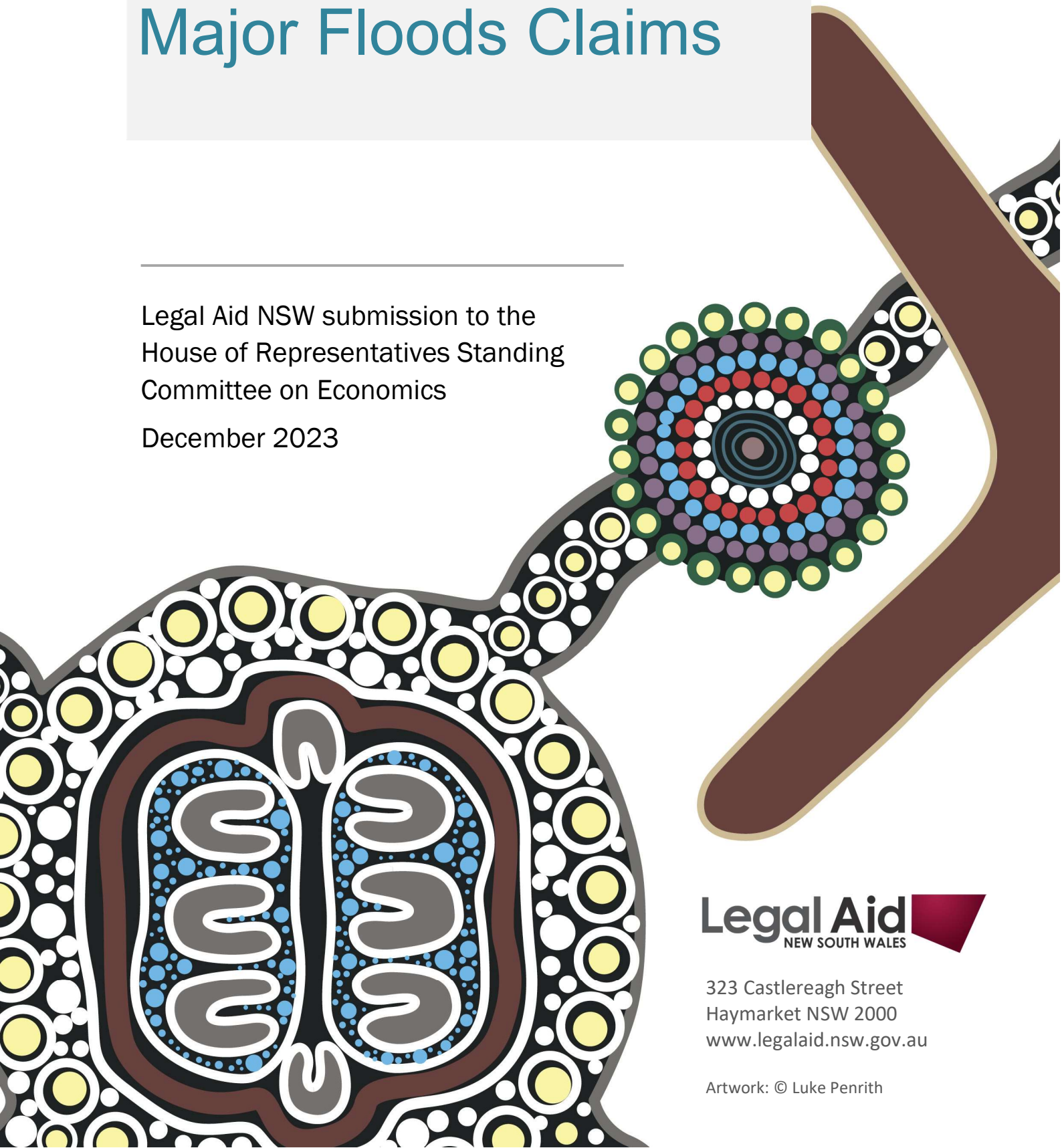


Inquiry into Insurers' Responses to 2022 Major Floods Claims

Legal Aid NSW submission to the
House of Representatives Standing
Committee on Economics
December 2023



Legal Aid
NEW SOUTH WALES

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Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

1. About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the Legal Aid Commission Act 1979 (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law.

Specialist services focus on the provision of Family Dispute Resolution Services, family violence services and the early triaging of clients with legal problems through the Family Law Early Intervention Unit.

Legal Aid NSW provides duty services at all Family and Federal Circuit Court registries and circuit locations through the Family Advocacy and Support Service, all six

specialist Children's Courts, and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and most regional offices. The purpose of the Civil Law Division is to improve the lives of people experiencing deep and persistent disadvantage or dislocation by using civil law to meet their fundamental needs. Our civil lawyers focus on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

Should you require any further information, please contact:

Ma'ata Solofoni

Senior solicitor (Disaster Recovery & Insurance)

2. Introduction

Legal Aid NSW welcomes the opportunity to provide a submission to the Federal Parliament Standing Committee on Economics' inquiry into insurers' responses to the 2022 floods.

Legal Aid NSW's specialist Disaster Response Legal Service (**DRLS**) responded to all flood events within the scope of this inquiry that occurred in NSW in 2022, and is the lead government agency coordinating the legal response to disasters in NSW.

