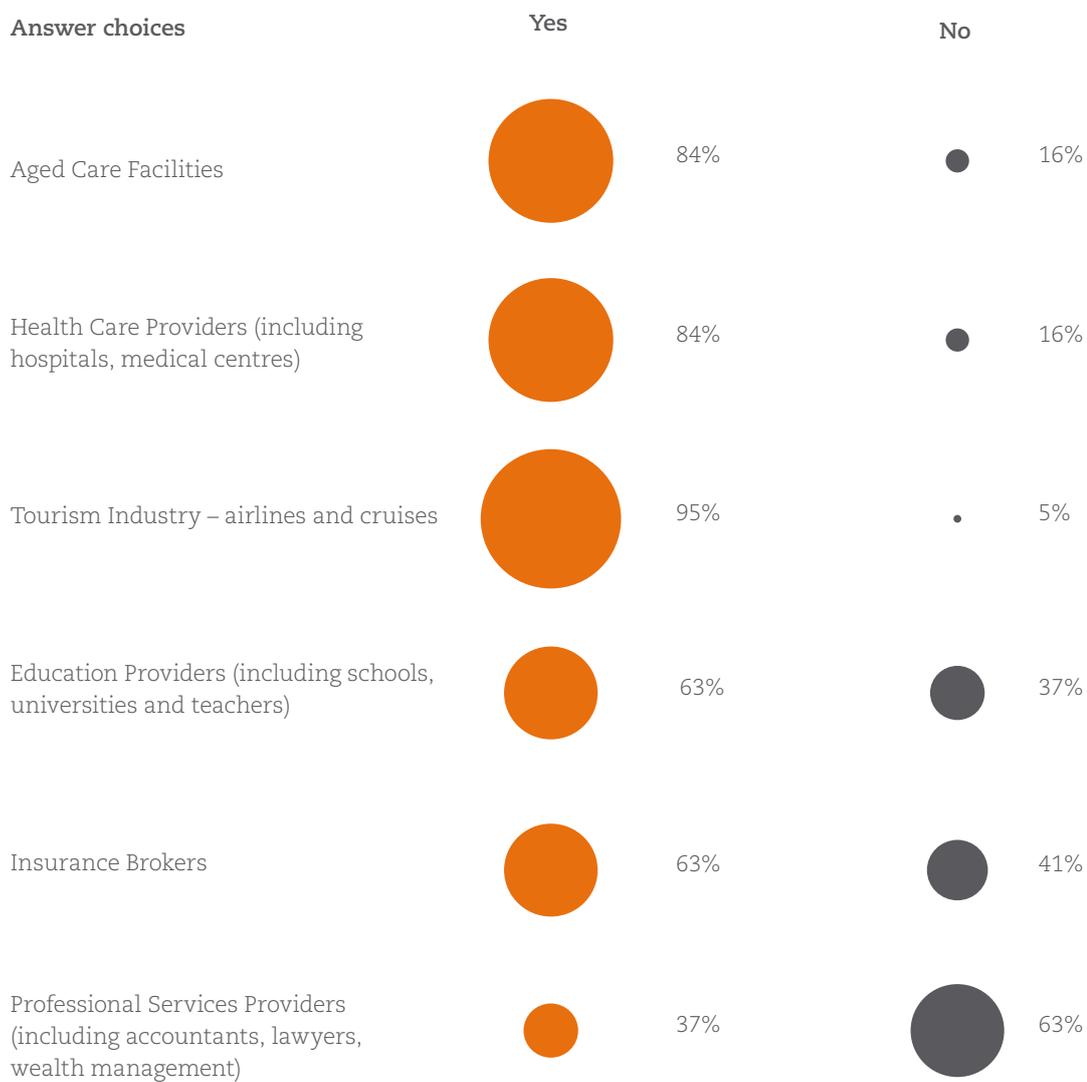
Businesses operating in the most challenged industry sectors including tourism, hospitality and aged care will expect insurers to develop and adopt novel approaches when providing products and services to meet the new risk exposures that they face.

“

A slow recovery period will also impact the value chain of the tourism industry, with significant impacts on SMEs and labour that participate in the industry.

