



COMMONWEALTH OF AUSTRALIA

## Official Committee Hansard

# HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON SOCIAL POLICY AND LEGAL  
AFFAIRS

**Operation of the insurance industry during disaster events**

WEDNESDAY, 26 OCTOBER 2011

BRIDGEWATER

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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**HOUSE OF REPRESENTATIVES**  
**STANDING COMMITTEE ON SOCIAL POLICY AND LEGAL AFFAIRS**  
**Wednesday, 26 October 2011**

**Members in attendance:** Mr Perrett, Ms Smyth and Dr Stone

**Terms of reference for the inquiry:**

To inquire into and report on:

To inquire and report on the insurance industry's response to the 2010/2011 extreme weather events around Australia, specifically examining:

- The claims processing arrangements:
  - a. Information - Whether consumers were given accurate and useful information by insurers about their right to make a claim,  
If they made a claim, the progress of that claim and their right to external dispute resolution.
  - b. Timeframes - The time taken to process claims by the insurance industry and whether these timeframes were reasonable (by event and region).
  - c. External parties - The engagement of third party experts and external consultants by the industry, including hydrologists and law firms, and the impact of these external parties on claims processing.
  - d. Internal Dispute Resolution - Whether industry IDR processes were effective and undertaken in a timely manner.
  - e. Code of Practice - The effectiveness of the insurance industry's Code of Practice.
- The conduct of external dispute resolution processes for claims arising from the 2010/2011 extreme weather events, including:
  - a. The effectiveness of dispute resolution within the Financial Ombudsman Service.
  - b. Barriers to participation in external dispute resolution for consumers.
  - c. The impact of free legal advice on people's access to external dispute resolution (including assistance provided by Legal Aid services and community legal centres).
- Any other matters impacting on insurance claims processing arising from the 2010/2011 extreme weather events.

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**HINNEBERG, Mr Brian, Flood Recovery Officer, Loddon Shire Council**

**HUTTON, Ms Emma, Flood Recovery Officer, Central Goldfields Shire Council**

**McLINDEN, Mr John, Chief Executive Officer, Loddon Shire Council**

**Committee met at 11:49**

**CHAIR (Mr Perrett):** I declare open this public hearing of the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the operation of the insurance industry during disaster events. I would like to acknowledge the traditional custodians of this land and pay our respects to the elders of the past, present and future. The committee also acknowledges the present Aboriginal and Torres Strait Islander people who now reside in this area and thanks them for their continuing stewardship.

I stress, for the sake of the public and the media, that the committee cannot investigate or make rulings on specific insurance cases. However, our aim is to learn as much as we can about what happened here with respect to insurance coverage and claims so that we can make recommendations to the government so that the path may be easier for people in the future. Please note that these meetings are formal proceedings of parliament. Everything said should be factual and honest. It can be considered a serious matter to attempt to mislead the committee. As this is being recorded, I request that, as far as is possible, you not refer to particular individuals by name today. We are here to have a look at all the relevant issues, not to conduct a witch-hunt or anything like that. Would any of you like to make a brief introductory statement before we move to questions?

**Mr McLinden:** I would. My comments will be brief—five or 10 minutes. I would like to paint a picture and give an overview of the community in Loddon Shire in respect of dealing with the insurance industry subsequent to the floods that ravaged the Loddon Valley in January 2011. Firstly, we thank the committee for the opportunity to make this presentation. We think that the work that this committee is doing has the potential to make a real difference to the future of our community and Australia's dealings with the insurance industry. We would like to bring to this committee the levels of angst and disappointment that the residents and ratepayers of Loddon have had with the insurance industry and the view that the circumstances are quite unacceptable. In particular, the time frames for claims-processing arrangements were completely unacceptable. We have had reports from many in our community of their angst and disappointment. By event and by region, things were quite unreasonable. We will talk about the engagement of third-party experts and external consultants, including hydrologists and law firms, by the insurance industry and the impact that this has had on individuals' ability to manage their claim. We will also make some comment on the insurance industry's code of practice and its effectiveness. For the committee, we do have a detailed submission that we will hand up, either today or at some appropriate time.

I will give a quick background of the experience of this community. On 13 January 2011, there were significant rains. Floods travelled down the Loddon Valley, first hitting, from our point of view, Newbridge. We understand that Central Goldfields, who are upstream from us, also suffered, and they will speak to that in due course. The next impact was on the township of Bridgewater. Those impacts were quite rapid, and there was little warning of the floods. Then the valley flattens out and the floods progressed further north and spread far and wide. Communities past Serpentine, which is approximately 21 kilometres north of here, did have some time to make preparations and understood the flood was coming. But people in this region—in this township and south of here—were caught quite unprepared.

The largest flood in living memory, this was a truly catastrophic event, although no-one in Loddon Shire and, to my knowledge, no-one in northern Victoria lost their life or was seriously injured as a direct result of the floods. For that, we can be thankful but, from an economic and personal hardship perspective, the impact of this flood was certainly significant.

We found in our community that there was a lack of insurance assessors available in a quick time frame to assess claims. We found that different types of evidence were accepted by different insurance companies and there was not a clarity there. In Loddon Shire there was a large area affected by these floods. There was not a strong concentration of people. That largely describes our municipality. We have 8,000 people spread over 6,700 kilometres, with no large single town. In fact, our biggest town is about 800 people. Although we are on the edge of Bendigo and not far from Melbourne, we have 1.2 people to the square kilometre. We think that that had some impact in terms of the lack of interest that insurance companies showed in this area.

We think that there should be a common assessment form operated by all insurance companies. We think that there ought to be a common agreed independent panel of assessors for all insurance companies to use. We think

that the committee ought to look at some of the defensive strategies that insurance companies take to fight the need for payouts. Certainly the industry does not see that it is there to help people in times of distress, and that is understandable in some ways. They are a business. Yet the community pay insurance premiums in the expectation that they will be helped in times of need. There is a disconnect there. Insurance companies, of course, are protecting themselves and their shareholders financially. There needs to be some balance. We did not see that balance in the experience of our community. We think that the code of practice for the insurance companies needs a good shake-up. In our submission, we have made some specific recommendations around that.

In conversations I have had with Mr Hinneberg, we have mulled over what the problem is here, where the disconnect is. I will use the example of health insurance. I think most people understand what they buy when they buy health insurance. I think that is because they expect that they will call upon it reasonably regularly, particularly if it is not just hospital cover but something beyond that, with extras and the like. So out in the community there is a pretty good understanding of the products that different companies offer. With house insurance, people buy it in the expectation that they will never need it, so they pay little attention to the products that they are buying. Flood, storm and tempest is quite a complex area, but the average consumer does not bother to acquaint themselves with what they are purchasing. We think that there is a role for government in clarifying this and having a standard suite of offerings that insurance companies provide. Whether this committee can advance that I am not sure. Whether you do it through standardised terminology or through regulation actually requiring standardised products to be delivered so that people do understand what it is that they are buying, I think it would be of great assistance. It would help all of Australia.

**Mr Belcher:** Our submission was very similar to Loddon's. To expand upon ours would only be repeating what Mr McLinden has already stated. However, our experiences were slightly different, even though we are neighbouring shires, particularly in the time we had to prepare. I know that some places in Loddon did have time and some did not. In our case, we were the first region to be affected by the floods. We had very little notification of them. Carisbrook was inundated with water within a matter of hours. Unlike the shires and the towns to the north and the north-west of us, we had no warning whatsoever, so we had no time to prepare for that.

As the week wore on, I think we were somewhat disadvantaged by the fact that the media focused on those towns that knew the floods were coming. The publicity seemed to go with those towns like Horsham and Mildura, where they knew that in three days they were going to be flooded. We had none of that. To some extent, we were left out in the cold a little bit in that regard. Whether our lack of publicity affected the willingness of insurance companies to come to the party I do not know. I certainly hope not. If they did think that way, I think they did so at their own peril and I think they have found out since that that was not the way to go. So that is one difference.

In terms of the area of our flooding, unlike Loddon our flooding was mainly confined to three major areas, being Carisbrook and surrounds, Talbot and, to a lesser extent, Dunolly. Certainly Carisbrook was our focus, where we lost quite a significant number of homes. To go any further than that would only be repeating what Mr McLinden has already stated. I think there are some subtle differences between the two shires, but overall, in terms of the performance of the insurance industry and the code of practice, I wholeheartedly support Mr McLinden's comments thus far.

**CHAIR:** Thank you very, Mr Belcher and Mr McLinden. Are you suggesting that the follow-up in terms of hydrologists and third parties seemed to flow with media coverage? I am being a bit provocative there.

**Mr Belcher:** I am not suggesting that. I am saying that it was certainly a possibility. We thought that that lack of publicity may have impacted on the willingness of some insurance companies to take steps.

**CHAIR:** Is that your perception from where you stand or is that your perception from talking to the other groups?

**Mr Belcher:** It is a bit of both. It is our perception and it is certainly the perception of some of the residents in Carisbrook too. They felt just through the media coverage that Carisbrook was to some extent the first one to get hit, there was no warning, and there was no pre-publicity. It came and went that quickly that it was all over in a short while.