From 1 March 2022 to 21 November 2023, the DRLS provided 6049 legal services to 3401 individuals impacted by the 2022 floods across 93 Local Government Areas. Of these services, 4205 were face to face services at Disaster Recovery Centres and Recovery Assistance Points across the State, shown on the map below.

Many of the clients we assisted following the 2022 floods experienced problems with their insurer, with insurance matters accounting for around 49 per cent of all legal services provided by the DRLS in response to the 2022 floods. In total, 2984 services provided by the DRLS were about general insurance, with over 120 insurance matters relating to the 2022 floods still open.

Insurance problems commonly encountered by our clients included

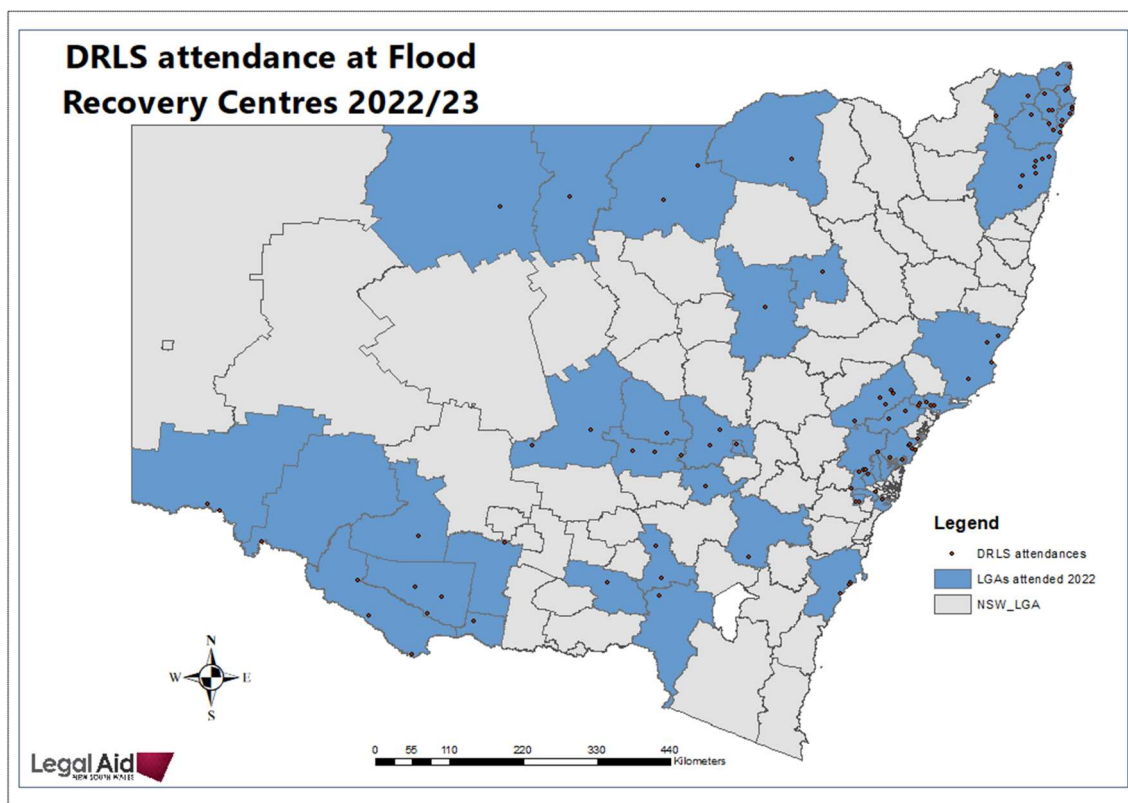
- difficulty contacting their insurer,
- unreasonable delay in processing their claim,
- poor communication from the insurer,
- poor quality assessor reports,
- poor quality repairs,
- difficulties arising from the cash settlement process,
- misuse of maintenance and pre-existing defect exclusions,
- difficulties accessing additional benefits under their policy such as temporary accommodation benefits, and
- poor quality internal dispute resolution (**IDR**) processes.

Many of our clients experiencing vulnerability were not appropriately supported by their insurers, in breach of part 9 of the General Insurance Code of Practice (**GICoP**).

Some insurers were better prepared to respond to the 2022 floods, provided a better service to policyholders and were more receptive to feedback from DRLS. We observed that insurer attendance at disaster recovery centres was highly valued by communities and generally facilitated better outcomes for policyholders.

The price of insurance was a consistent issue raised by our clients from all areas of NSW impacted by the 2022 floods. Nearly all of our clients who did not have any insurance, or who did not have flood cover, told us this was because it was unaffordable.

We respond to the Terms of Reference from point 2 below.



2.1 How Legal Aid NSW's Disaster Response Legal Service Operates

For well over a decade, Legal Aid NSW has provided statewide legal assistance to communities impacted by disasters across NSW as part of the NSW Government's response. The DRLS was established in early 2020 in response to the Black Summer Bushfires and provides statewide legal assistance, community legal education and information to individuals and communities impacted by disasters.

The DRLS specialises in legal issues that arise during emergencies, which can cause acute hardship if left unresolved. They include insurance entitlements and disputes, housing and tenancy, access to disaster grants, social security, credit, debt and financial hardship, employment, fines and domestic and family violence.