Johann Spies, Special Counsel

6. Do you think that COVID-19 will increase the 'duty of care' owed by operators in the following sectors?



## Our insights:

Globally, as many as half of all coronavirus deaths in Europe are residents of aged care facilities, the World Health Organization (WHO) says. Dr Hans Kluge, WHO's regional director for Europe, described the number of aged care deaths as a "deeply concerning picture".

Residents of aged care facilities are at increased risk of COVID-19 due to the environment of communal living facilities. The residents, along with the general elderly population, and persons who are immunocompromised, are also more vulnerable to serious complications if they do become infected due to their age and comorbidities.

Aged care facilities, along with pubs, clubs, restaurants and entertainment venues, owe a duty of care to ensure that residents, staff and visitors are not exposed to harm whilst at the premises. In the heightened litigation space associated with COVID-19, it is likely that steps taken by the operators of these facilities and venues, will be more heavily scrutinised as to the steps taken to ensure the safety of patients, staff, visitors and patrons.

Accordingly, operators need to ensure that all reasonable infection management protocols directed by the Government, and the relevant Public Health Authorities, are followed. In respect of aged care facilities and hospitals, these protocols are focused around patient care and visitor allowances. While at dining and entertainment venues, operators need to consider rules around social distancing, amenities and food/ beverage consumption.

As restrictions lift for access to facilities and venues, operators need to remain vigilant in enforcing social distancing, use of personal protective equipment and infectious disease management protocols, where appropriate. In aged care facilities and hospitals, this is particularly relevant to visitors, staff and treatment providers who may be asymptomatic to COVID-19 and therefore are capable of transmitting the virus unknowingly to susceptible patients

Should a claim be brought against an operator of one of these facilities, a claimant would need show that the operator breached its duty of care and this breach was causally related to a person suffering harm associated with COVID-19.

“

Due to the highly contagious nature of COVID-19, any organisation that facilitates large gatherings, including schools, aged care facilities, or hospitals is likely to be the focus of increased scrutiny regarding the duty of care they owe to employees, residents, patients, students, and visitors.

Lucinda Lyons, Partner

Individual claims may be brought by patients and/or their family members for compensation in respect of bodily injury pursuant to the Civil Liability Act 2002 or Compensation to Relatives Act 1897 in New South Wales (NSW), and equivalent legislation in the other States and Territories, arising out of the provision of/or failure to provide adequate medical, health care related and aged care related services at aged care facilities and hospitals. Patrons and/or their family members may bring similar claims against operators for a failure to ensure reasonable infection management protocols are followed and enforced at various accommodation, entertainment and dining venues.

In respect of claims from workers across the various facilities, based on the available health data, it is unlikely that a large number of workers who contract COVID-19 will become sick enough to commence a proceeding for damages. Where this is the case, however, in accordance with the Workers Compensation Act 1987 in NSW, and equivalent State and Territory legislation, it will be necessary to prove the employer breached its duty of care at common law or under statute to the worker. A breach will only occur if an employer failed to take reasonable steps to prevent the reasonably foreseeable risk of contracting COVID-19.

As this is a test of reasonableness, the employee will need to prove that they were forced to work in an unsafe environment where the risk of infection increased, i.e. lack of social distancing, or hygiene measures. Accordingly, employers need to ask whether their safety measures are reasonable with consideration given to public health orders issued by various governments.