**CHAIR:** The squeaky wheel gets the oil.

**Dr STONE:** One of our problems was that, at the time, we had the horrific Queensland set of events as well. A lot of insurance companies very rapidly sent their assessors, their hydrologists, everyone, to Queensland. We were being told, 'You haven't lost any lives,' which was obviously very fortunate for us in Victoria. But the focus was all on the disasters in Queensland. The personnel from the insurance companies were focusing on Queensland.

**CHAIR:** Let's just get the dates right. I think we had Emerald, Bundaberg, Rockhampton, St George, Roma, Dalby before Brisbane, and your date was the thirteenth, which was the day Brisbane was hit.

**Mr Belcher:** Ours was the Friday. I am not too sure of the exact date; the thirteenth or fourteenth.

**CHAIR:** I think Toowoomba was the Sunday and Brisbane was the Tuesday.

**Dr STONE:** In relation to the scale of the events the media kept portraying Queensland as so significant, and clearly that number of deaths was catastrophic, but it meant that we did not have the same attention from the defence forces. The Army was up there. We did eventually get some Army help here and when it did come it was great but it was late coming. Without the Army we could not have evacuated the oldies from the nursing homes and so on at Rochester. I think that was part of the problem because, in a sense, we were competing for insurance company attention when the big, national disaster seemed to be further north.

**CHAIR:** Could I put it to the panel that, if the density was 1.2 people per square kilometre, would the attention given to you by the support people have been appropriate with the population? Could you comment on that?

**Mr McLinden:** Can I go back to your previous comment. I differ a little from my colleagues on the view. We believe that the insurance companies used their legal advice and their hydrologists as a defensive strategy to minimise payouts. Loddon is a little different to Central Goldfields. We did get some media coverage, particularly the township of Bridgewater. This is in our view a purely commercial process that the insurance companies are trying to minimise payouts—as is their right to do so—but it is not an equal fight. The ability of individuals who have lost their homes and have had to find temporary accommodation are in a fairly stressed situation. They do not have the capacity to fight the insurance companies who bring in the big guns to defend their positions.

**CHAIR:** Just to get a bit of the local flavour, looking at the wall there, there is a paint mark. How much water would have come through here?

**Mr McLinden:** It would not have got to here. The flooding got to the edge of this property. The tennis courts outside did not go under. There is a fall from this point down to the river, and there was water all the way from this site to the river. The hotel, which is on the riverbank, had water halfway up the front doors and the post office had it nearly to the top of the counter. If you are travelling through town I could give you a bit of a picture.

**CHAIR:** Thank you, Mr McLinden.

**Dr STONE:** Can I add on there, too. Our complication is that this was the biggest flood on record. We had a dam burst in 1909, Laanecoorie, which was in living memory the worst, and this one exceeded that. For a number of people, the water came from directions different from what they had expected. The insurance companies got very complicated when they talked about whether it was river flood or a storm event with water coming from other directions. So we had people arguing with their insurance hydrologists and assessors even about which direction the water was coming from. We are a very flat plain. The Loddon River rose and flooded but we also had water coming from the west, a little further over here. It was an overland flow, in fact—Pyramid Hill and whatever other areas. I should have brought photos for you. So the whole plain was under water. This, of course, was indisputably a Loddon River over-the-bank event but numbers of people had problems whereby their flood insurance was such that they just walked away. The insurers said, 'You got flood and you were covered for storm.'

**CHAIR:** Thank you, Dr Stone.

**Mr Belcher:** It was the case that Carisbrook was flooded, whereas water had never been there before in living memory. We certainly had the joining of two creeks, plus water from the south coming over. That caused a lot of angst with hydrologists and residents about flood versus storm. I do not know whether we are still convinced which one it was.

**Ms SMYTH:** Each of the shires has very heavily emphasised in their submissions the role of external parties. You have talked about hydrologists and lawyers and the way that they have been used. I would be interested in getting a sense from each of you as to how many people may still be dealing with lawyers as representatives of insurance companies. How many people have had interactions with them about their insurance claims versus those who have simply settled or dealt directly with insurers themselves. You have both talked about the lack of compassion and you have emphasised elderly residents and residents who might not have great literacy skills. I would also be interested in hearing about what the broad experience of people interacting with lawyers has been.

**McLinden:** Laura, I think Mr Hinneberg would have a better handle on that than I. Can I defer to him, please.

**Mr Hinneberg:** A finite number of people who are still dealing with their insurance companies is a little hard to determine. A lot of the insurance companies have previously said that they have settled with a high proportion of people, and some have gone through the ombudsman phase to deal with their issues. To say that they have

settled is, I think, maybe an insurance company term. It may not be to the satisfaction of the large proportion of the population that has been affected. There is one gentleman in this town who I tried to encourage to come today who has, reputedly, a claim of towards a quarter of a million dollars and has not got one cent from the insurance company.

**CHAIR:** Because of the definition of water?

**Mr Hinneberg:** He has been fighting every step of the way with the insurance company to get a payout. He has basically done all he can in chasing them.

**CHAIR:** Internal and external?

**Mr Hinneberg:** He has gone through the ombudsman and the internal process of insurance companies to have the situation rectified—and this is just one case. There are others who have taken the ex gratia payment because there was not going to be anything else. An insurance company called a modest ex gratia payment of a few thousand dollars a 'settlement' but the differential between the claim and the settlement is huge.

**Dr STONE:** Was the RACV involved in that?

**Mr Hinneberg:** I am not nominating anyone in particular.

**Dr STONE:** It was the RACV that did the ex gratia payments.

**CHAIR:** But an ex gratia payment is not admitting any legal liability. They are saying—

**Mr Hinneberg:** They are saying it is now settled. It may be settled to their satisfaction but not to the client's satisfaction.

**CHAIR:** Is that a common story that you have heard?

**Mr Hinneberg:** There are numerous cases of that.

**CHAIR:** If people are not comfortable about coming to an inquiry, because I know it is a bit confronting, there are some cards that you can take when you leave and people can them fill out. It is a survey that only takes five minutes or so. You might give them to those people to make sure that they have at least some say. They can do it anonymously if need be.

**Ms SMYTH:** Returning to the point that I was asking you about earlier: we have heard evidence in Queensland, for instance, from councils of certain insurers making arrangements to accommodate the particular demographics of a council area—different populations challenged by English and older populations. Were any steps taken by insurers here to respond to the needs of perhaps elderly residents? Were there particular arrangements put in place with council where they knew that there were certain people who would find it very difficult to deal with them?

**McLinden:** The quick answer: no. There are certainly no language issues in our municipality. English is the vastly dominant language. It was really the ability of private individuals who do not have a strong business or professional background to deal with the might of an insurance company who turn up with their lawyers or hydrologists.

**Ms SMYTH:** Do you have a high proportion of elderly residents? I presume that you would.

**McLinden:** And increasingly so.

**Ms SMYTH:** So nothing in particular in relation to elderly people was done?

**McLinden:** Not that I am aware of.

**Ms SMYTH:** And did council take any steps in relation to elderly residents in particular?

**McLinden:** Not in dealing with insurance companies.

**Mr Belcher:** Yes, you are right: not directly with the insurance companies. We took steps to deal with them as a council and with DHS as a demographic but not through insurance.

**CHAIR:** In your opening statements, you made comment about the third parties—the hydrologists and assessors. What is the local perception of their independence in terms of serving the interests of the person whose property they were assessing?

**McLinden:** If I measure the mood of our community, they are not seen as independent at all. They are wheeled out by the insurance companies as a defence strategy to minimise payouts.

**CHAIR:** So there is not a perception that they were making a fair and independent arms-length assessment?

**McLinden:** That, I think, is a fair statement.

**CHAIR:** Mr Belcher?

**Mr Belcher:** I think so. Certainly the perception of the community is that the hydrologists employed by the insurance companies were not at arm's length from the insurance company and were, as Mr McLinden said, defending the insurance company more so than the clients.

**CHAIR:** Going back to your earlier statements about them not arriving in a timely manner anyway—and obviously water comes and water goes—were they open-minded in making assessments about the water? Were they willing to take evidence from locals? As we have heard, this was the first time in 100 years that water behaved in a certain way in this area.

**Mr Belcher:** I am reluctant to comment on what interaction some of the residents had with the individual hydrologists. We employed our own hydrologist to get our own perception of what had happened and that hydrologist did not always agree with the hydrologists from the insurance companies.

**CHAIR:** This is a local hydrologist who understands local water and had a professional disagreement with the insurance companies?

**Mr Belcher:** Some of the hydrology reports seemed to be conflicting.

**CHAIR:** With your hydrologist, who is beholden to no-one.

**Mr Belcher:** Yes. Our reports were completely independent, and they were not always consistent with other reports. That is not casting aspersions upon any of the hydrologists. I am not too sure whether it is an exact science for that matter.

**CHAIR:** Could you comment on the professionalism? You have both made comments on the independence of the hydrologists who were there, but could you comment on their professional standing?

