

Insurers' responses to 2022 major floods claims

AFCA submission to inquiry by House of
Representatives Standing Committee on Economics

October 2023

Contents

1	Introduction and overview	4
1.1	Key observations	5
1.2	Recommendations	6
2	About AFCA.....	6
3	Complaints data for the Major Floods	8
3.1	Overview of general insurance complaints	8
3.2	Volumes of Major Flood complaints	10
3.2.1	Major Flood related complaints received by insurer	11
3.3	Subjects of Major Flood complaints	12
3.3.1	Top 5 products complained about	12
3.3.2	Top 5 issues complained about.....	13
3.4	Closure of Major Flood complaints	14
3.4.1	Stages at which Major Floods complaints closed.....	14
3.4.2	Average days to close Major Flood complaints	14
3.5	Outcomes of Major Flood complaints	15
3.6	Insurer responsiveness.....	17
3.6.1	Indicators of responsiveness.....	17
3.6.2	Non-response rates.....	18
3.6.3	AFCA timeframes missed.....	19
4	Specific matters referred to in the Terms of Reference	19
4.1	Experiences of policy holders before, during and after making claims	20
4.1.1	Complexity and variety in flood coverage.....	20
4.1.2	Delay in claims handling.....	21
4.1.3	Denial of claims.....	23
4.1.4	Systemic issues relating to the Major Floods	28
4.1.5	Dealing with vulnerability.....	29
4.2	Timeframes for resolving claims	31
4.2.1	Obligations under law and industry code.....	31
4.2.2	Guidance issued by AFCA	32
4.3	Obstacles to resolving claims, including internal and external factors	32
4.4	Insurer communication with policy holders	33

4.5	Accessibility and affordability of hydrology reports and assessments to policy holders	33
4.6	Affordability of insurance coverage.....	33
5	Making complaints about general insurance.....	34
5.1	Internal dispute resolution.....	35
5.2	EDR: AFCA's complaints handling processes	37
5.3	'User pays' design of external dispute resolution.....	38
5.4	Remedies available to consumers through AFCA	38
5.5	General Insurance Code of Practice.....	39
5.6	Regulation of claims handling and settling services.....	40
6	AFCA's engagement with the insurance sector and communities	41
6.1	Ongoing engagement about general insurance	41
6.2	Responding to floods as 'significant events'	42
6.2.1	AFCA Communication.....	42
6.2.2	Streamlined, expedited complaint resolution.....	43
6.2.3	AFCA Hotline	43
6.3	Meetings with insurers	43
6.4	Industry Roundtable in May 2023	44
6.5	Visits to areas affected by floods	45
6.6	Other assistance provided by AFCA.....	46
	Appendix 1 – About AFCA	47
	Appendix 2 – AFCA complaint resolution process	49
	Appendix 3 – Determination 950175.....	50

1 Introduction and overview

AFCA¹ is the independent external dispute resolution (EDR) scheme for the financial services sector. We welcome the opportunity to contribute to the inquiry into insurers' responses to 2022 major flood claims conducted by the House of Representatives Standing Committee on Economics (Inquiry). This submission² draws on the experience of AFCA and its predecessor organisations, which have handled financial services complaints including about general insurance for more than 30 years.

The Inquiry is examining insurers' responses to a series of flood events that occurred across Eastern Australia³ between February and December 2002 (Major Floods) that were unprecedented in their scale and impact. These disasters devastated many thousands of people causing loss of life, injury, displacement, and trauma as well as damage to homes, businesses and property. AFCA sincerely acknowledges the enormous physical, emotional and financial impact of the Major Floods on individuals and communities, and we are committed to contributing to initiatives or reforms that will improve outcomes for Australians arising from similar events in the future.

AFCA received 3,477 complaints relating to the Major Floods between 1 February 2022 and 30 September 2023. Our submission is based on our analysis of data and decisions relating to these complaints, as well as consideration of the performance of general insurers more broadly over this period. We note that AFCA is still continuing to receive complaints relating to the Major Floods, although at a decreasing rate.

