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Standing Committee on Economics  
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Parliament House  
Canberra ACT 2600

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Dear Standing Committee

We appreciate the opportunity to contribute to the Inquiry into insurers' responses to 2022 major floods claims.

### **About Caxton Legal Centre Inc**

Caxton Legal Centre is Queensland's oldest and largest generalist and specialist community legal centre. We are an independent, non-profit community organisation whose purpose is to promote and protect human rights in Queensland through access to justice. Our objective is to provide free legal and social support services to people who experience disadvantage, trauma and marginalisation. Caxton delivers community legal education and advocates for reform to unfair laws, policies and systems.

Following the 2011 Brisbane floods, Caxton represented 116 clients to dispute their insurance complaints through the Financial Ombudsman Service.

Caxton's Flood Recovery Team was again established in May 2022, following the February flood and rain event in South-East Queensland. This program consists of a lawyer, a social worker and administrative support. We gave direct legal advice and assistance to clients who were directly impacted by this event. A significant amount of our work related to assisting clients with their insurance claims through internal dispute resolution process and the Australian Financial Complaints Authority (AFCA). We also assisted clients through other state government programs including the structural assistance grants and the Resilient Homes Scheme.

Our clients were also offered social work support. Many had been living with physical or environmental concerns, financial strain and emotional stress for months. Our social workers often assisted clients to navigate the practical processes connected with their insurance claims, such as supporting them through site visits from assessors, or to contact builders and other trades. Social work referrals also aimed to connect clients with services to improve their mental health, access practical supports and services from government or community neighbourhood centres and to receive financial counselling.

### **1. The experiences of policyholders before, during and after making claims**

The February 2022 in South-East Queensland was both a rain and flood event. This meant that clients' homes were damaged both by flooding from the river or a watercourse, and from the rain itself, and from rainwater entering their homes through the roof. While some clients had experienced a flood

previously, particularly in January 2011, there were many other clients who had not previously flooded or made a significant insurance claim.

*A. Experience of clients through the claims process*

The insurance claim process can be a long, bureaucratic and complex process. Some of our clients were overwhelmed by the process and could not rely on friends and family to support them through it. These claims could have been resolved more quickly if clients were offered appropriate case management that met their needs.

Claims were often handed to multiple claims officers. In addition to the communication challenges discussed below, clients often had to provide the same information to their insurers on multiple occasions.

Claims managers also may not have been trained or empowered to respond to clients with additional support needs. Some clients with health conditions did not feel that the claims managers understood how, or whether they could, alter the standard process of an insurer or an assessor or builder to accommodate their needs.

Many insurance policies offered a temporary accommodation benefit that is either capped as a percentage of the premium, or a 12-month timeframe. Many homes were not repaired in this length of time.

*B. Insurer's responsibility for third parties*

We note that a number of clients were unhappy with the quality of the work or conduct of loss adjusters, builders or third parties hired by the insurer. They considered their work to be unprofessional, inconsistent or unnecessary, and that the insurer did not properly screen or supervise these workers.

*C. Claims denied for maintenance, wear and tear, gradual deterioration, poor workmanship or structural defect*

We had a significant number of clients whose claims were partially denied due to maintenance, wear and tear, gradual deterioration, rot, or structural problems with the home. There were also major problems with mould, which were often excluded under the insurance policies. We note the General Insurance Code of Practice Code Compliance Committee and previous reports from Financial Rights Legal Centre have identified this as an issue.

Our clients were unaware that there were problems with maintenance at their home before they made a claim in this event. Some clients had done repair work on their home recently, and could not understand how the home was now considered to be not well maintained. There was a real gap between how clients expected their insurance policies to respond and how they actually responded.

Clients found it very difficult to dispute these claims. They generally could not afford or access their own experts and tradespeople to provide a second report. Mould reports are particularly expensive. The reports are difficult for a layperson to critique.

The reports did detail what work needed to be done, but they did not explain how regular maintenance of the roof should have occurred, and how this contributed to the damage.

Insurers did take the opportunity in the claims assessment process to clearly inform customers that there was a maintenance problem with their home and explain that this needed to be addressed

promptly. These maintenance repairs were often very expensive, and needed to be done before other insured work could occur at the home.

While Caxton does not provide tenancy advice to clients, we did provide advice to tenants who had insurance disputes. This includes one example where a tenant's contents claim was denied because it was damaged in the storm due to a water leak through the roof; the insurer denied the claim on maintenance grounds. It does not appear to be fair that tenants are sold contents policies that exclude damage caused by maintenance, when they are not responsible for the maintenance of the building.

#### **Case study**

*Emily's home was damaged by a storm in November 2021. This claim was not resolved by the time the February 2022 rain occurred and further damaged her home. Emily is an Indigenous woman in her 50s, with significant health issues herself and relied on a carer's payment.*

*The insurer initially denied the roof due to its age and condition. Emily did not have funds available to pay for a new roof and could not work to take out a loan to do the work.*

*With the support of the state government recovery agency, Emily was able to access another roof report on her home, which found significant hail damage. She sent this back to the insurer and they accepted her quotes to repair the roof.*

*In settling the claim, the insurer entirely forgot about an earlier cash settlement offer connected to the claim for damage to her ceiling. When Emily raised this with them, they said they had no record of the previous offer.*

#### **D. Cash settlements**

In an attempt to settle claims more quickly, some clients were encouraged to take cash settlements by their insurer. Choosing to accept a cash settlement is a difficult and complex decision.