**Mr Belcher:** I can only comment on what I read in some of their reports and what I saw of some of the photographs that were taken and also the comments attached to those photographs. I questioned some of their comments as well as some of their photographs and when those photographs were taken. For example, I know that some photographs were taken after we had been in and moved things off the road. They have taken a photograph and said, 'This is what the water did to this bit of road.' And we said: 'Hang on minute. That stuff had already been shifted when the photograph was taken.'

**CHAIR:** That is one of the consequences of coming a long time after the event.

**Mr Belcher:** Yes, a long time after the event.

**CHAIR:** I assume your focus as a council is not on insurance claims; it is on getting the roads recovered as soon as possible.

**Mr Belcher:** Absolutely. I had a couple of nagging concerns about some of their assumptions, rightly or wrongly—I am not in a position to say either way.

**Mr McLinden:** We are not naming names, but a good example is a recreation reserve, not this one but in a municipality that suffered significant damage. The independent insurance assessor, in the initial assessment, determined that 51 per cent of the facility was salvageable. Of course, 50 per cent is the trigger for a write-off. Coincidence? We say not and we fought that very hard. We managed to get that overturned and the site has now been demolished. If you saw the photographs of it you would understand that none of it was salvageable. The entire pavilion, including above the ceiling, went underwater. The place was trashed. No reasonable person could say that any of this was salvageable, yet the first attempt was 51 per cent salvageable. That gives an example of some of our concerns about the independence and professionalism of the assessment industry.

**Dr STONE:** We lost over \$2 billion worth of livestock, fences, farm infrastructure—and fodder that these days is stacked in paddocks although it probably would have gone even faster if it had been stacked in sheds. Does anyone want to comment on how community economies in rural shires like Loddon and Central Goldfields might have more difficulty recovering when farms are even less likely to have flood cover, but lose so much value and take so long to recover? The amount of fodder from the previous season which was reasonable draped on fences pushed fences over, even those which might otherwise have withstood the floods.

**Mr Belcher:** I ask Ms Hutton to comment on that because she specialises in the rural sector.

**Dr STONE:** Good. In a nutshell, if you take the city of Brisbane you would expect the majority of people to be flood or storm insured. In a rural community, where the economy is dependent on farms, what is the proportion of insured likely to be? What was your experience of the problems rural communities had compared to those in the suburbs?

**Ms Hutton:** There is one family in particular that still have not received an insurance payout. They are a farming family insured with Wesfarmers and there is no likelihood of their getting a payout. There is another

family that I am aware of that received an ex gratia payment and also received assistance from the Rural Finance Corp. A lot of farms in Central Goldfields Shire, in particular, are already in debt having been in drought for 10 to 15 years and then the floods came along. They are basically still in the negative. If they have not been able to get their full insurance payout because of the flood, they are not going to pay for their fences. A lot of them have received internal fences but not boundary. I am also aware of two that have shut up shop because it was too hard to recover when they were not going to receive any money from insurance. They were not eligible for the rural finance grants because the income criteria, being in drought they have got a supplement—

**Dr STONE:** The equity was too eroded.

**Ms Hutton:** Yes, that is right. There are two in our shire who have completely folded and one family who are still fighting to get an insurance payout.

**Dr STONE:** So they did have storm coverage?

**Ms Hutton:** Yes, but it has been judged as flood damage or something like that.

**CHAIR:** We have heard evidence in other areas that the uncertainty was almost more damaging than the actual event. Please comment on the uncertainty of not knowing where your life is going to go.

**Dr STONE:** And whether or not you are going to be covered by insurance.

**CHAIR:** If you know, that might be heartbreaking but at least you know and you can readjust your life accordingly. But the uncertainty—

**Ms Hutton:** There is actually still a bit of uncertainty for the people who have received insurance payouts or money from somewhere else. They are looking at what they could possibly do to prevent it from happening again in the future. Are they going to take out the same insurance policy, because some of them did not receive a full payout? It might not have covered everything, such as crop loss. Their machinery might have been covered but nothing else. So there is still a lot of unease in the farming community.

**Dr STONE:** How much feedback did you get about the problems of waiting for assessors, the time it took for the insurance companies' assessment teams to come and the time it has taken since then for works to commence? We have discussed the hydrology reports. Do you have any comments to make about the assessors, who, ideally, needed to have been on the ground very quickly.

**Ms Hutton:** I started with the council in July and they were still chasing up assessors then. So that is six months waiting for assessors.

**Dr STONE:** This is in private homes as well as on farms?

**Ms Hutton:** Yes.

**Dr STONE:** Were some insurance companies in particular more difficult than others in terms of assessing?

**CHAIR:** And/or better?

**Ms Hutton:** Wesfarmers—

**CHAIR:** You do not have to name them. We are not saying you cannot name them—

**Dr STONE:** Feel free to, if you wish.

**Ms Hutton:** Some were better than others.

**CHAIR:** Consistently, names came out of insurance companies that did and did not look after people? Would that be true to say?

**Ms Hutton:** Yes.

**CHAIR:** Can you indicate what the differences were? For example, people did return calls, people did not return calls; people came out promptly or people did not come out promptly. Are there any comments you can make?

**Ms Hutton:** It was mainly about the assessors not coming out and the follow-up.

**Dr STONE:** You talked about the seven months time lag before the assessors came out. You found that was not unusual in your shire?

**Ms Hutton:** That is correct.

**Dr STONE:** Do you have any comments on the assessors?

**CHAIR:** How many hours away from Melbourne, are we?

**Ms Hutton:** Two hours.

**CHAIR:** So it is not exactly in Woop Woop.

**Dr STONE:** Chair, we were often told the assessors were all in Queensland.

**CHAIR:** As a Queenslander, that is a good thing of course.

**Dr STONE:** John is going to comment on the assessors from his perspective.

**Mr McLinden:** We found that assessors arrived quite early in urban areas. They arrived but they did not necessarily complete the process. The process seemed to take a long time. Whilst in many cases—not all—people were having visits from their assessors within a week of the flood, it then seemed to take a lot of to-ing and fro-ing in a number of cases to get a result. That issue about uncertainty and 'not knowing my future and my outcome' was perpetuated by that.

Another problem we had was difficulty in locating everyone who was in need. It was easy in our townships but not so easy in our rural areas. We suspect that, by now, a number of people out there have contacted their insurance company but may have been slow to realise that perhaps there was help there. It is difficult to hold the insurance companies accountable for the fact that individuals do need to start the process.

There is no doubt that there is a significant amount of underinsurance in the rural sector. That has hurt our farming community significantly. Nearly 2,000 kilometres of fencing was lost in the Loddon shire. That is equivalent to the distance from here to Perth. Most people have got their boundary fences re-established, many of them with their own resources or with the aid of volunteer organisations, which have been fantastic. There are only a limited number of insurance providers for farm insurance. I think each of those insurers, from my experience, have been very clear on what their products are, unlike the residential and domestic market. Generally, those insurances are provided through stock and station agent companies and large rural produce providers. So the insurance is just one of the products that they sell. They have a strong business relationship with each of their customers.

**CHAIR:** Are they the agent of the insurance provider or the—

**Mr McLinden:** Yes. Farm supplies. They sell stock and station agent processes, farm real estate agent insurance et cetera, including financing as well. So they have a stronger relationship with their customer base and they seem to have taken a more benevolent approach to assisting their customers work their way through the insurance issue.

**CHAIR:** Or could I put that a different way, Mr McLinden: the customer well and truly understands what they are buying because there is an ongoing relationship?

**Mr McLinden:** I think the companies have been quick to tell the farmers what they are buying once the disaster happens. If we had not had this flood and you asked me if I think our farming sector understands whether they have flood insurance or not, perhaps I would say no but they very quickly understood—

**CHAIR:** It is not only flood insurance obviously; there are other elements to agricultural insurance.

**Mr McLinden:** Fire, hail, storm, theft, flood and public liability are the basic products.

**Mr Belcher:** One thing we noticed was inconsistency between companies about what to do with damaged goods. Some people were told: 'Get rid of them. Get them out of your house. We'll take it on face value that it has been damaged.' Whereas the next-door neighbour was told: 'Leave the carpet in your lounge room. I don't care how wet it is. It has to stay there until we see it,' or, 'Leave your stuff on the footpath.' I think those inconsistencies caused a lot of conflict even between neighbours.

**Dr STONE:** Not to mention the health hazard—

**Mr Belcher:** I think the industry needs to have a consistent approach to their assessment process in terms of what has been damaged.

**CHAIR:** We have heard suggestions that there can be ongoing health issues associated with—

**Mr Belcher:** Yes, with wet carpet and those sorts of things. We heard of one family whose carpet was not taken up for three months. It is atrocious to think it was in their house for that long.

**Ms SMYTH:** I want to ask the Loddon Shire to expand on the suggestion they made in their submission around having insurance companies agreeing to having a team of authorised agents assessing a complete neighbourhood. I presume you would want that to be contemplated in, for instance, the code. You might have more to say about the mechanics of how that might operate, who those agents might act for and how they would go about the work they do.