This submission:

- contains data relating to EDR complaints performance and outcomes relating to the Major Floods as well as other lines of general insurance (Section 3)
- responds to the relevant questions raised in the Inquiry's Terms of Reference including case studies to illustrate issues identified in our complaint resolution (Section 4)
- describes the end-to-end complaints experience for consumers and outlines AFCA's role in the consumer redress framework (Section 5)
- identifies relevant legislative and co-regulatory frameworks that support good outcomes for general insurance claims handling (Section 5)
- describes how AFCA works with insurers and communities in response to natural disasters, and provides specific details of our ongoing and targeted engagement with insurers (Section 6)

¹ Appendix 1 provides a brief overview of AFCA. For comprehensive information about AFCA, see our website www.afca.org.au.

² This submission has been prepared by the staff of AFCA and does not necessarily represent the views of individual directors of AFCA.

³ CAT 221, CAT 223, SE 222 and SE 224.

1.1 Key observations

- General insurance plays a critical role in protecting the financial wellbeing of all Australians, and fair and effective claims and complaints handling ensures that the true value of insurance is realised by the consumers who pay for it.
- AFCA has seen sharp increases in all general insurance complaints over the last 18 months and we received 3,477 complaints relating to the Major Floods up until the end of September 2023.
- The early resolution rate in insurance complaints across the Major Floods for the relevant period was 34%. This was significantly lower than the average across other general insurance complaints for the same period (46%).
- Early resolution in the first stage in AFCA's complaints resolution process is better for complainants and is an opportunity for insurers to resolve complaints promptly before incurring higher costs at AFCA. We have been working with insurers to improve these rates. While results from insurers have not been consistent, we believe that some improvement is starting to occur. Enhanced resourcing of internal dispute resolution (IDR) and EDR functions is necessary to improve these rates.
- The main issue complained about by consumers relating to the Major Floods was delay in claims handling followed closely by claims denied based on policy exclusions or conditions.
- AFCA is particularly concerned about the rates of delay-related complaints that have been escalated to EDR. Pursuing these complaints requires significant additional effort and causes increased stress for consumers who are already suffering trauma and loss because of the disasters.
- AFCA believes that insurers need to resource and improve their claims processes to reduce delays and - where this is unavoidable - to communicate regularly and effectively with their customers to reduce the likelihood that these turn into complaints to AFCA. ASIC has also recommended that general insurers address communication and resourcing.
- Efficiency and timeliness in complaints handling is also improved where financial firms apply approaches taken in AFCA Determinations to other complaints in their IDR or AFCA queues. This results in speedier complaints resolution and can reduce costs for insurers.
- AFCA has engaged regularly with our member insurance companies and industry stakeholders in relation to the Major Floods and we have shared regular data and insights with member firms. We have met with CEOs and Boards of Insurance companies to give tailored feedback and we have raised issues with regulators and made information publicly available.
- We have also developed fact sheets and information for consumers and for community advocates. AFCA is committed to continuing to work with industry to improve outcomes for consumers.

1.2 Recommendations

Over recent years a range of environmental and external factors have created challenges for the general insurance sector and more broadly for Australian businesses and consumers. However, AFCA has seen a steep rise in the volume of complaints in the general insurance sector that has continued now for more than 12 months and does not look to be slowing. In 2022-23 AFCA received 27,924 general insurance complaints, an increase of 50% compared to the preceding year. Nearly 30% of those complaints were about delays.

Reference is often made to natural disasters as one-off events. However, the reality of climate change and land use patterns in Australia means these events will likely become more common and continue to have significant effects on Australian communities. Being able to juggle 'business as usual' claims with natural disasters must be part of the way we all work.

