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Standing Committee on Economics
Parliament House

Dear Committee

Supplementary submission: Inquiry into insurers' responses to 2022 major floods claims

Thank you for the opportunity to respond to the Committee's inquiry into insurers' responses to the major flood claims arising from 2022's 'disaster year'. We have signed onto and fully support the submission from Financial Rights Legal Centre (FRLC) and CHOICE (**primary submission**). Consumer Action has experience advising and representing clients with insurance claims and disputes. Demand for insurance advice has been increasing as a result of the recent floods and other natural disasters in Victoria. We provide the following additional case studies from our frontline advice services to emphasise the issues impacting consumers from the October 2022 floods in Central Victoria. We have changed our clients' names and removed the name of their insurers. These stories are typical of the myriad issues that arise in any claim difficulty that presents to our service: confusing, contradictory and delayed communication; and overly technical and inaccessible arguments to deny claims.

Broadly, any consumer lodging a claim after a natural disaster like a flood is extremely vulnerable. Our lawyers report that these clients are typically very distressed when they first speak to them. These clients have often lost their homes and been physically disconnected from family and community. They simply do not have the resources to engage in legalistic and technical disputes with their insurer and advocate for themselves to try to get a fair outcome. We frequently see consumers accepting a less than satisfactory outcome because they no longer have the capacity to continue in a claims dispute process.

The primary submission makes 34 detailed recommendations to improve outcomes for consumers and we encourage the committee and industry to consider these with the seriousness they deserve. Consumer Action affirms the overall need for increased resources, support and compassion for consumers navigating an insurance claim after a natural disaster – both from government and industry.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Case Study – Camilla

Camilla's house was inundated in the October 2022 floods. Her sum insured was \$450,000. After the damage, she, her partner and children moved into temporary caravans.

After lodging a claim, Camilla's insurer sent contractors to undertake agreed make safe works between October 2022 and March 2023. The insurer later determined the house was a total loss and offered Camilla a payout, less \$60,000 for the works undertaken. The insurer later raised this figure to \$90,000 despite Camilla obtaining estimates that the works were only worth \$20,000.

Camilla lodged an internal dispute resolution complaint with her insurer, who investigated the trades and found they had been double-charging. She accepted a payout for the full \$450,000 plus CPI, but less \$44,000 for the make-safe works.

While they wait to rebuild their home, Camilla and her partner are renting a property at their own expense out of town and paying their mortgage.

Camilla's story demonstrates the issues arising when an insurer has poor oversight of their contractors. If Camilla hadn't been able to advocate for herself, the financial impact of the contractor's double billing and the insurer's poor supervision would have been significant.

Consumer Action also notes that Camilla wasn't offered an uplift payment, despite accepting the risk of rebuilding and loss of economies of scale that an insurer has access to. This story demonstrates the necessity of recommendations 13a and 13b in the primary submission:

13. The General Insurance Code should be amended so that

- a. if a consumer cash settles within 12 months of a disaster occurring, they have 12 months in which to ask the insurer to review the amount of the cash settlement if the amount is inadequate due to circumstances which were unforeseen at the time of the settlement; and*
- b. people should be directed to obtain legal advice regarding cash settlements before accepting the settlement.*

Case Study – Trevor and Narelle

Trevor and Narelle are in their late sixties. Trevor is a builder. Their home was flooded in October 2022 and they lodged a claim soon after. Their policy only covered damage due to stormwater.

An assessor came to visit their home and they discussed what make safe works were required. Trevor and Narelle confirmed that they didn't want significant amounts being stripped out of their home, because Trevor could use them in his own work and in the event their claim was declined.

Contractors attended the property in November 2023. Narelle and Trevor were still concerned about the contractors working on the house before they knew if their claim would be accepted. Documents show that they raised this with the contractor, who confirmed with the insurer that the works should proceed even though the policy didn't cover flood damage. Trevor and Narelle say that the contractor asked Trevor and Narelle to sign a waiver to cover the workers for any OH&S issues. They report being pressured to sign the document in a short timeframe, and weren't given time to consider it.

Trevor and Narelle say that the contractors commenced major works and removed many materials that were obviously salvageable - including stone benchtops, sinks, faucets, and a toilet.

In late March 2023, their insurer declined their claim for the water damage after an expert hydrologist report found that the inundation of Trevor and Narelle's home came from the rising river, which they were not covered for.

Trevor and Narelle asked the insurer to compensate them for the unnecessarily destroyed materials, but the insurer relied on the waiver to refuse. The waiver permitted the contractor to remove any non-salvageable building materials in order to commence restoration works. The document had not been explained to Trevor and Narelle, despite the multiple times they had raised concerns that their claim might be declined. The waiver did not have an attached statement of works and the contractors weren't actually carrying out restoration works.

Consumer Action has assisted Trevor and Narelle to lodge a dispute with AFCA. Trevor is restoring their home himself, but they estimate their loss for the salvageable materials to be more than \$20,000. They are still trying to make themselves whole more than a year later, and the delay in determining the outcome of their claim and the unnecessary destruction of their materials has significantly exacerbated the process.