The challenges in sourcing and hiring trades and asking customers who are already overwhelmed to manage the rebuild of their home is significant, and formidable for some of our clients. Many customers expect an insurer to look after them when their home is damaged by a disaster, including by completing the rebuild. We are concerned that in some instances, this was explained to consumers as though they had no choice in the matter.

There is a real concern that even when these claims are resolved through a cash settlement, customers may not be able to proceed with rebuilding their home due to price increases and trade or supply shortages, or conduct (or later insolvency) of builders they have engaged themselves.

Insurers need to consider the needs of vulnerable clients when offering cash settlements.

### **Case study**

*Kevin is over 70 years old. His home was flooded in Jan 2011, and again in February 2022.*

*He had lived in that community for many years and loved his garden. He was extremely overwhelmed following the February flood and had difficulty making small and large decisions. He does not have family members who could support him through the process. He could not understand how he would progress a rebuild of his home.*

*Quickly after the February flood event, Kevin was offered a cash settlement as the cost of repairing his home was too close to the sum insured (though his policy did offer gap cover).*

*The insurer reconsidered Kevin's request on many occasions, but they refused to do the work. As time passed, the cost of building increased further. After lodging in AFCA, the insurer did another inspection of the property with a structural engineer, and then stated that the work and costs had increased, and their builders would not warrant the work.*

*Ultimately, Kevin accepted a cash settlement. He is being closely supported by the local neighbourhood centre to progress his rebuild.*

#### **i. the different types of insurance contracts offered by insurers and held by policy holders**

We found that our clients generally understood that they had flood cover, or, understood that they did not because they could not afford it. We do note the rise in number of households that are unable to insure their properties. This is likely the result of the 2011 flood, the introduction of the standard definition of flood and the decision by insurers to introduce flood as standard. We did note that some insurers have now expanded their flood definitions to include rainwater mixing with floodwater.

#### **ii. timeframes for resolving claims**

Our clients found that the time to resolve their insurance claim was too long.

The timeframe to resolve these claims was significant, as there were often disputes about what caused the damage to their homes. This led to these clients needing sustained support as they were under pressure for significant periods of time while waiting for an outcome.

The timeframes to resolve the dispute were made worse by poor communication by the insurance companies.

#### **iii. obstacles to resolving claims, including factors internal to insurers and external, such as access to disaster hit regions, temporary accommodation, labour market conditions and supply chains**

We acknowledge that the scale of the disaster contributed to trade, professionals, housing and supply shortages that put significant pressure on insurers and led to claims delays. These same pressures mean that cash settlements are even less appropriate for many customers.

#### **iv. insurer communication with policyholders**

##### **A) Prior to disaster events**

There is an opportunity for insurers to educate consumers about the maintenance and preparedness work that can be done at their home. Many customers understand that, for example, they need to

clean their gutters. Beyond that, our clients did not have an understanding on what more they could do to maintain their home, particularly their roof. They do not expect to have failed to do maintenance when they did not know there was a problem.

Insurers could develop a clear checklist of expectations of homeowners and consider more effective ways of communicating these expectations to customers.

*B) Claims handling process*

Our clients faced significant challenges in communicating with insurers. These include:

- Extreme hold times
- Phone mailboxes being full
- Multiple claims managers
- Difficulty in getting an update or snapshot of their complex claims when they had questions
- Insurers appearing to forget earlier statements or partial cash settlement offers
- Earlier claims not being finalised before February 2022, and there being difficulties in understanding what damage was caused by each event
- Call centre staff not being in the correct team to handle their complaint, and specialist teams being short staffed

Many customers were also not comfortable using, or able to use email, or had challenges using mobile phones. Other customers found it difficult to retain the information provided to them in a phone call.

**Case study**

*Gemma's home was damaged by the rain in February 2022. She continued to reside in her home and advocated for herself with the insurer.*

*However, in the following months, mould began appearing in the home. At that point Gemma, who was still residing in the property, contacted her insurer again and arranged to move into temporary accommodation, paid for by her insurance. The payments, however, were made in short and inconsistent increments meaning Gemma needed to regularly contact the insurer for updates.*

*As Gemma had a number of health conditions, her claim had been placed in a specialist team that dealt with vulnerable customers. Sitting on hold was extremely difficult for Gemma, as it would increase her anxiety. When the calls were eventually answered, often members of the correct claims team could not access her file and answer her questions. Gemma would become frustrated, and the calls would be terminated before the issue of her temporary accommodation was resolved. Gemma was told that she would receive a call back from the specialist team, but these were unreliable.*

*Because of the difficulties communicating, Gemma had resorted to using her credit card to make these payments herself (which she could not afford). Gemma's health conditions meant that she could not quickly move herself back into the home and she was not comfortable moving back into a home that was not yet repaired.*

*Caxton advocated for Gemma with the insurer, they apologised, committed to offering temporary accommodation for the length of the rebuild and assigned a senior claims manager to her matter. The work has progressed, and Gemma expects to move back home by Christmas.*

#### **v. accessibility and affordability of hydrology reports and assessments to policy holders**

Hydrology reports were essential for clients who did not have flood cover, as it allowed insurers to deny the claims. These reports were near impossible for customers to source themselves, expensive, and difficult to read or critique for people who are not experts. This reduced our clients' ability to understand or contest the insurer's decisions.