The DRLS service model ensures a timely, targeted and trauma-informed service¹ through a multi-channel approach including:

- The DRLS 1800 helpline open 9.00am to 5.00pm weekdays operated by LawAccess NSW
- Face to face legal assistance at Recovery Centres, Recovery Assistance Points and Mobile Outreach hubs
- A telephone advice service staffed by Legal Aid NSW Civil Law solicitors.

- More extensive casework and allied professional services when needed
- Targeted community legal education and information at community meetings, mobile hubs and events
- Referrals to other agencies and support services, including pro bono referrals
- A dedicated DRLS website¹
- Advocating on systemic issues with insurers, regulators and other stakeholders; and
- Coordinating disaster legal help on behalf of the NSW legal assistance sector, working closely with Community Legal Centres NSW, Tenants Union NSW, Aboriginal Legal Service NSW/ACT, Justice Connect, NSW Bar Association, Law Society of NSW and the pro bono sector.

The DRLS model is client centred and aims to mitigate the impact of disasters on individuals, families, and communities. It adopts a holistic approach to a clients' legal problems, by providing early legal assistance, identifying systemic legal issues, and referring them to appropriate stakeholders or regulators, and providing legal education to affected communities. Where needed, the DRLS provides clients with more extensive, ongoing legal assistance through casework, advocacy and representation, subject to Legal Aid NSW guidelines and policies, and allied professional services, such as financial counselling, and non-legal referrals.

Anyone living in communities affected by disasters in NSW can access assistance from the DRLS. For many of our clients, it is the first time they have ever needed Legal Aid. People impacted by disasters often experience unexpected hardship and trauma and are therefore considered priority clients. Leaving one's home at short notice or facing the loss of secure housing, belongings, businesses or workplaces, often leaves people unable to move forward without support, even if they have resources and capability.

Vulnerable and isolated populations, including Aboriginal communities, older people and people living with a disability are disproportionately affected by disasters and therefore receive more intensive socio-legal services from legal and allied professional staff. After the bushfires, studies showed that over one-quarter of the Indigenous population of NSW and Victoria, lived in a bushfire-affected area.² The DRLS model incorporates targeted local service delivery strategies for vulnerable groups that are accessible and culturally responsive.

¹ <https://disasterhelp.legalaid.nsw.gov.au/>

² B. Williamson, F. Markham and J.K. Weir, "Aboriginal peoples and the response to the 2019–2020 bushfires" (Working Paper No. 134/2020, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2020).

Recommendations

Recommendation 1

Insurers should have dedicated teams to coordinate their response to disasters and ensure they have adequate workforce surge capacity to respond to increased demand.

Recommendation 2

Insurers should attend Disaster Recovery Centres and outreach events to assist policyholders to lodge claims and get updates on their matters.

Recommendation 3

Insurers should ensure all frontline staff are trained on the General Insurance Code of Practice, particularly Part 9 regarding supporting customers experiencing vulnerability, and the principles underpinning the General Insurance Code of Practice of communicating clearly and treating the community with respect and sensitivity.

Recommendation 4

Insurers should endeavour to have the same claim manager deal with the claim lodged by a policyholder experiencing vulnerability. Policyholders should be able to contact their claims manager directly to seek updates on the progress of their claim.

Recommendation 5

Insurers should settle claims flexibly after large scale disasters, particularly regarding temporary accommodation benefits.

Recommendation 6

Insurers should be required to proactively warn policyholders when they suspect they are underinsured.

Recommendation 7

Insurers should improve their consumer information on topics including understanding coverage and rebuild costs and where to access help if required, including legal and financial counselling services.

Recommendation 8

The Australian Financial Complaints Authority's jurisdictional limit for non-financial loss should be increased to sufficiently address the impact of unreasonable insurer delays.

Recommendation 9

Insurers should review and update the design of temporary accommodation benefits to ensure they meet the real needs of policyholders following a disaster including by:

- a) requiring claims managers to proactively raise temporary accommodation benefits with policyholders when a claim is lodged and clearly inform them of the features of the benefit;

- b) increasing the standard period of the benefit to at least 24 months; and
- c) including flexible approaches to how the benefit can be used.

Recommendation 10

The federal government should review the standard definition of 'flood' as part of its review of natural hazard definitions, and the approach of some insurers of bundling together opt out of flood cover with storm surge and rainwater run-off cover.

Recommendation 11

Insurers should provide clear information to consumers on:

- (a) maintenance exclusions and expected maintenance standards at policy inception, renewal, and claim.
- (b) the reasons for denying a claim in full or in part because of poor maintenance.

Recommendation 12

Landlord insurance policies should include temporary accommodation benefits for tenants where the property is uninhabitable due to an insured event.

Recommendation 13

Governments should continue to fund programs such as the Flood Property Assessment Program.

Recommendation 14

Government should expand mitigation and resilience measures such as rezoning flood affected areas, buy back, resettlement and property modification (such as home raising and retrofit) schemes, and should consider implementing these programs in high-risk areas before as well as after disasters.

Recommendation 15

Insurers should be required to consider relevant property-level mitigation measures in any new or renewing insurance policy, and to demonstrate how those measures have been reasonably reflected in the proposed premium. The process for informing an insurer about modifications should be streamlined and accessible.