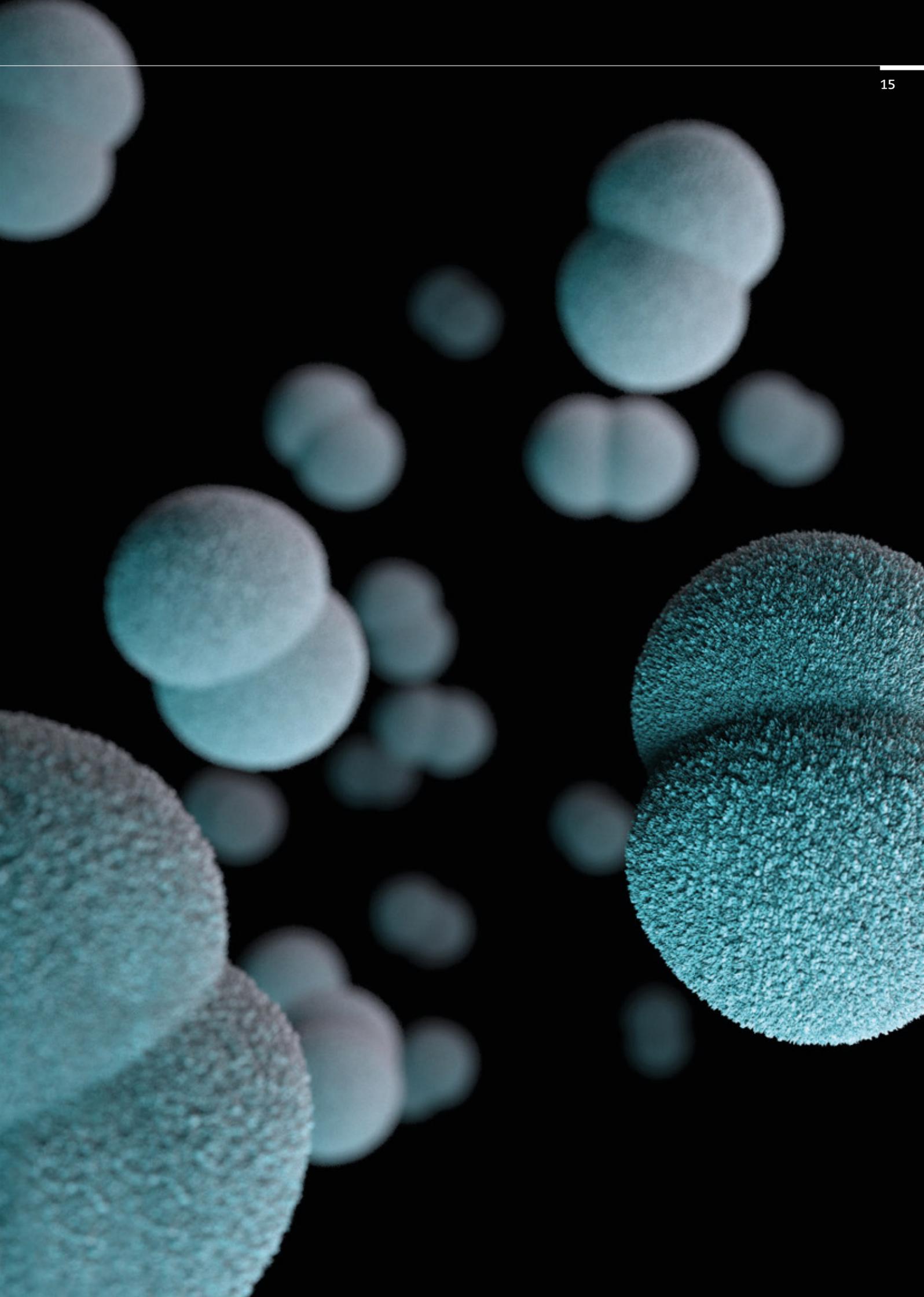
Finally, with a significant number of COVID-19 positive cases arising from clusters at various aged care facilities, hotels and manufacturing plants, there is also a risk of plaintiff firms exploring mass tort class actions against various operators of these facilities. With the appetite for class actions in Australia growing, particularly in respect to COVID-19, insurers need to be mindful of future claims risks.

Depending on the nature of the claim against the operator, Workers Compensation, General Liability, Medical Malpractice and/or Professional Indemnity policies may respond.