**Mr McLinden:** What is driving our suggestion there are these issues of consistency. As Central Goldfields have just said, we are trying to avoid different treatment house by house down the street. We would get consistency. We think for minor events it is not required. There needs to be some trigger where a disaster state is

called that would then bring these arrangements into place. It would need to, we think, work through the insurance council.

**CHAIR:** Particularly in rural areas?

**Mr McLinden:** I guess we are thinking about our municipalities, so small townships in rural areas. I do not think we would make any comment as to whether this would work in larger urban areas. We have not been thinking about that. Certainly in rural areas it is to try to get consistency. How would it work? We have not gone too far into the detail other than there should be a pool of independent assessors who have a uniform approach, have standard instructions on how to process claims, how to make assessments and how to deal with customers regardless of their insurance company. We are very much pushing a standardised approach.

**Mr Hinneberg:** The submission also talks about standardising the terminology. You cannot have a standardised approach to response unless you have standardised terminology and definition. When a disaster is declared it comes back from that declaration as to whether it is declared a flood, a storm or whatever. That is when the standardisation across insurance should really kick in.

**Dr STONE:** When we had the Financial Ombudsman Service here they said some people making representation to them were concerned about their hydrology reports. FOS's question was: were the shires themselves producing flood plans? I think you have already referred to yours in the Central Goldfields on which you have been doing some work. Are you planning a hydrological statement for the Loddon shire which might help insurance assessors get a better sense of risk in the future? People might be able to use them as ammunition, if you like, when they are being challenged by an assessor or a hydrologist who says, 'There is no way you could have had storm damage here because you are in a flood zone.' Is that something you as a council are doing now?

**Mr McLinden:** The way that we are approaching that issue is through North Central Catchment Management Authority. They are undertaking a review of flood zones in the municipality. They did a very quick assessment in the immediate aftermath of the flood and indicated that they did not expect much change in the LSIO, the land subject to inundation overlay, which is a control in our planning scheme that is generated from work by the catchment management authority, or in the flood overlay, which is an area that shows deeper, faster flowing water. For example, parts of Bridgewater will have flood overlay—that is, through the centre of the town—and the extremities of the town where the water was shallow but still flooded will be land subject to inundation overlay. That work had been done in Loddon some years ago in quite a lot of detail. It was done to the one-in-100-year flood level, which is a legislative requirement. More or less across the municipality that stood up to what we saw in January. There will be some tweaking, but it is fine tuning only.

**Dr STONE:** So you think in terms of insurance claims in the future people will have a better or a refreshed understanding of the planning inundation overlays and so on?

**Mr McLinden:** People think about their own circumstances. In relation to an individual's property, if they seek the information, they will have access to good information about whether their property could be subject to inundation or not.

**CHAIR:** Which would help them negotiate with the insurance company before the insurance is handed out.

**Mr McLinden:** One would hope so.

**CHAIR:** Mr Belcher, would you like to answer the same question?

**Mr Belcher:** We are subject to the North Central Catchment Management Authority as well, who have done similar studies in the Central Goldfields Shire, in particular of late in Carisbrook. The difficulty for Carisbrook is that we have now had to set a new flood level, which means that any new dwellings that are being approved have a different flood level attached to them. It means that houses are being built about a metre off the ground, which causes some concern. Houses that were under construction as the flood occurred are now below the flood level. It is a difficult situation that we find ourselves in. We think ours was probably a one-in-200-year flood in terms of the flood level in Carisbrook. That is where we are setting the flood level now because we have to.

**Dr STONE:** You talked about the code of practice needing a good shake up before, John, and then you talked about a standardised product being needed for insurance. Do you differentiate that and are you having thoughts about a standardised product for farms that would cover livestock, infrastructure, fodder, machinery and so on? Have you got any thoughts about a standardised product or a national scheme to help with farming, given that for a lot of our farms this is actually something they are never going to recover from?

**Mr McLinden:** The majority of our thinking was around the domestic insurance market. In our submission we have talked about the terminology—storm, tempest, flood and riverine flood. When someone is buying insurance they do not dwell on those terms and they do not understand what it is they are buying. We are

suggesting that is the issue that should be clarified. If we extend that to the farming sector, I think there is benefit in that. There are different elements of a farming enterprise that can be insured and individuals make those decisions about their own enterprise. But there is the second layer. What events am I insuring that particular part of my enterprise against? Am I insuring my livestock? Am I just insuring them against theft or theft and loss through fire or flood? If I insure my farm sheds, my machinery and my fencing, do I face the same set of questions? It is quite a complex issue that many businesses do not take the time to think about hard enough and, when they do, it is a minefield. We are saying that the industry could be standardised so that people can understand what it is they are buying.

**CHAIR:** Thank you very much for taking the time to appear before us today. Thank you for your submission and for the one that is coming. I have been on this committee for four years and I would have to say, Mr Hinneberg, that is most impressive moustache we have had appear before the committee in that time.

**LAWTON, Ms Jenny, Professional Support Lawyer, Victoria Legal Aid**

**ROBERTS, Mr Simon, Project Officer, Victorian Legal Assistance Forum**

[12:35]

**CHAIR:** Welcome. Please note that these meetings are formal proceedings of parliament. Everything said should be factual and honest. It can be considered a serious matter to attempt to mislead the committee. As this is being recorded, I request that, as far as possible, you not refer to particular individuals by name today, unless you feel compelled to do so. We are here to look at all of the relevant issues, not to go after any particular individual or company. Do you have any comments to make on the capacity in which you appear?

**Ms Lawton:** I am representing the Victorian Legal Assistance Forum today.

**Mr Roberts:** I am employed by Victoria Legal Aid.

**CHAIR:** Thank you. Would you like to make a brief introductory statement before we move to questions?

**Ms Lawton:** The Victorian Legal Assistance Forum has provided a submission which, as the committee will note, particularly addresses the absence of a coordinated legal assistance response after disaster events. The purpose was to ensure that that issue was ventilated. The Legal Assistance Forum has, however, endorsed the submission made jointly by Choice, the Consumer Action Law Centre, Financial Counselling Australia and the Footscray Community Legal Centre, which made broader recommendations. To avoid duplication, we decided to confine ourselves to the issue of legal assistance, which in our experience is a significant element of community recovery after a disaster.

In my evidence today before the committee, I might also add, for the sake of completeness, that I was a lawyer engaged by Victoria Legal Aid to establish and work in the bushfire insurance unit after the February 2009 fires. My history before commencing with Victoria Legal Aid was that I was a panel member with the Insurance Ombudsman Service, as it was then known, for a period of some 10 years. It has moved on to become the Financial Ombudsman Service. My background in being connected with the ombudsman service was that I was a consumer advocate and financial counsellor for 17 years before moving into a career as a lawyer with Victoria Legal Aid. That is the experience that led me to contribute to Victoria Legal Aid and Bushfire Legal Help's contribution to disaster recovery. Hopefully that enables me to provide the committee with responses to the questions that you no doubt have, because you have our submission and you have read it in context.

**CHAIR:** In light of that history, could you tell us about the differences you observed in the area of legal aid between the Victorian bushfires and the Victorian floods and your statement that 'demand for legal assistance following the Victorian floods was not as high compared to the 2009 bushfires'? That is interesting in the light of the claims in Queensland, where we took evidence previously, that floods elicit more insurance problems due to the definitions of floods. I think you heard some of the earlier evidence. Could you expand on that?

**Ms Lawton:** Based on my experience, floods are such a complex claim that consumers are often very easily defeated. Even as a flood hits, consumers think, 'Oh no, a flood; I've heard lots of people aren't covered for flood,' or 'Gee, did we buy flood cover?' and so forth. So there is already an air of defeat over the whole disaster. With bushfires it is generally conceded that, if you have insurance, you will be covered for that loss. So there is a lowering of expectations when you are affected by a flood disaster compared with other disasters, in my view. That is a sad reflection of the state of the insurance industry that just happily derogates from the standard cover provided under the Insurance Act, which would admit flood cover.

The adequacy of the derogation has been the subject of a number of submissions to the committee, I note. First of all, I would endorse the submissions made which suggest that it is not appropriate to derogate; that Australia needs to recognise that vulnerable people and people who lack choices are going to live in land areas where they will suffer from inundation and suffer great loss; that, until we can achieve better mitigation, better flood mapping and better information, there is a case to be made for preventing the insurance industry from derogating from the provision of flood cover; and that smart solutions can be found to deal with the reinsurance issues that I understand have been put, going back through the history of flood inquiries, to pretty much every inquiry that has ever been conducted on the subject.

**CHAIR:** You speak with some authority on that, I would think.

**Ms Lawton:** Tragically, yes.

**Mr Roberts:** I think also that with the bushfires, which happened all at once, the marshalling of resources was somewhat easier to do. These flood events seem to have gone on for a long time. Also, because a lot of this effort is unfunded, it is really hard to marshal forces in this area. There are two community legal centres, one in Mildura and one in Bendigo.