3. The experiences of policyholders before, during and after making claims (ToR 2(a))

3.1 Policyholders' experiences before making claims

In our experience, many people do not know what their insurance policy covers, including their sum insured or the benefits they are entitled to under their policy. Those who have looked at their policy schedule often find it complicated and hard to understand.

It is common for policyholders to engage with the detail of their insurance policy for the first time when they need to lodge a claim after a disaster. It is at this point that many people discover that they are underinsured.

Many of our clients describe staying with the same insurer for many years, sometimes out of a sense of loyalty and often out of convenience. While our clients are generally not aware of the details of their insurance coverage, most are very aware of the cost. Our clients consistently tell us that they opt out of flood cover because it is too expensive, and they cannot afford it.

3.2 Policyholders' experience during making claims

Most of our clients seeking assistance on insurance matters after the 2022 floods approached the DRLS because of problems they experienced during the claims process. These include difficulty contacting their insurer, unreasonable delay in processing the claim, poor communication from the insurer, poor quality assessor reports, poor quality repairs, difficulties arising from the cash settlement process, and difficulties accessing additional benefits under their policy.

Difficulty contacting insurers

It was very difficult for many policyholders to contact their insurer in the immediate aftermath of the 2022 floods. Some insurers did not have sufficient workforce surge capacity to deal with the influx of claims and inquiries. Our clients often described waiting on hold to talk to their insurer for hours, only for calls to drop out, leading them to attempt to contact their insurer multiple times over several days. Clients who were able to leave messages told us that they often went unacknowledged or unactioned by their insurer for weeks or months. Many of our clients who were able to speak to their insurer reported to us that the insurer committed to calling back within 24-48hrs, which frequently did not occur.

Disruptions to phone reception and power outages during floods and other disasters also make it harder for policyholders to contact their insurer. In some instances, brick-and-mortar insurer shop fronts are forced to close, as occurred during the 2022 floods

in Lismore. This made it more difficult for older customers and customers with limited technology to reach their insurer.

For some clients, difficulty contacting and communicating with their insurer prevented them from making a claim because they were uncertain about the process involved and couldn't find clear instructions from their insurer. Many of our clients described feeling overwhelmed with the whole process, with the lack of communication from their insurer creating uncertainty about the next step of their recovery journey.

These difficulties are minimised by insurers attending recovery centres in the immediate aftermath of floods or other disasters. In our experience, insurers' presence 'on the ground' after the 2022 floods was highly valued by communities, and allowed clients to lodge and progress their claim in a way that isn't possible or is much more difficult over the phone, get updates and access emergency payments and temporary accommodation. In our experience, insurers tended to be more responsive to our clients' circumstances, and open to considering reasonable and practical approaches to claims and complaints when dealing with customers face to face in a recovery centre setting.

4. The different types of insurance contracts offered by insurers and held by policyholders (ToR 2(b))

4.1 Flood cover

In high flood risk areas in NSW like the Northern Rivers, the Hawksbury and some Central West locations like Eugowra, a significant portion of our clients with insurance policies had flood cover excluded. Many clients told us that they had opted out of flood cover as the premiums were unaffordable. Other clients told us they had no insurance cover at all as the cost was prohibitive.

Our clients impacted by the 2022 floods who had insurance cover either held home or contents insurance which included flood cover as a standard term, or flood cover was an opt in or opt out term. While the introduction of a standard definition of 'flood' in the *Insurance Contracts Regulation 2017* (Cth)³ in 2012 has provided some clarity and consistency, our clients still experience confusion regarding what their flood cover includes.

4.2 Bundling of opt out flood cover with storm surge and rainwater runoff cover

Many of our clients were impacted by the NRMA's approach to bundling together opt-out flood cover with rainwater runoff and storm surge cover in its home and contents insurance policies. As a result, NRMA customers in NSW who opt out of flood cover also opt out of rainwater run-off and storm surge cover. The NRMA is the only insurer we are aware of that takes this approach, which we understand was implemented following the major flood in the Northern Rivers around 2017. We are concerned that this approach may undermine the intention of the standard definition of 'flood', of providing consumers with clarity regarding their insurance coverage and exclusions.

Many of our clients with NRMA home and contents insurance were not aware of this change in their policy until they lodged a claim. They reported that the reason they opted out was because flood cover was too expensive. Many did not realise they were also opting out of rainwater and storm damage cover, and did not understand the nuances of flood water, rainwater run-off and storm surge.

³ *Insurance Contracts Regulation 2017* (Cth), regulation 34.

Some of our clients' properties were damaged by rainwater run-off instead of, or before, flood waters. This type of damage is covered by some insurance policies even when flood water damage is excluded. However, this damage was not covered for policyholders who had opted out of flood water, rainwater runoff and storm surge cover.

4.3 Farm insurance policies

Farm insurance policies which include the residential home as well as the wider property (used for commercial / primary producer purposes) are common among our clients in regional and rural areas. In the aftermath of the 2022 floods, clients living on rural properties frequently sought our advice regarding fencing damage, ground erosion / landslip and cut off access to private roads. Often these events are not covered under insurance policies but significantly impact the policyholder.