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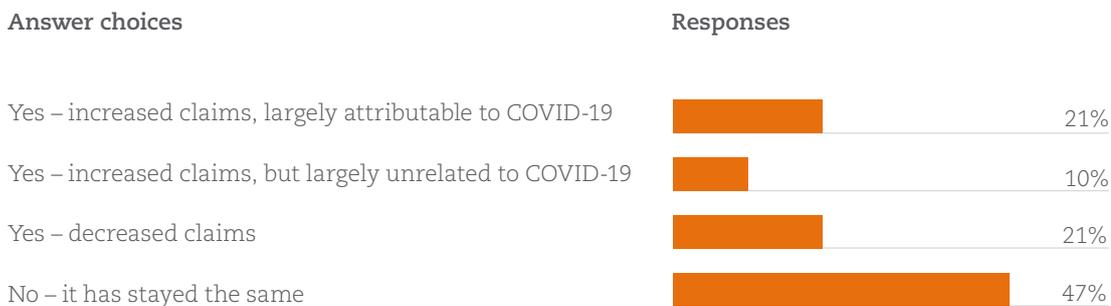
Since COVID-19 there has been an increase in employer liability claims, as businesses struggle to balance the retention of the workforce with the significant reductions in demand across many industries.

David Amentas, Partner



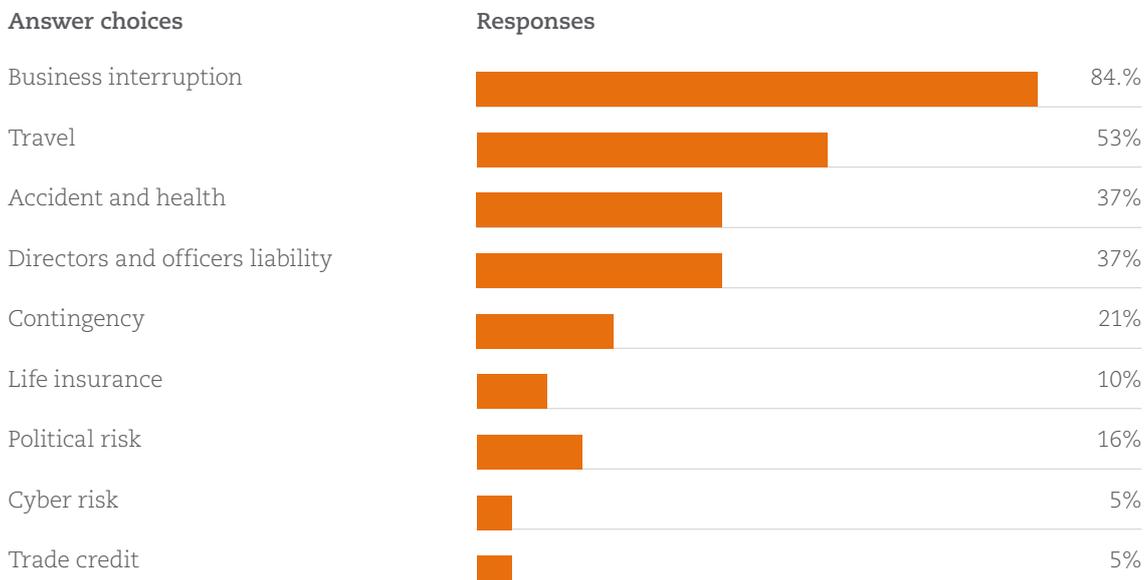
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## 7. Has the volume of claims received changed since 1 April 2020



If Yes, in what lines of insurance have you seen increased claims?

## 8. In what lines of insurance do you expect to see the most significant increase in claims (by value) arising from COVID-19? (choose up to 3)



## Our insights:

Unsurprisingly, the first wave of COVID-19-related claims that the insurance industry has faced largely arise from Travel Insurance, Landlord Insurance and Business Interruption Policies.

As the ripple effects of the COVID-19 pandemic are felt throughout the economy and Government protection measures come to an end, we can expect to see a second wave of COVID-19 related claims in other lines of insurance including Trade Credit and Life Insurance due to businesses and consumers seeking alternative avenues to recover their financial losses during the economic downturn.

The capacity of state based tenancy tribunals to deal with deferred tenancy disputes and evictions associated with COVID-19 will be tested as issues which were deferred during the eviction moratoria period are finally required to be determined. Insurers offering Landlords Insurance policies may see a sharp increase in claims as eviction moratoria across Australian states and territories are lifted and the rate of evictions surges across the country as a result of the impact of COVID-19.