Based on our experience in relation to the Major Floods, AFCA calls for:

- Immediate and enduring increases in resourcing of claims and complaints resolution teams within general insurers to respond to the demands on these functions.
- Insurers to improve their communications with insureds about claim progress, particularly those who have been affected by natural disasters, recognising the particular trauma and uncertainty that these consumers will be experiencing. Better communication can reduce complaints and restore trust.
- General improvements in practices and systems relating to the use and reliance on expert reports in flood events and more broadly. This is an issue we have been raising with the industry and has also been raised with us by consumer advocates representing consumers.
- Continued commitment to strong standards which go beyond the law in the General Insurance Code of Practice (GI Code). The Code plays a vital role in ensuring good outcomes for consumers by publicly setting out what is good industry practice which AFCA relies on directly in making decisions.

AFCA would like to acknowledge the hard work and commitment of claims and complaints handling staff within general insurers. We understand the very real challenges – both practical and human - in dealing with complaints relating to natural disasters and our recommendations are intended to support their capacity and performance in the future.

2 About AFCA

AFCA is the EDR scheme authorised under the *Corporations Act 2001* (Corporations Act) to deal with complaints about all licensed firms in the financial sector including general insurers.

The AFCA scheme is overseen by the Australian Securities and Investments Commission (ASIC) and must comply with general considerations which are: accessibility; independence; fairness; accountability; efficiency and effectiveness. AFCA resolves complaints that individual or small business consumers make about their financial firms. Our complaint resolution service, provided free to consumers, is an alternative forum to tribunals and courts, and our decisions are binding on financial firm members.

AFCA operates under a set of Rules which set out what complaints we can consider, the procedures we can use to resolve complaints, remedies we can provide and related matters including our reporting obligations. When determining general insurance complaints, the AFCA decision maker must do what is fair in all the circumstances, and have regard to:

- legal principles
- applicable industry codes or guidance
- good industry practice
- previous relevant determinations of AFCA or predecessor schemes.

AFCA also publishes detailed Operational Guidelines which explain in more detail how we will interpret and apply our Rules when considering complaints involving financial firms.

In addition to providing solutions for financial complaints, AFCA has responsibilities to identify, resolve and report on systemic issues and to notify ASIC, and other regulators, of serious contraventions of the law. AFCA works closely with ASIC and regularly liaises with it to share complaint insights, to inform and assist its regulatory work.

AFCA's Code Team supports independent committees to monitor compliance with codes of practice in the Australian financial services industry, including the General Insurance Code of Practice, and to achieve service standards that people can trust.

More broadly, AFCA plays a key role in restoring trust in the financial services sector. Since its establishment on 1 November 2018, AFCA has handled over 367,000 complaints and delivered over \$1.07 billion in compensation to consumers. Our systemic issues work has resulted in 4.8 million people receiving more than \$340 million.

There is more detailed information about AFCA's role in the consumer compensation framework – and how we resolve complaints in practice - in Section 5 of this submission. We also include relevant examples of our systemic issues work relating to the Major Floods in Section 4.1.4.

3 Complaints data for the Major Floods

3.1 Overview of general insurance complaints

From 1 February 2022 to 30 September 2023, AFCA received 44,693 general insurance complaints. Compared to the corresponding period from 1 February 2021 to 30 September 2022, this was a 39% increase.