4.4 Insurance held by tenants

We also advised significant numbers of tenants⁴ in the aftermath of 2022 floods in NSW⁵, and observed that very rarely did tenants hold contents insurance over their belongings. In these circumstances we referred them to government and charitable support to assist in replacing essential items, such as the Back Home Grant and the Disaster Relief Grant. Without contents insurance, tenants are also not covered for temporary accommodation benefits and insurer support to locate alternative accommodation.

⁴ Tenants often sought advice regarding their right to repairs or terminating the agreement in relation to uninhabitability under the *Residential Tenancies Act* NSW.

⁵ 17 per cent of our DRLS's services in 2022 related to tenancy.

5. Timeframes for resolving claims (ToR 2(c))

5.1 Unreasonable insurer delays

Many of our clients' claims have been delayed in breach of timeframes set out in the GICoP, particularly timeframes for updating clients on the progress of their claims. Our clients often report not hearing back from their insurer for weeks or months. Some of our clients' claims have progressed very little and are still unresolved 12-18 months after the floods.

We acknowledge that some causes of delay are beyond insurers' control, such as COVID-19 related disruptions to supply chains, difficulties in assessors accessing flood impacted locations, and labour shortages of specialist trades, hydrologists, builders, geotechnical engineers, structural engineers, and loss adjusters. However insufficient staffing within insurance companies of claims processors and assessors, to deal with the increase in demand following the floods also caused significant delays.

Delays in resolving insurance claims can exacerbate the trauma of floods and negatively impact on the wellbeing of policyholders, including where delays lead to further damage to the property, such as mould, that can significantly affect those with medical conditions.

Cash settlements offered by insurers do not always allow for CPI or contingency buffers to cover any increase in repair or rebuild costs between the time of the claim and its approval or the commencement of work. Delays processing claims can also prevent policyholders from accessing local council schemes that dispense with the usual Development Approval (**DA**) process for a period following a disaster.

We have assisted many of our clients who have experienced unreasonable delay to prompt their insurer to progress their claim. This includes through complaints to IDR and the Australian Financial Complaints Authority (**AFCA**).

Policyholders can seek compensation for unreasonable delay in resolving their claim, which is capped at \$5,400 for non-financial loss. We consider that in many instances this is inadequate to compensate policyholders for the substantial inconvenience, pain and distress caused by their insurer's delays. It also does not appear to sufficiently disincentivise insurers from routinely breaching the claim handling timeframes in the GICoP.

Case Study: Sam and Jane's story

Our clients Sam and Jane are an elderly couple with several health conditions who reside on a farm in regional NSW. In 2022 floods severely damaged their home and property.

Sam and Jane immediately lodged an insurance claim. However, despite spending hours on the phone and making multiple requests for their insurer to allocate a hydrologist, it took five months for this to occur. The insurer told Sam and Jane that they had to wait on the outcome of the hydrologist's assessment before any funds could be released for make safe works and cleaning, despite clause 64(b) of the GICoP.

During this time black mould rapidly contaminated their home, causing additional damage. After the hydrologist finally inspected their property, the insurer engaged contractors to strip the walls.

This may have been avoided if the insurer had processed their claim more quickly, or fast-tracked payment of some benefits to allow Sam and Jane to clean their home.

6. 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 (ToR 2(d))

6.1 Labour shortages

Following the 2022 floods labour shortages undermined the ability of consumers and insurance companies to engage tradespeople and other workers to undertake assessments and repairs.

Some highly qualified or specialised workers were particularly scarce following the 2022 floods, including hydrologists, geotechnical engineers and trades. Many of our clients reported that they found it very difficult to find the required tradesperson to provide them with a quote or an opinion about the damage to their property, and even after engaging a tradesperson it could be months before they were available to start work. Our clients also reported that it was difficult to find local tradespeople or experts to provide a second opinion or assess the quality of work completed by contractors engaged by an insurer, as they were often relying on work allocated by insurers.

6.2 Rushed assessments and cash settlement problems

We have observed that the lack of available tradespeople in the aftermath of floods and other disasters can impact on the quality of urgent make safe work, with initial assessments sometimes rushed and ill considered.

Case Study: Amanda's story

Shortly after lodging her claim, Amanda was advised by her insurer that they were sending an external contractor to strip out her home's hardwood walls, floors and a bathroom, which was regarded as 'urgent make safe work'.

Jenny and her friend, a licensed builder, questioned the extent of the strip out and thought it excessive. The insurer insisted that the work was necessary.

The insurer's contractor caused additional damage during the strip out, which Jenny was quoted \$67,000 to repair. The insurer informed Jenny that the price

of the strip out was around \$50,000, which will be deducted from any settlement. Given the number of hours spent by the contractors at her home, Jenny estimates the cost of the strip out was around \$1,000 per hour.

Misuse of maintenance exceptions and cash settlements

Rushed and poor-quality assessments can miss critical information and lead insurers to incorrectly apply exclusions and decline claims partially or fully, and prematurely offer cash settlements to finalise claims. For example, an insurer may accept that damage to internal walls was caused by a storm, but not damage to the roof where the water entered. Insurers then often offer a cash settlement on the basis that they cannot warrant the job without repairs to another part of the property that they have declined to cover.

In the aftermath of the 2022 floods we observed many instances of insurers relying on maintenance and pre-existing defect exclusions without sufficient evidence. Insurers often did not provide our clients with clear reasons or evidence for relying on such exclusions, and in some instances the claims assessors were not able to explain what those exclusions meant to our clients.