The second wave of claims may also bring to light other industry-wide issues that have lain dormant in those lines of insurance. In particular, prior to the outbreak of COVID-19, the life insurance sector was already under strain from the exposure to the cost of mental health claims which had not always been properly factored into premiums. There will inevitably be indirect mental health impacts arising from COVID-19, in terms of increased anxiety arising from isolation and the disruptive effects of the pandemic on society. We expect this trend to exacerbate the underlying pressures in the life insurance sector in relation to mental health claims in disability policies.

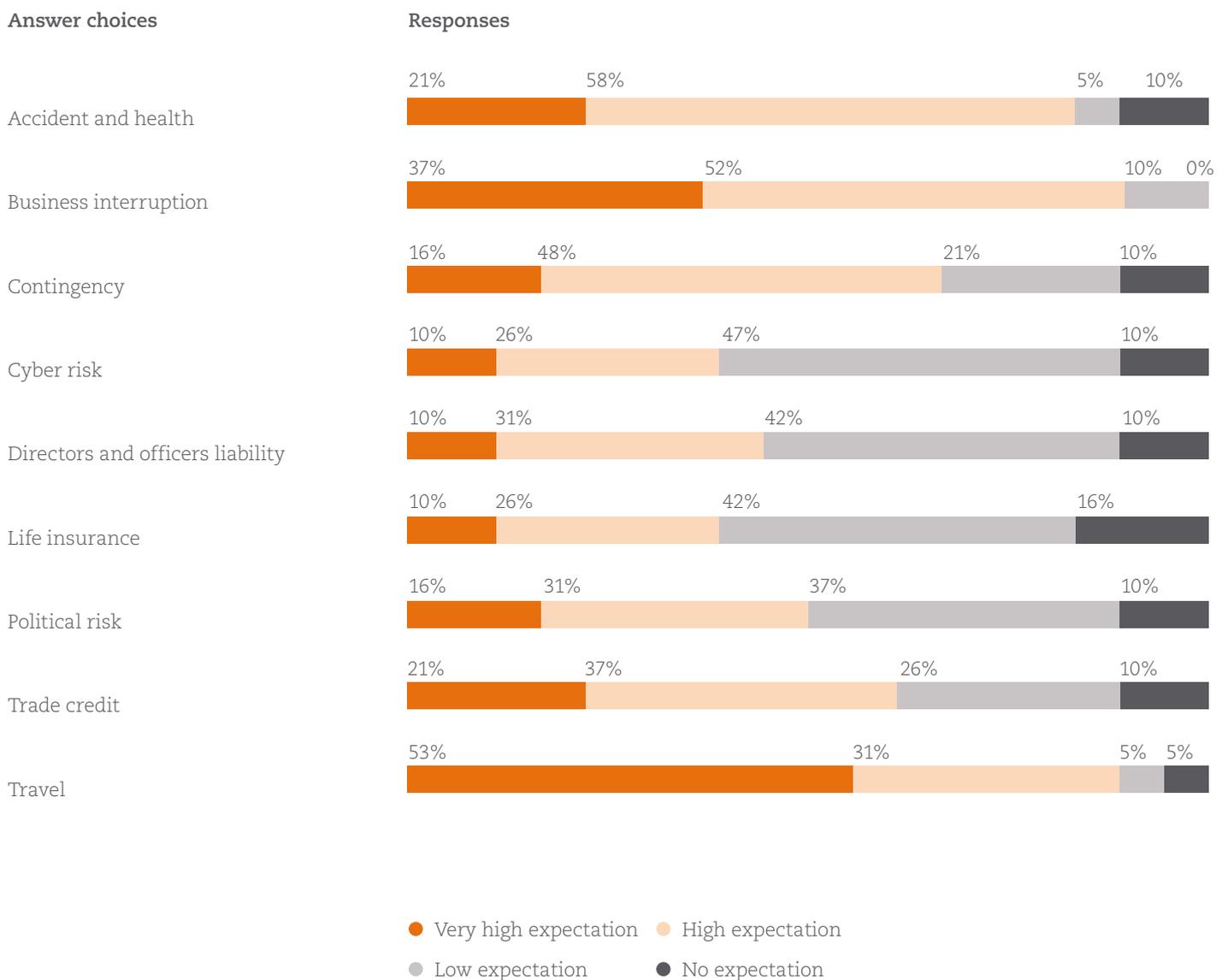
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This first wave of claims has shone a light on emerging industry-wide issues such as the operation of infectious diseases exclusions and pandemic exclusions in these unprecedented circumstances.