**Dr STONE:** Mildura is five hours away?

**Mr Roberts:** Yes, that is right.

**Dr STONE:** So it is hardly next door.

**Mr Roberts:** Yes. There is a VLA office and there is some pro bono. Also, it just went on for months and months and months, so it is hard to monitor and hard to marshal the resources. By the way, the community legal centre is still open for business for anybody who has got legal issues around these.

**CHAIR:** Could you comment on that statement of Ms Lawton's that it is almost starting from a position of defeat or despair before they even commence.

**Mr Roberts:** Yes, I think so, because they are confronted psychologically by this great disaster, and they need to put together their paperwork. Often they do not even think about assistance, and it is not up front that the assistance is there—apart from the fact that we ran Bushfire Legal Help. I think the response was disjointed, and what we are trying to say is that in future we would like to be at the fore of providing assistance to these people.

**CHAIR:** Could I be devil's advocate here. Why should any public dollar go to interfering or jumping in between someone that enters a contract and someone that provides a service? Surely the English legal system is based on the fact that people enter into a contract aware of what is within the four corners of the contract. It is not the public's fault that people have not read their 157-page product disclosure statement, is it, Ms Lawton?

**Ms Lawton:** The product disclosure statements are unfortunately, as you have indicated, often very lengthy and convoluted documents. A stunning example emerged in Queensland of people who had taken the trouble to comprehend that flood cover was an option. They had purchased the option but discovered that it was a significantly capped cover. As I recall, it may have been only \$10,000 or \$12,000. So they had to some extent taken reasonable steps, they thought, to protect their interests, but that was buried in the fine print.

Coming back, though, to the broader issue of the need to intervene, the impact on the communities of disasters is so substantial. You will have noticed from our submission that around 65 to 70 per cent of calls through Bushfire Legal Help related to insurance in the first six months. It is interesting to note the make-up of the other calls. When a community is affected by disaster, there is all sorts of dislocation that occurs to family in social settings. Normal support services that might be supplied to people—for example, simply Meals on Wheels—are not able to be delivered to communities affected by disasters, and individuals suffer greatly. Those calls to Bushfire Legal Help that were not insurance related touched on sad subjects like how to maintain child access and contact and how to comply with office of corrections orders to perform community service.

There are a range of impacts on a community affected by disaster and those community impacts live on, in my experience of the 2009 bushfires. I am certain the committee has heard evidence of the impacts in flood affected communities in Victoria. A trickle of calls and contacts have been made regarding flood, to come back to that point. We do not have a large razzle-dazzle service out there, as occurred with Bushfire Legal Help, because we have not had specific funding for that. The bushfires had the advantage of attracting a great deal of pro bono legal assistance from private legal practitioners under the broad banner of Bushfire Legal Help. The floods just have not attracted that level of community sympathy or sympathy amongst the legal profession. That goodwill is not there.

To come back to the thorny question of the complexity, these claims are extremely complex. Generally the claims viability will not be able to be determined until a hydrologist report is obtained, and no doubt there will be disputes and so possibly a second one will be commissioned, maybe by a group of consumers or maybe with the assistance of a local government authority. Then, if it goes to the ombudsman service, the ombudsman service will probably call for a third hydrological report. They are very long tailed claims—

**CHAIR:** In contrast to fire.

**Ms Lawton:** That is right. The difficulty arises then that any goodwill that may have been there to supply services on a pro bono basis really disappears. It is complex. It involves pointy, tricky, highly technical issues around the nature of the waters and so on.

**CHAIR:** It is a very specialised area.

**Ms Lawton:** It is highly specialised. With the bushfires I had the advantage of being in a team with four other people who could rapidly put together training materials, resources and a hotline back to Melbourne for any lawyers out in the sector providing bushfire insurance advice, which is still somewhat technical. We were able to put together those support services, harness that goodwill and make sure that people felt supported and resourced. It gave them the capacity. We do not have that capacity in Victoria. I think I am probably about it at Victoria Legal Aid for any tricky flood issues that come in.

**CHAIR:** And you cannot do flood law 101.

**Ms Lawton:** We have put a 101 on our website and some of the other community legal aid commissions have resources. Queensland has an A to Z of insurance, and I know because I helped edit the original version of that some years ago. It is still on the website in an updated form. Victoria Legal Aid has flood information on its website and we are aware—it is in our submission—that it is receiving hits. But in terms of providing legal support on these highly technical and complex issues, we just do not have the capacity. That is the central thrust of our submission: that our ability to maintain the capacity to respond depends on ongoing funding, even if funds are supplied after a disaster. VLAF is in a position to coordinate the delivery of legal services, harness those resources, commission and update training materials, provide telephony and whatever else is needed to give that support—

**CHAIR:** You have to go to that pro bono well.

**Ms Lawton:** To go to the pro bonos, to go to the community legal centres, to go where services are needed. Sometimes we were providing advice to social workers, financial counsellors, consumer advocates, welfare officers in local councils and home help people. All manner of helping agencies were able to access that support to steer claims through, but they were not long tailed claims and they were not as technical as floods. If we do not have funding to build that capacity and if we cannot maintain that capacity, then even throwing funds in after a disaster is not enough. It is going to be a big leap to go forward. I think it is fair to say only Queensland and New South Wales currently have specialist community legal centres dealing with insurance claims.

**CHAIR:** New South Wales does. I am not sure about Queensland.

**Ms Lawton:** I am not sure. I am referring here to the issues paper prepared in relation to the national disaster insurance review.

**CHAIR:** I think there was specific funding for Queensland rather than ongoing.

**Ms Lawton:** In Victoria during the bushfires we had a very generous supply of resources from the New South Wales centre. One of their staff members came and worked with us for three months. We were able to divert some of our calls, through strategic use of telephony, through to that centre in New South Wales. We can coordinate and do these things. Happily there was capacity there, but I would say that, with Victoria, the added drama was, after 20/11, that such knowledge and information as was available was also being drawn in the direction of Queensland.

**CHAIR:** I will flag that lawyers giving evidence to lawyers that there should be more lawyers is not necessarily something that the public will be looking for. Can I just go back to the bushfires: what was the main reason for victims contacting you? Was it under-insurance or process?

**Ms Lawton:** In relation to under-insurance issues?

**CHAIR:** Yes.

**Ms Lawton:** Predominantly delay in claims handling became the great issue or adequacy of the claims settlement.

**CHAIR:** Rather than under-insurance.

**Ms Lawton:** Under-insurance was a subfeature of the adequacy of the claims settlement. The under-insurance issue is a very substantial issue. There is a great case to be made to continue with the financial literacy campaigns in Australia and to extend that to insurance literacy. Under-insurance is a very unfortunate subplot for people who think they have done the right thing and insured, but the sums insured are not adequate. We commonly encountered people who had relied on a calculator, or a brochure or a telephone call centre operator to initiate the original sum insurance. The insurance industry members, as a whole, generally indexed—or if they increased the sum insured or recommended an increase of the sum insured at the time of renewal—were just following a general CPI rise.

**CHAIR:** Not even the building CPI?

**Ms Lawton:** The building CPI is unfortunately a little bit steeper than the CPI.

**CHAIR:** I thought that we have heard evidence to the contrary.

**Ms Lawton:** That was recently changed and some insurers have adopted that practice. We were responding to people who might have re-insured with the same insurer for 10 or 12 years. It had started off on a poor information base and staggered along. It was very unfortunate. That was one of the features of under-insurance. The other features of under-insurance are that, after a disaster of course, you get that inflationary effect of

attempting to purchase supplies and labour for rebuilding in a very tight market. There was huge competition for those resources, so there a substantial inflationary effect. Only some insurers offered a sort of balloon-type.

**CHAIR:** Some did offer a disaster index?

**Ms Lawton:** Yes. Some also allowed you to get a bit of a margin if you could demonstrate that your sum insured was reasonable but, because of changes in building regulations, the need to meet new laws and requirements, planning laws in particular, they would meet those additional costs. Classic examples of that in Victoria were, post bushfires, the introduction of the bushfire fire-rating scheme. You had to first of all pay for an assessment to get your classification and then that changed how expensive your windows were going to be and so on. Some insurers had that built into the policy and that provided some people with that protection. Others were simply caught by the requirement that you now have a five-star energy rating on a new home. So that was introduction of additional infrastructure that you had not factored in. A careful consumer who set a carefully considered sum insured and would have been quite adequate if it had been a one-off loss found themselves under-insured.

**CHAIR:** I would be interested if you could let us know about the company or companies that did have that balloon-type disaster clause? Was it an individual allocation or a policy?

**Ms Lawton:** It was to do with insurers that do not have the replacement sum insured. I am happy to say that, for example, with AAMI, the consumer is not the one who has to guess what the risk is; they do not have to allocate a sum insured. They simply describe their building to the insurer when they commence the policy and the insurer calculates a premium based on their estimate. The insurer will bear the loss of having to meeting inflated costs, how ever they arise.