Cash settlements are often problematic for our clients as they require the policyholder to manage repairs or a rebuild, which if given the choice, many of our clients would avoid. Insurers are generally better equipped to manage this process and have access to a greater range of tradespeople. Cash settlements transfer the risk of the repair and rebuild process to the policyholder, and do not account for any increase in costs of labour or materials while the policyholder is waiting for work to begin.

6.3 Temporary accommodation benefits

In many flood prone regional areas of NSW there is a lack of affordable rental properties and limited housing options. We observed that the 2022 floods exacerbated the housing crisis in regions such as the Northern Rivers as thousands of displaced homeowners sought temporary accommodation in the same area.

It is generally beneficial for people to stay within their local area, to access recovery services, health services, jobs, schools, family and social support. Relocating to another area for temporary accommodation is not a viable option for many, especially as it can be months or sometimes years before they can return to their home.

Temporary accommodation benefits can significantly assist policyholders and are one of the main issues we provided advice and assistance on in the early stages following the 2022 floods. Temporary accommodation benefits can include assistance locating and paying for temporary accommodation or reimbursement of out-of-pocket expenses. Understanding this benefit can relieve a lot of stress for displaced

homeowners, giving them options for finding secure accommodation away from their homes.

As noted above, many tenants we assisted did not have contents insurance and therefore were not entitled to temporary accommodation benefits.

Problems our clients experienced regarding temporary accommodation benefits

Similar to previous disasters, following the 2022 floods we observed that insurers often did not inform policyholders of their entitlement to temporary accommodation benefits when they lodged their claim. As a result, some of our clients paid for accommodation themselves, or stayed with friends, family or in some cases their disaster affected home, when they were entitled to temporary accommodation benefits under their policy.

Other issues with the way insurers approached temporary accommodation benefits for our clients following the 2022 floods included:

- Providing accommodation that was too far from policyholders' home and community.
- Paying the temporary accommodation benefit in a piecemeal manner, often for short periods of 2 – 6 weeks at a time while our clients' claims were assessed. This reduced some of our clients' sense of security or permanency, often requiring them to relocate multiple times to different facilities, and preventing them from securing longer term accommodation options. Many of our clients complained of missing out on rental accommodation which required longer commitments.
- Using high-cost short term rentals such as AirBnB properties. For policyholders whose temporary accommodation benefit was limited to a certain percentage of their sum insured (as opposed to time based which is not concerned with cost) this quickly depleted their benefit. While sourcing temporary accommodation was difficult in many regional areas, insurers were often inflexible in their approach.

Flexible approaches to temporary accommodation

Other insurers responded flexibly and creatively to providing temporary accommodation benefits that met the needs of our clients. For example, in the aftermath of 2022 Northern Rivers floods some insurers provided upfront cash settlements for policyholders to purchase caravans, or arranged for the hire of a pod or caravan that was placed on the owner's block, so they could stay on their own property while repairs were undertaken. These solutions were practical and suited the needs of the policyholders concerned.

Temporary accommodation benefit period

Most temporary accommodation benefits are for a period of up to 12 months. We consider that this amount of time is no longer fit for purpose, given the rebuild and

repair time often far exceeds this, especially in disaster areas where trades are scarce. Insurance claims and assessment processes can take significant amounts of time, and many months can be taken up with the assessment process before repairs even begin. Some of our clients impacted in the early 2022 floods are still waiting for repairs to their property to be completed almost 2 years after the event.

7. Insurer communication with policyholders (ToR 2(e))

7.1 Common communication issues

Almost every client the DRLS assisted with insurance matters reported poor communication from their insurer at some stage of the claims process. This included:

- Insurers providing policyholders with incorrect information. For example, incorrectly informing policyholders they had to retain damaged goods for an assessor to inspect, as illustrated by the case study below.
- Insurers requiring policyholders to obtain quotes for different repairs, adding further stress to people impacted by disasters, and contrary to the GICoP, particularly Part 9 on supporting customers experiencing vulnerability.
- Insurers asking third parties, such as assessors, claims management firms and builders, to communicate with policyholders about the progress and outcome of their claim, often resulting in mixed messages and increasing uncertainty.
- Insurers failing to take responsibility for poor conduct workmanship of third parties engaged by the insurer.
- Insurers requesting itemised lists of damaged contents where there is a total loss, contrary to clause 80 of the GICoP. This issue is illustrated in Jenny's case study below.
- Insurers not complying with obligations in the GICoP regarding consumers experiencing vulnerability, as explained further below.

Case Study: Incorrect information regarding rubbish removal

Legal Aid NSW solicitors driving to a Recovery Assistance Point in the small Hunter Valley community of Broke were struck by the large volume of debris out the front of flood damaged homes, despite council offering a free rubbish removal service.

Clients told our solicitors that they were hesitant to get rid of any rubbish as their insurer had told them not to remove anything until assessors had inspected the goods, which was likely to be weeks away. The large volume of rubbish and debris was unsightly, hindering clean-up efforts, and a potential health hazard.

The DRLS worked with individual clients, Resilience NSW and community workers to inform people of their legal rights and reassure them that they did not need to wait for assessors to come to the town. We informed the community that if they took photographs or videos of damaged household

goods they could take advantage of the council offer to get rid of the debris immediately.