Yvonne Lam, Senior Associate

## Impact on products

9. To what degree do you expect there to be changes in existing insurance products as a result of COVID-19?



## Our insights:

Pandemic and infectious diseases exclusions in a number of lines of insurance (particularly Business Interruption Policies, Travel Insurance and Life Insurance) have been the subject of renewed focus as a result of COVID-19, with insurers and reinsurers putting the wording of these exclusions under the microscope in assessing COVID-19 related claims.

There is a wide range of wordings used in the Australian market for pandemic and infectious diseases exclusions, which is producing a variety of different outcomes for claimants in the complex and unprecedented factual matrix of the COVID-19 pandemic.

It is expected that in light of the coverage issues emerging, insurers will take the opportunity to carefully review and tighten their wordings of any existing pandemic and infectious diseases exclusions to reduce their exposures to the direct and indirect effects of COVID-19, and other similar pandemics, going forward.

There will also be pressure on insurers to include pandemic and infectious diseases exclusions in a larger range of insurance policies which did not conventionally contain such exclusions, to mitigate future exposure to COVID-19 and any other potential future pandemics or outbreaks of infectious diseases.

## Health

COVID-19 will unequivocally have a number of long-term effects on accident and health cover. We have seen this before in the aftermath of the SARS epidemic, which resulted in a temporary spike in critical illness policy sales in Asia.

However, COVID-19 is a pandemic and as a result, there will be an increased pressure on health services due to the number of patients worldwide. Also, the manner in which health services are provided has changed very quickly. We have seen a rise in telehealth services, offering consultancy to patients via phone or video services.

At this point in time and in view of “second spikes”, it is very difficult to predict the necessary diagnostic and treatment requirements as well as the eventual mortality rates. Accordingly, the costs for the health insurance industry are also difficult to predict.