Trevor and Narelle's story is a particularly egregious example of poor communication. Their insurer should have at the very least clearly explained to them what the contractor would be doing. If they had, Narelle and Trevor would not have agreed to it. What has transpired is that Trevor and Narelle feel they are in a worse position than if they had never lodged a claim at all.

Trevor and Narelle's story goes directly to recommendations 1 and 12 in the primary submission:

- 1. Insurers must better resource, and train employees, to communicate with consumers in a transparent manner, clearly informing them how their extreme weather event claim will be assessed and how their claim is progressing.*
- 12. Insurers need to better project manage and oversee third party contractors.*

Case Study – Christina

Christina and her young family rent in Rochester. After the October 2022 floods, their home was uninhabitable, and they stayed with family and in crisis accommodation in neighbouring towns. About a third of their belongings were destroyed. Christina lodged a claim on her contents policy immediately and estimated her losses at \$30-35,000.

A contractor was assigned to undertake a 'restoration' and removed many of the damaged items. The insurer required the contractor to provide a list and photos of the removed items, but they took more than a month to send the report.

In December, her insurer asked for a list of all the damaged items, and then for replacement quotes. This was a huge amount of work, and she was then asked for an itemised list of her things that were not damaged and in storage. Eventually, a financial counsellor assisted Christina and her family and they received a settlement in March or April 2023.

Christina feels that without the assistance of the financial counsellor, the payout from her policy would have been significantly less.

Christina and her family are still dealing with the impacts of the floods – more than a year on, they are in temporary accommodation. Their insurer is covering the difference between their current and ordinary rent and expect their policy's allowance will run out in June 2024. Meanwhile, repairs or rebuilding work are still yet to commence on their rental home.

Case Study – Susie

Susie lives in Rochester and had flood cover for her building and contents. After the October 2022 floods, she was unable to live in her home and spent two months staying with her daughter a long drive away. Her insurer later reimbursed her for the purchase of a caravan on her property.

Susie says that after the October floods, the previously level floor of her home had noticeably changed and damaged the floorboards throughout. Her insurer obtained an expert report that identified one stump as allegedly being damaged prior to the floods. The report also claimed the flood hadn't impacted on the footings and foundation, but that the soil remained saturated and could cause further damage. A 'desktop' survey of the soil identified it as a contributing factor, but they didn't actually test the soil around Susie's home.

Susie asked her insurer for a second report, but says it didn't provide any new or different information. The insurer relied on the reports saying one stump was faulty to deny coverage for all of the stumping.

Representatives from Susie's insurer came to Rochester, and after meeting with them at a public forum they agreed to a settlement - two thirds of Susie's total sum insured. That amount wasn't enough to rebuild, so she sold her house as is and moved away from the town she'd lived in for years.

Susie and Christina's stories are representative of the inherent power differential between insurers and consumers, exacerbated for survivors of a natural disaster. Susie tells us that her floor was totally level before the flood. Even if one stump had pre-existing damage, it isn't clear that this is a sufficient basis to deny coverage for the entire floor. It is very difficult for people to know whether they can dispute what the insurer says. We feel this story directly supports recommendations 5, 7 and 8 in the primary submission:

- 5. A standardised industry approach should be established for exclusions that involve subjective assessments which insurers rely on including maintenance, wear and tear, defect, and pre-existing damage*
- 7. Where maintenance, wear and tear, defect, pre-existing damage or other exclusions are relied on or asserted then sufficient evidence should be provided by insurance assessors. We support the Legal Aid Queensland and the CGC who argue that the quality of reports prepared by assessors and experts must be improved by requiring reports:*
 - a. identify what damage occurred to the property;*
 - b. identify what reasonable maintenance has not been undertaken by the consumer;*
 - c. outline whether the failure to maintain would have made a significant difference to the outcome and damage sustained to the property;*
 - d. identify and explain the causal link between the failure to maintain and how that resulted in a significant contribution to the damage sustained to the property;*
 - e. be conducted by independent third parties, who are not appointed by insurers;*
 - f. be provided in a standard format to obtain more consistent and higher quality input*
- 8. Insurers should pool funds to allow consumers to obtain independent expert reports in a timely manner when they have complaints in AFCA.*

For Christina, her claims process became more arduous at every step, when her insurer asked for another time-consuming task. What should have been a simple claim took close to six months to resolve. Christina tells us that she had lost any ability to deal with the process by the time a financial counsellor was able to help. Her story directly supports recommendations 1 and 2:

- 1. Insurers must better resource, and train employees, to communicate with consumers in a transparent manner, clearly informing them how their extreme weather event claim will be assessed and how their claim is progressing.*
- 2. Insurers need to take a proactive approach to progressing delayed claims, and identifying vulnerable customers for whom to provide appropriate care.*

Consumers seek insurance to mitigate their risk and loss when affected by circumstances out of their control. The community expects that an ordinary consumer, having purchased an insurance product deemed suitable for them and promptly lodging a claim, would be protected from the impact of a major, life-changing losses of their homes and belongings. For so many of the clients seeking our services, they have been left shouldering a significant loss. Many of them do not feel like they have the energy to keep fighting.

We are willing to share these stories and also our experiences in dealing with clients in a public hearing.

Please contact Policy Officer **Rose Bruce-Smith** at **Consumer Action Law Centre**

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

Stephanie Tonkin | Chief Executive