We worked with Resilience NSW to ensure that the correct information regarding damaged goods was widely distributed across the region so that this issue did not emerge in other towns. We also informed the Insurance Council of Australia that some insurers were routinely providing misinformation regarding the need to retain damaged goods.

Case Study: Jenny's story

Our client Jenny's home and belongings were significantly damaged by flood waters in 2022. Jenny immediately lodged a claim but after more than four months the insurer still had not determined the outcome.

Jenny made numerous calls to her insurer to seek updates about the status of her claim, often waiting on hold for two to three hours on each call. The insurer insisted that Jenny prepare a detailed and itemised list of all her damaged possessions, provide photos of the damaged goods and proof of ownership.

Jenny had received assistance from the Australian Defence Force to dispose of most of her damaged possessions in the wake of the floods and had not taken photographs. Jenny's records and computer were also destroyed in flood waters, so she was unable to provide proof of ownership.

Out of frustration and after many failed attempts to resolve these issues on her own, Jenny attended a recovery centre at Lismore and with the help of a Legal Aid NSW lawyer, spoke to a representative of the insurer. The insurer's representative recognised that the claims manager's approach was unreasonable in the circumstances, agreed to assess Jenny's claim as a total loss and paid the full sum insured.

7.2 **Obligations to people experiencing vulnerability**

Many of our clients experience vulnerability, such as the elderly, people living with a disability and/or mental health conditions or caring for children with disabilities.

Part 9 of the GICoP set outs insurers' obligations to support people experiencing vulnerability, however in our experience insurers often failed to meet these commitments following the 2022 floods. For example, some insurers have required our clients experiencing vulnerability to speak to different representatives each time and repeat their story. This can be retraumatising and does not show an attempt to make it easier for a policyholder with vulnerability to communicate with the insurer, as outlined in clause 99 of the GICoP. In other instances, insurers have refused to accept our authority to act forms signed by our clients and continued to contact our clients directly, contrary to the commitment in clause 98. In some instances, insurers have contacted clients we are representing and asked them to accept settlement offers without providing the clients with the opportunity to obtain legal advice.

8. Accessibility and affordability of hydrology reports and assessments to policyholders (2(f))

Eastern Australia can experience frequent flooding and severe storms during La Nina weather systems, leading policyholders to make claims for damage caused by flood, storm or rainwater runoff.

Insurance companies rely on hydrological reports to determine the proximate cause of the policyholder's loss. As flood cover is often prohibitively expensive and excluded from many policies, the cause of loss is often in dispute.

8.1 Shortage of hydrologists

We have observed significant delays in insurers engaging hydrologists. For example, many of our clients who lodged claims following 2022 floods waited more than 6 months for their insurer to allocate a hydrologist.

The lack of sufficient hydrological expertise in Australia to deal with the surge in demand following floods and storms has been well known by the insurance sector for over a decade, with similar findings made in a Treasury Report in 2011.⁶ The scarcity of hydrologists also makes it expensive and difficult for policyholders to afford a hydrologist's report if they wish to commission their own assessment on whether their damage was caused by flood or storm.

8.2 Issues with hydrology reports

In some instances, insurers rely too much on hydrology reports and do not give sufficient weight to other evidence including eyewitness accounts, photos and videos of the cause of damage.

For example, Legal Aid NSW has assisted clients to dispute their insurer's decision to deny a claim based on a hydrology assessment that found the cause of damage to their property was flood, when it was in fact stormwater. Our client provided their own eyewitness account as well as time stamped photos and videos showing storm water entering their property before the riverbank broke and flooded the area. The insurer did not accept this evidence at first instance, and the matter was resolved through IDR.

⁶ Commonwealth of Australia, *Natural Disaster Insurance Review: Inquiry into Flood Insurance and Related Matters*, (Report, 2011), at 1.35, 2.18, 14.13, 14.16,

8.3 Government funded property assessment programs

During the 2022 floods the DRLS made use of the NSW Flood Property Assessment Program (**FPAP**) to access free building reports from various trades like builders and engineers through the Johns Lyngs Group. These reports can be very useful but are generally not hydrological reports.

9. Affordability of insurance coverage to policyholders (ToR 2(g))

9.1 Impact of unaffordable premiums

The high cost of insurance was consistently raised by our clients from all areas of NSW impacted by the 2022 floods. Nearly all of our clients who did not have any insurance or who did not have flood cover told us this was because it was unaffordable.

Insurance premiums are higher in areas that experience more frequent disasters. These areas often overlap with lower socio-economic communities, where there is a higher proportion of alternate low cost living such as caravan parks. Clients have told us that they were quoted insurance premiums of \$10,000 and as high as \$60,000 per year to include flood cover in some parts of NSW.

With the increased frequency of disasters, for example the western Sydney Hawksbury region suffered significant flooding events in 2021, February /March 2022 and July 2022, the affordability of insurance is more pressing. Some of our clients who have owned and lived in the same area for a long time have told us that the risk profile of their area has changed, and once affordable insurance cover is now prohibitive.

Unaffordable premiums are particularly difficult for clients on Centrelink payments, such as the age pension, as they may be unable to insure their only asset and also do not have the means to relocate to a less disaster-prone area.