**CHAIR:** The premium is higher, I assume, for that?

**Ms Lawton:** Not necessarily, and that was something that was quite interesting to observe. People with similar houses—say, those with AAMI policies in Marysville—did not appear to be paying anything more significant than people who had nominated a sum insured that might have been reasonable but with another insurer. The AAMI customers got the benefit of the insurer being responsible to reinstate the property. Reinstatement policies are quite an important protection against consumer ignorance or against disaster.

**CHAIR:** So you do not need to know the 157-page PDS because you are saying, 'This company will reinstate the home that I am currently getting insured from over the phone.'

**Ms Lawton:** Providing it covers the type of loss that they suffer and then the 157-page PDS becomes crucial. Even though the insurer says they have flood cover, how have they defined the term 'flood'? That becomes quite an issue for those people. Also, I mentioned claims handling. The other main bulk of calls was claims delays. I know that with bushfires some of those insurers were bringing assessors from New Zealand and Western Australia to try to help with claims' assessments which is to their credit. But if these claims assessors had come from a sheep farming area in New Zealand, they would not necessarily know how things work in Bendigo or Maryville.

**CHAIR:** Never mind coming from Chicago or somewhere like that.

**Ms Lawton:** Yes, the same difficulties and barriers to resolving these things. There were claim delays that were due to simply it being a disaster and the high volume of claims that needed to be met. You have to bear in mind that something like 1,950 homes were completely destroyed, but that is nothing compared to the numbers that were damaged and then add in other infrastructure that was destroyed. It involved over 13 regional areas in Victoria.

**Dr STONE:** Floods or the fires?

**Ms Lawton:** Bushfires. That imposed huge pressures on the insurance industry to respond.

**Ms SMYTH:** The issue of a specialised insurance law legal service certainly interests me. I wonder if you have anything more to say about comparable arrangements perhaps even overseas that you might be aware of? Obviously, a lot of modelling would be required around this issue. It is of interest in terms of dispute resolution and methods of funding—whether it is purely public funding or whether there are models where funds are derived presumably from insurers or others in anticipation of events occurring—and how you would manage the situation which is different from other specialised legal practices in that this kind of work is necessarily lumpy, so to speak, because you are dealing with things that are at crisis point or that there is not terribly much insurance related work that needs to be pursued. What is the scope for that sort of organisation and what would be some of the logistics around it?

**Ms Lawton:** I might commence by indicating that there are always insurance issues around. Insurance is relied on by not just the wealthy or those with property; it is also relied on by people with car loans and all sorts of businesses. There is a constant supply of people who would fall into the cohort of vulnerable people, who are unable to resolve claims disputes with their insurers. Yes, there could be peaks and there clearly would be peaks after insurance disasters, but the supply of services to others would be deferred or restricted.

**Ms SMYTH:** You are thinking of a broad-scale insurance law service rather than just something that is responsive to particular situations of crisis?

**Ms Lawton:** Yes. The risk if you have it only responsive to particular crises is that you do not maintain capacity and you are scrambling to marshal resources and expertise.

**Mr Roberts:** It would not have to be all that big. There is an advantage in having it around all the time. There are insurance issues coming all the time. Someone whose house has burnt down might have the same issues that 950 people had; it just so happens it is not all once. Sorry, what was the point I was going to make? Perhaps you can go on—I have just lost it there for a minute.

**Ms Lawton:** A specialist centre would have a role in articulating change and improvements to processes within the industry and to also strengthen positive relationships with other stakeholders. The Insurance Council of Australia and the Financial Ombudsman Service provide a constant stream of reviews over their processes and so on, and there simply is not the capacity within the community to contribute to those in a structured way. 'Down time' I think is the expression you used. There is potential to very positively use that down time to contribute to improvements of systems and processes across the board.

One of the other issues I should indicate has become quite apparent as a result of these recent disasters is the adequacy of the code. Again, I am certain the committee has heard a number of submissions on this point. The code has been subject to a number of reviews since its commencement. The tweaks and changes moving in the direction of ensuring improved time limits and improved consumer protections have been few and far between, which is very disappointing. It is an influential industry that wrote its own code at a time when certainly the blowtorch was being applied to it to improve its systems and processes. The development of a code at all was an important step. But it is timely to consider, as part of this committee's work, strengthening the protections to consumers in the code. Again, I would refer to the submission made by the Consumer Action Legal Centre on that point.

**Mr Roberts:** Just to go back to your question, the point I was going to make that slipped my mind for a minute was that, if you have a small centre that specialises in this, it has the capacity to do ongoing community legal education in areas like this that may be vulnerable again to flood and in other areas, bushfire. So you will be educating the populous about these issues. It can also provide specialist professional legal education for other lawyers in the sector between times and then quickly skill-up the teams that would have to go into an area to provide information. They can provide fact sheets. You would have lawyers out the front but specialists behind who would be able to give that more detailed advice.

**Ms Lawton:** May I emphasise that the people that we skilled-up, supported and trained did consist largely of social workers, financial counsellors and consumer advocates. Following the bushfires we recognised that lawyers are not the only helping agents and that there are extremely skilled groups of people out there who just needed to turn their attention and skills and build their knowledge in this area. A large number of those people helped individual consumers resolve their claims issues with insurers through their own direct advocacy—sometimes referring back to us or sometimes just building on the knowledge and experience they gained.

**CHAIR:** Before I go to Dr Stone, Ms Lawton, I think you heard some of the earlier evidence from the councils. I am not sure if you heard the evidence about the faith in, or support of, hydrologists and/or assessors. You made a long list of people who helped to advance claims. Are there any comments you could make on those third-party experts, such as hydrologists or assessors?

**Ms Lawton:** In a perfect world, Chair, I would be advocating for a panel of hydrologists to be called upon to provide independent assessments.

**CHAIR:** Paid for by the hand that feeds them?

**Ms Lawton:** If that were to go through some sort of independent authority to commission that report—and that independent authority also has the ability to seek additional opinion on particular issues or seek supplementary reports—then I think that that expert view would carry greater weight and have greater credibility if, as I say, the funding and the commissioning was at arms length. There is a great deal of concern and lack of confidence in hydrologists' reports paid for by insurers. Inevitably, the Ombudsman Service is commissioning a second or third report for that reason.

**CHAIR:** I notice *Choice* magazine in the last few days had some awards—

**Ms Lawton:** The Shonky Awards?

**CHAIR:** Yes, the Shonky Awards, and I think some of the comments that were made were about flood insurance, in particular. You are saying this might go some way to ensuring that the insurance industry does not receive a Shonky award in the future?

**Ms Lawton:** The Shonky award in that particular case was for the insurer who sold flood insurance as an optional extra but you only got \$10,000 or \$12,000 of cover, which would barely cover the cost of throwing out the carpet and renewing it. Unfortunately there is a lot more work to be done.

**CHAIR:** I did not see all the details.

**Ms Lawton:** That was the detail of that particular award—a well-deserved award, if I can give that opinion.

**Dr STONE:** I have been, like the rest of my committee members, hearing evidence all through Queensland in relation to their floods, and I have to say that when you compare the response of legal aid in Queensland—the access to legal aid in Queensland—I am shattered with what was available in Victoria. I think you have explained to us that that was a resource issue—you simply were not given the resources. Ms Lawton, you have made it very clear that you are aware of what could have been done, you were aware of the needs, but it was just missing—it was not in Victoria. For example, in our emergency centres that were set up, including here in Bridgwater in this building, in Rochester, in Pyramid Hill and so on, there was no evidence of any pro bono lawyer, legal aid, Financial Ombudsman Service or legal insurance council. There was no evidence whatsoever of any of those people. We had Centrelink, of course; Red Cross; St Vinnie's; and so on, which was lovely, but none of the other. Where did we fail? How did we fail to get the resources for that insurance legal support? Was it that all the attention was on Queensland at the time because of the enormous disaster happening there or is it that we need somehow to be setting these things up well in advance of a disaster? Can you comment on that failure.

**Ms Lawton:** Yes, it is a tragedy that people were able to get a cup of tea and a hamburger but not access to advice. To the credit of the Victorian government, there was some additional funding made available through the Financial and Consumer Rights Council to provide flood coordination; and, if I recall the detail correctly, perhaps an additional five financial counsellors across five areas. I have some knowledge of that because the first thing they did was come to legal aid and ask for us to provide them with training and up-to-date materials and support and assistance. I was directly involved in doing that.

Financial counsellors are an extremely useful service provider in a situation because, when you have a substantial claims delay, often you will be incurring additional costs—perhaps having to rent a home because your own home is unusable; you might have had to urgently purchase initial supplies or replacement goods. If you are doing that on the never-never the inevitable credit card bills start rolling in and the demands. So financial counsellors are often a first point of contact for people suffering financial pressures as a result of claims delay or non-insurance or the scope of cover did not cover that loss. That was a strategic decision, I think, to fund additional financial counselling services and fund some coordination through the Financial and Consumer Rights Council.

**Dr STONE:** Yes, there is one person just employed at the Inglewood hospital. She has been in the business for six weeks now and flood occurred seven months ago.