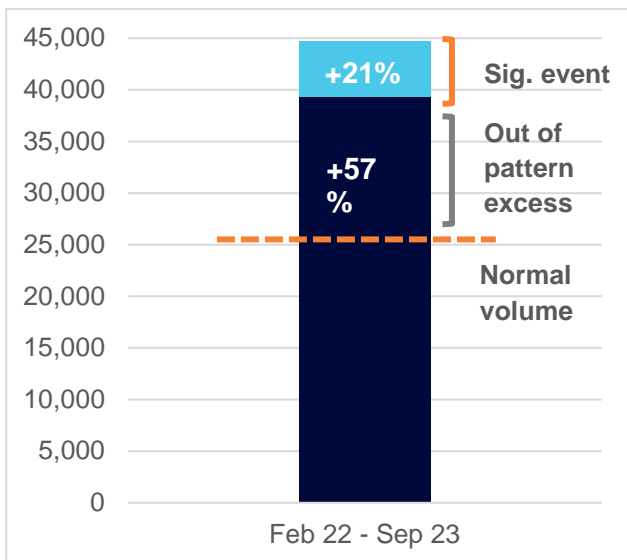
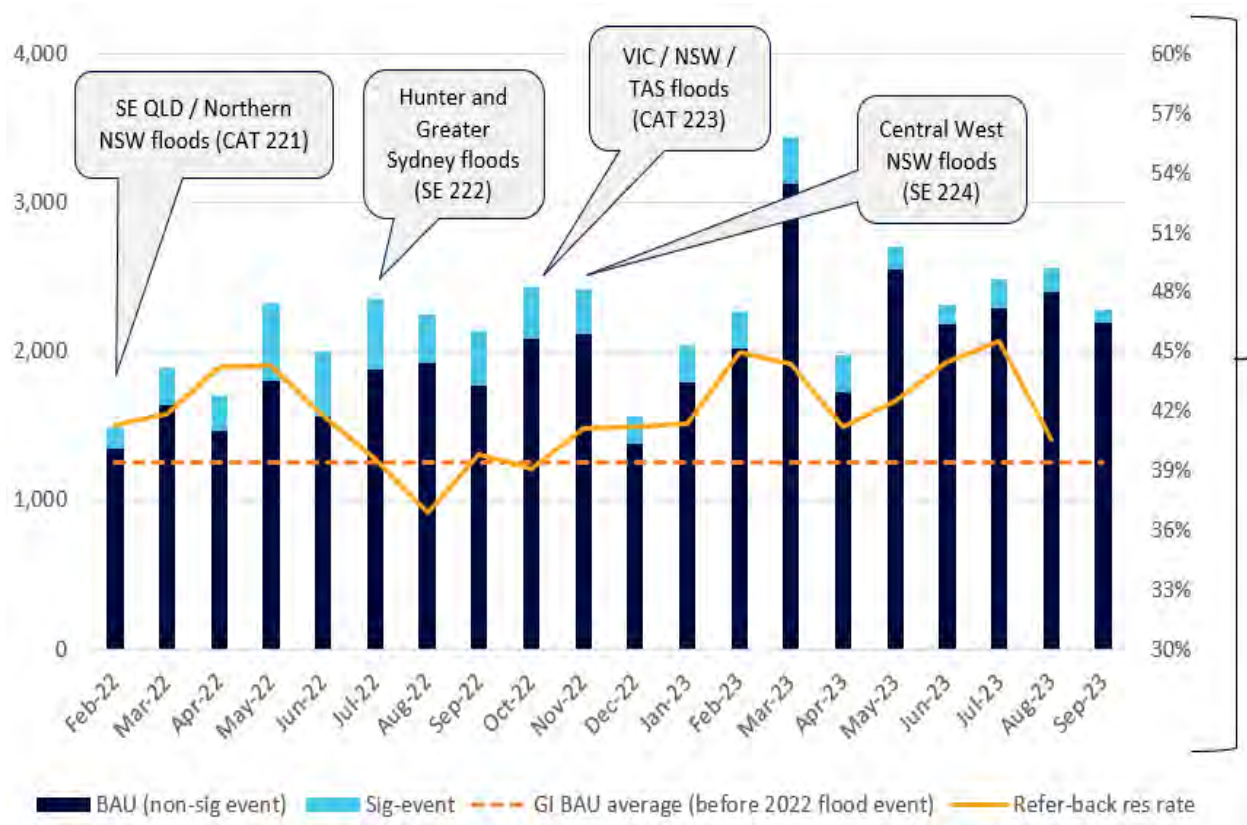
When AFCA receives a complaint, it enters the first stage of our complaint resolution process – Registration and Referral (explained in Section 5.2 of this submission). If the complaint is not resolved at that stage, it is 'accepted' and progresses to the second stage in the process, Case Management.

There has also been a significant increase in general insurance complaints accepted by AFCA. Comparing the periods of February 2021 to September 2022 and February 2022 to September 2023 shows an increase of 38%. Once they are accepted, complaints require a greater resourcing commitment from both the insurer and AFCA. This ultimately increases costs to insurers in higher AFCA complaint fees and user charges.