We also assist a significant number of clients who are owners of dwellings in Residential Land Lease governed parks (caravan parks). There are limited insurance providers for these dwellings, and in areas that have experienced one or more disaster, premiums are often prohibitively expensive.

Underinsurance is also common among clients we assisted following the 2022 floods, which occurs where a persons' sum insured is not sufficient to cover the repairs or rebuild of their property back to the pre-event condition. This can be due to increased rebuilding costs, new safety ratings and/or consumers not reviewing their sum insured amounts at each renewal time. Insurers possess data on properties and can be aware where properties may be underinsured.

9.2 Reliance on government assistance schemes

Our clients without insurance or sufficient insurance increasingly rely on government grants and housing assistance programs as the only viable source of recovery. We welcome the NSW Government's introduction of grant programs like the Disaster Recovery Grant, Back Home Grant and Temporary Housing Programs such as the Caravan at-home. These initiatives are critical to assist disaster affected people who do not have any or adequate insurance cover to recover from disasters. However, the

increasing reliance on these programs highlights the significant gap created by unaffordable insurance products.

Other significant government assistance schemes have been implemented following the Northern Rivers floods, such as the Resilient Home Program, which offers home buy backs in deemed higher risk areas and assistance for retrofitting homes with flood resilient materials or home raising. We support these and other measures that provide tangible solutions for residents to relocate from flood prone areas, or mitigate their properties' vulnerability to flood damage.

10. Claimants' and insurers' experiences of internal dispute resolution processes (ToR 2(h))

Many of our clients had negative experiences of insurers' IDR processes following the 2022 floods, which often exacerbated their distress and hindered their recovery. We observed the following issues:

- The IDR decision maker not engaging with the policyholder's evidence that supported a different outcome to the insurer's first instance decision.
- Inconsistent decision making and approaches to the same issue by the same insurer.
- Unclear communication, including using insurance sector terminology that is confusing for many of our clients.
- Frequent delays and failures to adhere to timeframes for IDR set out in the GICoP. This caused many of our clients significant detriment, particularly those who experienced dire financial hardship following the 2022 floods, and prolonged the time some were homeless and/or dislocated from their community and support networks.

Many of our clients also required legal advice to explain the IDR decision, options for appeal and to advocate for their interests.

In our experience some insurers were more proactive in seeking feedback from our lawyers on issues and problems encountered by our clients, and more receptive to taking steps to address these than others.

11. The impact of land use planning decisions and disaster mitigation efforts on the availability and affordability of insurance (ToR 2(i))

Many of the NSW communities impacted by floods in 2022 have been flooded before and in some cases multiple times within short periods. Some of our clients have lived in those areas for many years (in some cases, for generations) and some have chosen to move there, often because housing is more affordable. Most know that they live on or near flood prone land, but many continue to live there because of the lower cost of housing, and the expense and difficulty of moving.

However, as insurers consider these areas high-risk, premiums are higher and often unaffordable for our clients. From our casework, we have observed that the members of these communities most impacted by floods and other disasters tend to be those people with lower socio-economic backgrounds.

The NSW Flood Inquiry 2022 recommended approaches to planning decisions and mitigation efforts, including not releasing or developing land that is a known disaster risk, buying back properties in disaster prone areas, allowing and assisting residents to re-settle communities in safer areas, and providing funds and support for mitigation measures such as home raising or refitting with disaster resilient materials.⁷

We consider that insurers should consider and assess any reduction in risk because of modifications to make a property more flood/ disaster resilient and reduce the premium accordingly.

⁷ NSW Government, *Flood Inquiry*, (Report, July 2022), chapter 7.

12. The inquiry shall also have regard to insurer preparedness for future flood events. (ToR 3)

In our experience responding to the 2022 floods and other disasters, insurers that were well prepared provided better service and outcomes to policyholders. We consider that it is critical for insurers to prepare to respond to severe weather events in advance and agrees with ASIC's claims handling review that insurers need to:

- Minimise frictions in the claims process.
- Permanently enhance their claims handling and dispute resolution systems, practices, resourcing, capacity and responsiveness.
- Adequately prepare for disasters by proactively uplifting resourcing rather than scaling-up resources once one has occurred; and
- Plan for repeated disaster events that overlap, demanding significant resources to support consumers from the recovery stage through to the completion and closure of claims.⁸

⁸ Australian Securities and Investment Commission, *Navigating the Storm: ASIC's Review of Home Insurance Claims*, (Report 768, August 2023), 8.

13. The inquiry will take into consideration findings from other reports such as Deloitte's external review of insurers' responses to the 2022 floods, and ASIC's claims handling review (ToR 4)

Legal Aid NSW's DRLS' observations of insurer responses to the 2022 floods accord with ASIC's findings in its claims handling review⁹. We agree that all insurers can improve, and support ASIC's recommendations and the primary areas of improvement it identified of:

- better communications to consumers about decisions, delays and complications
- better project management and oversight of third parties
- better handling of complaints and expressions of dissatisfaction
- better identification and treatment of vulnerable consumers, and
- better resourcing of claims handling and dispute resolution functions.



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⁹ Australian Securities and Investment Commission, *Navigating the Storm: ASIC's Review of Home Insurance Claims*, (Report 768, August 2023), 8.