**Ms Lawton:** Yes, and I bet she is flat out—or will be. The financial counsellors know this. When the underlying issue that is causing the financial stress is claims delay, disputes about the scope of cover of the policy or whether that particular loss is covered by that type of policy, they know they will need some guidance and support in dealing with that complex area. So it was based on their experience that they came straight to us once they obtained the funding. So it is to their credit.

**Dr STONE:** That funding was a long way down the track after the disaster.

**Ms Lawton:** It was well after the disaster and there was no additional funding, to my knowledge, in 2010, and there are still claims disputes outstanding from 2010 in Victoria. So, again, if we do not have capacity there—if we have not built it and if we are not maintaining it—then we are at risk of failing to provide support to individuals and communities that will need it in a timely way.

**Dr STONE:** Can I ask for your comment on another complication? Obviously, we are dealing with two sorts—or perhaps three—of loss during a flood, like with any other disaster. There is the householder, the person—they might be a retired person—whose home has been destroyed or partially destroyed. Then you have the business that has likewise had its infrastructure destroyed and is therefore not in receipt of income for a time while that is all happening. And the third is the farm.

The farm people, in particular, are alone of those three categories. For example, if you are a dairy farmer and your farm is flooded, how do you milk your cows twice a day? They will become diseased very quickly with mastitis if they are not milked, and you have to walk those cows seven hours to the nearest dairy—if you are lucky—and so on. Some farmers in our area who were flood affected had their livestock washed away, or their livestock isolated without feed. I will never forget one farmer telling me, with tears in his eyes, that he did not realise that it took 2½ days for a sheep standing in water up to the belly to collapse finally and die.

With the farm population flat out trying to work out how to keep alive the remnants of their livelihood, not to mention the humane aspects of animal distress, how are they going to get in touch with their insurance company when they have no phone line and the batteries on their mobiles are gone or flat and their nearest neighbour is in the same sort of dire predicament? There is no legal aid coming to them cold calling and there is no FOS cold calling them.

I am putting this to you as a scenario needing quite a substantially different approach to what we have now. As a consequence of that approach not being in place we are going to lose a substantial capacity for recovery in our rural sector in this part of the world. Do you have any answers to that—how we can have in place an understanding of the special needs of farm enterprises when hit by a disaster like flood?

**Ms Lawton:** A number of farm enterprises have obviously been hit in 2010 and 2011 in Victoria, and a number of farm enterprises were hit in the bushfires. The impact with the bushfires was so substantial on the infrastructure that similar stories were reported, and they were extremely distressing—I take your point.

The issue is that strategic planning around disasters is obviously of primary importance so that those businesses can be supported. They also contribute to the community; they are the backbone of the community.

**Dr STONE:** They are the economy in this part of the world.

**Ms Lawton:** They are the economy. But we get down to the essential point that even with the best disaster plan in the world, even if we can get the milk trucks through and willing hands out there to help with the herds—even if you can do that—if the farmer does not have the benefit of flood cover because insurers are allowed to derogate from that as standard cover then the disaster plan will only take the situation so far. There will not be recovery beyond even the short term. Whatever is supplied in an effective, well-considered disaster plan to keep the lines open and to get labour—those willing hands—to support that farmer will all fall apart if there are no insurance assessors following the helpers, walking in and saying, 'Right. How do we rebuild this? How are we getting the roads open? How can we get tankers through? How can we restore your milking sheds?' There is no point in sending in the willing helpers if there is then no insurance to respond to rebuilding.

**Dr STONE:** I agree with you wholeheartedly. I guess I was making the point initially that given the nature of the disaster when it occurs on a farm property, you do not necessarily have the time or the infrastructure to go and chase insurance companies straight away. Therefore, we need some proactive push—probably some sort of state response, as you say—which recognises that fact. You had the insurance industry sitting in the crisis centres in Queensland—you actually had Suncorp there in the crisis centres. None of that happened in Victoria. I think there are interesting lessons to be learned about the two different states' responses, but I guess I was putting to you that we need to understand that there is waiting for someone to call their insurance company versus their not having the capacity or time to call maybe for three weeks. We therefore need something coming back from the other direction.

**Ms Lawton:** Insurers did that in Victoria with the bushfires. They went to those centres. They set up little trestle tables under umbrellas. And, where they heard of someone who could not reach them at their trestle table at the relief centre, they did go the distance.

**Dr STONE:** But in flood it did not happen.

**Ms Lawton:** But in flood it did not happen. They are long-tail claims. Insurance companies know that it is going to be six months before they have a report to decide who is in and who is out, if the insurer had derogated from flood cover—if that was not available under the policy. So they will be just sitting tight, with fingers crossed, potentially, hoping that the report will come in and say: 'Storm: you have to pay. Flood: you're out of it.'

**CHAIR:** Thank you very much for your evidence today. I particularly note your great history of dealing with these things in Victoria. It was great to have you appear before us as witnesses today.

**BLACKMORE, Mr Max, Member, Victorian Farmers Federation**

[13:16]

**CHAIR:** Welcome. Mr Blackmore, please note that these meetings are formal proceedings of parliament. Everything that is said should be factual and honest, and it can be considered a serious matter to attempt to mislead the committee. As this is being recorded, I request that you not refer to particular individuals or companies by name today, as much as possible, unless you feel it is absolutely necessary. Do you have anything to say about the capacity in which you appear today?

**Mr Blackmore:** I am a member of the VFF Water Council and secretary of our local branch.

**CHAIR:** Mr Blackmore, would you like to make an introductory statement before we move to questions?

**Mr Blackmore:** Very briefly. Basically, I am here with a view to put forward a summary of what we have heard from our members in dealing with both the floods and the fires, relevant to insurance companies. Pretty much the one point that keeps coming up for us again and again is the problem of the huge inconsistencies between both companies and geographies, as you have probably heard. I know from personal experience of having roughly 200 millimetres of water through my house back in January that our insurance broker and insurance company were fantastic to deal with. Other people within our town really struggled. And then I suppose our town was lucky, in that the majority seem to have been paid out, whereas other towns in the region seem to have received no support at all.

**CHAIR:** The same insurance company and the same insurance broker?

**Mr Blackmore:** Different broker, same company, in some examples, or different companies.

**CHAIR:** Is that because you had the clout of the Victorian Farmers Federation behind you or just the luck of where you were in terms of the behaviour of water?

**Mr Blackmore:** I think it is the luck of where we were. I am based in Carisbrook, which is very much upstream. We were hit before the communities like Bridgewater or Charlton. We were right on the tail of the Queensland floods. This is purely my interpretation. There was a lot of public pressure for insurance companies to support their customers. My belief is that we snuck in on the tail of Queensland, where they were paying out where they might not have. Further downstream, it seems to me that they have drawn a bit of a time line and have been very strict in their interpretation of riverine flooding as opposed to stormwater flooding.

**CHAIR:** I just want to tease that out, Mr Blackmore. Are you suggesting that the payouts were linked to something other than the behaviour of water—that they were linked to public pressure?

**Mr Blackmore:** This is purely a personal opinion based on nothing but my observations.

**CHAIR:** And your members' feedback?

**Mr Blackmore:** Yes, and talking to people in the communities. It would be very difficult as a layperson—and I believe even in our town there were conflicting hydrologists' reports as to whether the damage within the town was from riverine flooding or stormwater flooding.

**CHAIR:** So, rather than the different wording of the policies, it was the actual behaviour of the water or source of the water that there were differing views about?

**Mr Blackmore:** In the majority of cases, that is my understanding from members—that most policies were reasonably explicit in what a riverine flood is and what a stormwater flood is; it was just trying to determine whether the water was stormwater or coming from the river.

**Dr STONE:** Max, you were not in the irrigation area, being at Carisbrook, but are you aware from some of your members' talking about the problems of the irrigation infrastructure exacerbating the flood damage or perhaps helping with the flood damage in some instances, because the channel banks acted like levies? Are you aware of some of your insurance claimants then having difficulties, given the impact of the state owned irrigation infrastructure?

**Mr Blackmore:** I am not personally aware, no, of where state owned irrigation infrastructure caused or stopped a problem and that having a bearing on an insurance claim. It is something that I would be happy to follow up—

**Dr STONE:** I can give you lots of cases.

**Mr Blackmore:** with the staff in the office if the committee would like.

**Dr STONE:** Your president, Mr Broad, is more than familiar with those cases, coming from that area.

**Mr Blackmore:** Yes.

**Ms SMYTH:** Mr Blackmore, I would like a sense of your members' understanding. We have heard quite a lot at various points during the inquiry about the understanding of different groups within different communities about their level of insurance and about the nature of the insurance products that they have signed up for, and it is particularly of interest to us in the context of some of the suggestions about key facts sheets and other methods of alerting consumers—and particular types of consumers, such as farmers—to their rights well in advance of events such as these.

**Mr Blackmore:** It is my experience that the majority of farmers who are signed up to insurance understand their product reasonably well. As a business, as opposed to residential individuals, there is—

**CHAIR:** Just because they are good at driving a tractor does not mean they are good at reading a contract, if I can be a devil's advocate here.