Since the floods in South East Qld and Northern NSW in February and March 2022 (CAT 221), AFCA has seen significant increases in general insurance complaints across the board. Whilst complaints related to CAT 221 and other significant or catastrophic events have increased, the majority of the increase to AFCA complaint volumes has been due to general insurance complaints unrelated to significant or catastrophic events (business as usual or 'BAU' complaints).

In the period under review for this submission, we have seen an increase to this longer-term average of BAU complaints of 57%.

General insurance complaints received by AFCA – BAU and significant events



The diagram above provides further detail, based on complaints received by AFCA. In each column, dark blue shows BAU complaints and light blue shows complaints related to significant or catastrophic events. The dotted orange line represents our long-term average of BAU general insurance complaints to AFCA from the

commencement of AFCA (1 November 2018) until the events of CAT 221 (which began at the end of February 2022).

The yellow line reflects the resolution rate at registration. This is the percentage of complaints closed after being referred by AFCA back to the financial firms. A high-resolution rate reflects success in complaints being resolved early and indicates effective and efficient complaint team performance.

3.2 Volumes of Major Flood complaints

Flood event	Complaints received by AFCA 1/2/22 – 30/9/23	Percentage of Major Flood complaints
South East Qld & Northern NSW – Feb/March '22 (CAT 221)	2,931	84%
Hunter and Greater Sydney - July '22 (SE 222)	233	7%
Vic, Tas & NSW – Oct '22 (CAT 223)	300	9%
Central West NSW – Nov/Dec '22 (SE 224)	21	1%

AFCA had received 3,477 complaints about the Major Floods as at 30 September 2023 and at that date AFCA had 561 open complaints. We identify these complaints through manual flags that are applied in our case management system once a particular natural disaster or significant event occurs and has been classified.

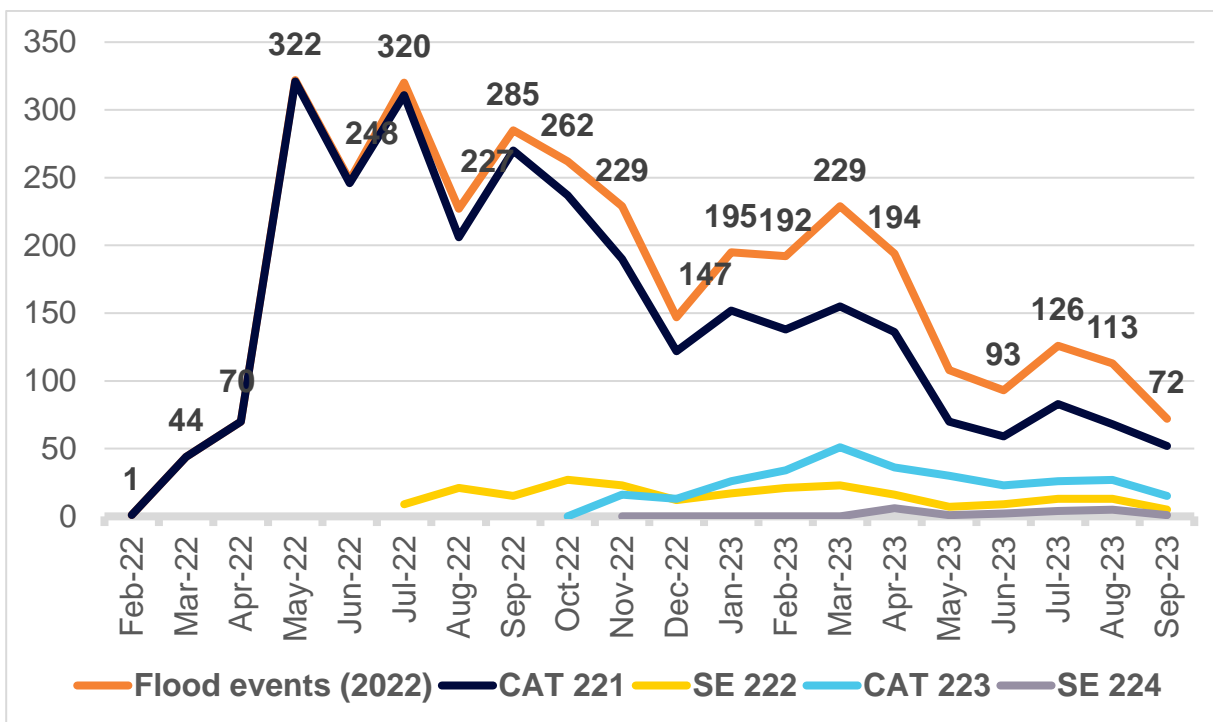
The reliability of manual flagging to identify particular categories of complaints can be affected by issues including the amount and nature of detail provided by a consumer when they first register a complaint with AFCA. There will therefore be some discrepancies between the EDR data that AFCA reports and complaints data held by individual insurers - who will have more timely and comprehensive data on their own flood-related claims and complaint issues.