In 2022, our clients did find the accessibility and affordability of other experts reports to be a greater challenge than hydrology reports, as more claims were partially denied due to maintenance, wear and tear, gradual deterioration or structural issues.

#### **vi. affordability of insurance coverage to policy holders**

The affordability of insurance is an ongoing problem. We are aware of clients who have rebuilt their homes knowing that it will be very difficult for them to get flood cover in the future.

We have other clients who are now surprised that they cannot access flood cover, either because it is not available, or it is completely unaffordable. These clients tend to have fixed low incomes, and do not have realistic options to move to other housing (for examples, residents of manufactured home parks or of regional towns with limited housing stock).

##### **Case study**

*Joan lives in a regional Queensland town with her family and relies on a pension. Her home flooded twice in early 2022.*

*Her insurer offered to cover some of the damage to her home.*

*After lodging with AFCA, the insurer offered to increase the settlement amount. However, they refused to pay for any damage connected to Joan's stumps, as they believe damage was not caused by the flood events.*

*She was not interested in a buyback, as she did not believe she would receive enough to be able to buy another property in her hometown.*

*She understands that she will not be able to get flood insurance in the future.*

*Joan used this money strategically to repair her home in a way that will make it more likely to withstand another disaster. She has used payments from the Resilient Homes Fund to move parts of her home to the upper level to make it more resilient.*

#### **vii. claimants' and insurers' experience of internal dispute resolution processes**

We found that IDR processes were helpful for clients where they were able to provide additional reports or information, or where the initial claim assessment had not considered all the damage to the home.

In many other instances, IDR decisions tended to reinforce the insurer's original decision. When the matters progressed to AFCA, we found that insurers made a greater effort to reconsider the matter, and work with the client to resolve the claim.

#### **viii. the impact of land use planning decisions and disaster mitigation efforts on the availability and affordability of insurance**

It is crucial that decisionmakers be mindful of the risk from natural disaster and the impact of climate change when making land use decisions.

We encourage governments at all levels to work with local communities, and to consider:

- Educating the building industry and wider community about resilient materials and design
- Offering grants to homeowners, to allow them to complete mitigation, resilient and preparedness work on their properties. We see value in these programs being offered throughout the disaster cycle, not just in response to a particular disaster. This is particularly important for low-income earners.

We expect that the insurance industry will encourage these initiatives and insurers will price their premiums in a way that incentivises this work being completed.

## **2. The inquiry shall also have regard to insurer preparedness for future flood events**

We encourage insurers to:

- Prepare for further disasters through their surge capacity, and the training they provide to clients and agents in relation to working with clients with a disability, and trauma informed practice.
- Be willing to partner with governments to roll out preparedness and resilient scheme. We note that only two insurers chose to partner with the Queensland Resilient Home Scheme, which then allowed them to do the resilient refit work on people's home while they were also rebuilding them.

## **3. The inquiry will take into consideration findings from other reports such as *Deloitte's external review of insurers' responses to the 2022 floods*, and *ASICs Claims Handling review***

### **Our recommendations**

We have reviewed Financial Rights Legal Centre and CHOICE joint submission and agree with their recommendations.

In addition, we recommend that:

1. Insurers improve their internal record system and communication with clients. Where possible, insurers should offer customers a single claims manager. Insurers should be accessible and responsive to all customers.
2. Insurers resource and train teams that work with vulnerable customers, so they understand mental health first aid, trauma informed practice and ensure that their procedures are flexible enough to respond to customer need.
3. Insurers work with the consumer sector to review their approach to exclusions relating to maintenance, wear and tear, rot and gradual deterioration and consider:
  - a. Using consistent definitions;
  - b. Educating customers about what is expected of them and create tools that support customers to maintain their properties (rather than rely on these tools as a reason to deny claims); and
  - c. Ensuring that when these exclusions are relied on, it is clear what was expected of the client and how that contributed to the damage.
4. Cash settlement offers be redesigned to clearly explain what damage is being settled (this is especially for partial settlements).
5. Extend the right of review for a cash settlement amount under the General Insurance Code of Practice to clients who have been affected by a disaster and accept the cash settlement within 12-18 months of the disaster.

6. Insurers and governments work with community organisations to develop more affordable insurance products.

This submission was prepared by Jacqui Cavanagh, Flood Recovery Lawyer at Caxton Legal Centre Inc. If you have any questions about this submission, please contact Jacqui on

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Yours sincerely

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