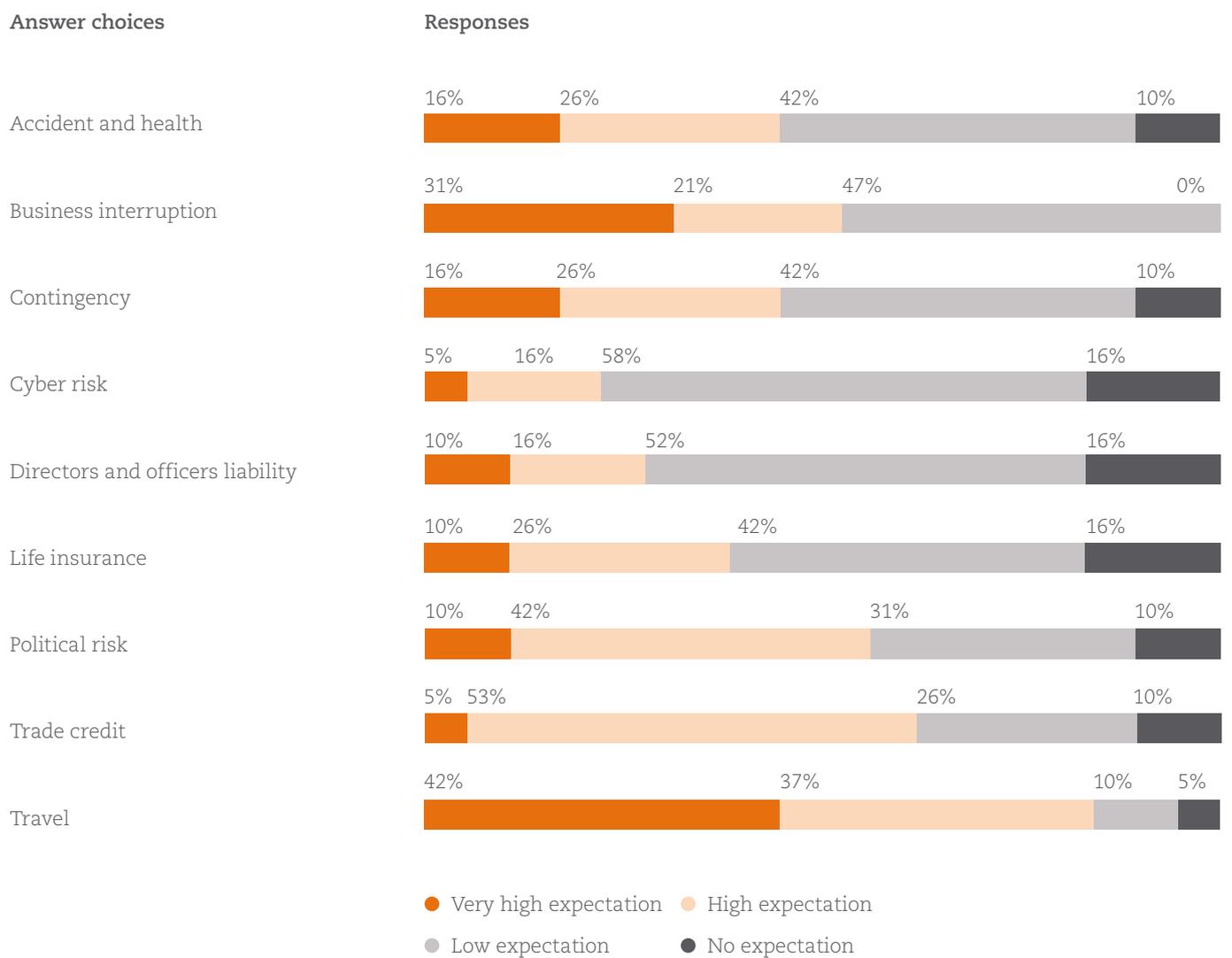
The emergence of quick and effective diagnostics, such as telehealth services, particularly for rural communities and also for those who may not have private cover, may assist in alleviating stressors upon the public health sector in the long term. At the same time, risks associated with medical malpractice may rise through the use of health technology.

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A real challenge is the speedy testing and detection of the virus, especially for those persons within a vulnerable class such as the elderly and those with co-morbidities.

Michelle Dunne, Partner

10. To what degree do you expect there to be **new** insurance products as a result of COVID-19?



Our survey suggests that the post COVID-19 recovery, will not necessarily give rise to a surge of new products. Instead the focus will be on reviewing existing products and mitigating exposure, particularly unforeseen exposures arising from pandemics.

However, the widespread disruption to the industry and society resulting from COVID-19 lockdown orders, provides prime opportunities for insurers to recalibrate their operations, service delivery models and responsiveness to customer demands in the new normal. The rise of work-from-home arrangements for a majority of the industry's workforce will also drive the industry to find solutions to the challenge of transitioning from legacy systems that are not suitable for flexible working arrangements outside of the office.

While some insurers and intermediaries had started investing in technology solutions prior to the outbreak of COVID-19, the new environment will accelerate such investments as the insurance industry considers alternative methods to stay engaged with their customers amid falling consumer confidence levels. Insurers will also need to consider digital methods to deliver their services to customers in a streamlined way and from a remote location.

Across the market, insurers and intermediaries are looking at how to become more relevant to their customers, which includes consideration of integration of insurtech into their operations. Business customers all over the world, not just in Australia, are more aware of their risks than ever before and will demand solutions to help them better manage those risks, including those which take advantage of currently available technologies such as automation and artificial intelligence. Insurers and intermediaries need to position themselves as partners to help businesses prevent losses and support them through challenges.

Key to supporting clients and their demand for innovative products will be the ability of insurers and intermediaries to:

- Provide pragmatic and efficient solutions;
- Adopt a digital and technology strategy;
- Apply innovation in products and distribution.



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# 440

Partners

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# 1,800

Lawyers

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# 4,000

Total staff

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# 50+

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