**Mr Blackmore:** Certainly.

**CHAIR:** Or is that where the agent comes into play?

**Mr Blackmore:** It is both where the agent comes into play and the fact that you are not just insuring your own house or your car. There is crop insurance, fire insurance—just the amount you are paying tends to lead to your having a bit more of a—

**CHAIR:** It focuses your attention.

**Mr Blackmore:** Yes, it focuses your attention on the contracts and the policy documents a bit more than for residents. I have had firsthand accounts, and these are in the minority, of farmers who thought they were covered and who in the fine detail, so to speak, were covered not for riverine flooding but for stormwater. But to my understanding—

**CHAIR:** But there was a presumption in their mind that they were.

**Mr Blackmore:** Correct.

**CHAIR:** When they were buying the product, they thought they knew where the river was and they knew what the water does, I assume, even in flat land like this. You probably know it more than someone in the Mount Kosciusko area, I assume, because you know what the water does and where the water courses are if you are a farmer.

**Mr Blackmore:** Yes, they assumed that if their fences got washed away they would be covered by insurance, but in fact they were not.

**Ms SMYTH:** Without naming the particular insurers, is it also the case that a preponderance of farmers are insured by one insurance company or relatively fewer insurance companies than the rest of the population, and perhaps there is a best practice model there?

**Mr Blackmore:** I must admit I have never thought of that, but it could well be the case that there are a smaller number of companies that offer farm insurance and—

**CHAIR:** Does word get around quickly?

**Mr Blackmore:** It certainly does in the farming community: who is paying out, who has not paid out, who has been difficult to deal with and who has not. From my experience, cost pressures are always almost forefront when taking it out. You will get a quote from several insurance companies and, to a certain extent, it is usually the lowest quote that wins.

**CHAIR:** Rather than service and name and history?

**Mr Blackmore:** To some extent, yes.

**Ms SMYTH:** And also that factor of the difficulty of getting insurance from a broader range of insurers. Is it substantially more difficult? Are farmers finding it increasingly difficult to get particular types of insurance, in your experience?

**Mr Blackmore:** It is almost easier, being a business; because you are talking larger dollars and larger policies, you can get a bit of personal attention. Having said that, there are a smaller number of companies offering the product.

**CHAIR:** Could you comment on any particular market failures? For instance, crop insurance is not something we are looking at in particular, but if you would like to make a comment on hail or fire—

**Dr STONE:** Storm.

**CHAIR:** You might have heard Dr Stone's earlier questions about milk supplies—not being able to ship the milk off the farm. So in terms of business interruption—

**Dr STONE:** And not being able to milk the cows.

**Mr Blackmore:** Crop insurance is probably the easiest one. There are set events. If there is damage, it is pretty easy to calculate what the potential yield would have been, what the costs are and what it was worth, and receive a cheque from the company. What I have been hearing particularly—I was interested that you raised dairy farmers—is that it is not just the cost of the infrastructure but also having to ship your cows off to another farm and having to pay someone else to milk them. Those sorts of business costs do not seem to have been met, even under policies that have been paying out. I have to qualify that that is what I have heard.

**CHAIR:** Yes. But how do you put in agistment costs when you do not know if it is drought or flood, if everyone or no-one has lucerne? It must be hard for an actuary to sit down and work out what the cost of looking after the dairy farm is.

**Mr Blackmore:** To the best of my knowledge, there are no products offered that will cover that sort of thing.

**Dr STONE:** Yet there is income replacement if your business goes belly up for a time, as you are aware. So why can't farms have income replacement, you could argue, under a policy or product? Say, if you are dairying and you have no income from your property for maybe six to eight weeks while you cannot milk, then—

**CHAIR:** It might be enough to tide you over until the milk is flowing again.

**Dr STONE:** Businesses may be insured, as you know, for income replacement, and numbers of them have been successful with that policy product.

**Mr Blackmore:** It is virtually impossible for a farmer to get income protection insurance against either disaster or personal injury. To give you an example from my personal situation, I was working in Sydney, consulting in the utilities area, where I had income protection insurance. I returned to the farm and my broker advised me, 'Don't ever change it or even look sideways at the policy, because you will never be able to get that level of cover as a farmer.'

**CHAIR:** Is that right? Because of the vagaries of seasons and incomes?

**Mr Blackmore:** Yes. You can get cover, but the cost is just prohibitive, mainly because of the high rate of injury among farmers, I understand.

**Dr STONE:** I have received a lot of complaints from insured farms in relation to loss of livestock—where their livestock was washed away, injured or died from disease, specifically dairy cattle—where the insurers then argued that there was no proof of the existence of these animals prior to their claimed demise. Have you had many of those cases in the VFF? Do you have any comments on those problems with insurance companies?

**Mr Blackmore:** No. It is interesting that you would raise that. As a branch secretary I have not heard personally through the office of that being an issue. I would have thought last year's financial tax returns, where your stock numbers are accurately recorded, would have been sufficient but—

**Dr STONE:** You would have thought, wouldn't you? We had cases where the only evidence they had in the end—thank goodness—was knackery records of when the dead animals were removed. They would not accept statutory declarations. They would say, 'You would have vet records, wouldn't you, of the treatments of these animals before they died?' Well, obviously people would not, if the insurers had any understanding of what was going on immediately after the floods. So you have not had such cases come through the VFF?

**Mr Blackmore:** Not personally, no. And that then comes back to what I said before about the inconsistencies. I do know of some insurance companies that have paid out based on just farm records of how many sheep or cattle were on the farm at the time.

**CHAIR:** Further to that, Mr Blackmore, on that underinsurance problem, if there are 20 dairy cattle, I assume it is not that hard to get some cost figures. We had evidence earlier about fences and things like water tanks and dams. Can you comment on whether farmers know what they are insuring and what it costs to build another water tank or build another dam or put up 200 kilometres of fencing? It is not like the new Toyota, where you get a replacement. Can you comment on what people are actually insuring and what they get after the event?

**Mr Blackmore:** I think underinsuring would be quite common across farming. You mentioned the cost of putting up a new fence. You have struck an insurance deal 20 years ago in some cases—farmers tend to be pretty brand loyal and if the product keeps ticking along they will keep it and never update it. There have been a lot of cases where the amount that the farmers insure for is nowhere near the replacement cost. That is not something I can level at the insurance companies; it is more the farmer running their business—there are a million and one things to look at and the insurance documentation quite often slips down the list.

**CHAIR:** It is in the drawer, hopefully never to be used.

**Mr Blackmore:** Exactly. Having said that, it is quite difficult to understand products. For example, with insurance on a hayshed it is easy to insure the building but in September you have to insure the hay you are going to put in there. It is virtually impossible to know how much will go in and what it will be worth. It is a matter of taking a stab in the dark, a best guess estimate, and that then can lead to the underinsurance problem.

**CHAIR:** Or overinsurance.

**Mr Blackmore:** Or paying for insurance that you do not need. That is something I quite often lament. It would be nice if, as you go along, you could update the amount that is in there and either pay a bit more or receive a refund, but that process seems to be too complicated to be bothered with.

**CHAIR:** Most farmers have GPS-guided tractors—the technology is improving, and we have this fantastic National Broadband Network being rolled out. Do you think information could play a greater role in insurance? Rather than having this 20-year-old policy that is not particularly relevant, would farmers benefit from being able to give more information to the insurer, who can then make a more accurate assessment of risk and therefore price accordingly.

**Mr Blackmore:** I would definitely think so—more of an entry year to and fro with the insurer would be, for me personally, definitely beneficial.

**CHAIR:** Can you comment on things like the southern oscillation index, which no-one talked about 20 years ago but nowadays it is on the news. With things that affect weather and chance and statistical possibilities of rainfall and things like that, do you think that the insurance industry has some opportunities in terms of accessing data?

**Mr Blackmore:** My comment would be that it would be very difficult for them. The bureau cannot forecast weather with any real degree of accuracy, so for insurance companies I would imagine it would be something they would step well back from. It is certainly not a factor in most farmers' thinking, that I know of, year on year when you are insuring. There maybe a 50 per cent probability of above average rainfall, but such probabilities are so unreliable that they are not things that factor into these sorts of decisions.

**CHAIR:** Like tweaks in long-term cropping decisions or equipment decisions, but not your insurance policy.

**Mr Blackmore:** Yes.

**Dr STONE:** For example, this year we have been told that la nina is tracking in again and we are to expect a very wet situation again. That is the word out there, but I do not think many people are adjusting their insurance policy at this point.

**Mr Blackmore:** Definitely not. A much wetter than average year has been forecast, yet if you take out the heavy rains that caused the disasters at the start of the year, in this region we have really had quite a dry year.

**CHAIR:** Mr Blackmore, thank you very much for appearing before us today and sharing your experiences. If you hear of people who did not have a chance to make a submission, there is on the table a quick survey they can fill in in the next few weeks and they might like to forward their input as well. We want to ensure that people do not suffer all over again, so there is also information about insurance support and the like.

Resolved (on motion by **Ms Smyth**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 13:35**