The following table shows the top ten insurers that we received complaints about relating to the Major Floods. The top six general insurers accounted for 77% of all complaints received.

3.2.1 Major Flood related complaints received by insurer

AAI Limited	776	22%
Insurance Australia Limited	609	18%
Allianz Australia Insurance Limited	427	12%
Hollard Insurance Partners Limited	368	11%
QBE Insurance (Australia) Limited	252	7%
Auto & General Services Pty Ltd	241	7%
Allianz Australia General Insurance Limited	172	5%
RACQ Insurance Limited	164	5%
The Hollard Insurance Company Pty Ltd	150	4%
Youi Pty Ltd	71	2%

Unsurprisingly the vast majority of complaints received related to CAT 221, which accords with data published by the Insurance Council of Australia (ICA) about the scale of this event, described as the costliest flood in Australia's history. The graph below shows the volume of Major Flood complaints received by AFCA, month by month, from February 2022 to September 2023. This indicates total volumes received for all of the Major Floods as well as volumes for each flood.



3.3 Subjects of Major Flood complaints

3.3.1 Top 5 products complained about

Product	Complaints about product	Percentage of Major Flood complaints
Home building	2,676	77%
Home contents	330	9%
Landlords insurance	170	5%
Motor vehicle - comprehensive	167	5%
Commercial property	101	3%

3.3.2 Top 5 issues complained about

Issue	Complaints raising issue	Percentage of Major Flood complaints
Delay in claims handling Financial firm delayed actioning or processing claim	1,236	36%
Denial of claim – exclusion/condition Insurance claim was denied on basis loss or damage occurred as result of an excluded event or a breach of insurance policy condition	1,123	32%
Claim amount Insurance claim amount was disputed – eg financial firm accepted claim for certain amount but claimant believed they were entitled to different amount	961	28%
Denial of claim Financial firm denied claim	337	10%
Service quality Service-related issues not within other service categories	176	5%

Table 3.3.1 shows the top five products complained about in the Major Flood complaints made to AFCA, 88% of which relate to home building and contents policies. Table 3.3.2 shows the top five issues raised in these complaints and Section 4 of this submission, which discusses experiences of policy holders, focusses on the top two issues complained about: delays in claims handling and denial of claim – exclusion/condition.

3.4 Closure of Major Flood complaints

3.4.1 Stages at which Major Floods complaints closed

The table below indicates that, when compared with all general insurance complaints over the same period, Major Flood complaints have tended to close at later stages in AFCA's process. We note in particular:

- the comparatively high rate of Major Flood complaints that closed at Case Management or later – 65% (compared to 46% for all general insurance complaints)
- the comparatively low rate of Major Flood complaints that closed at the first stage of Registration and Referral – 34% (compared to 46%).

AFCA has been engaging with insurers about this data which shows that there are important opportunities to resolve more of these complaints earlier in the AFCA process, reducing impacts on complainants, insurers and AFCA.

Stage	Number of complaints	Percentage	Percentage for comparison*
Registration & Referral (R&R)	987	34%	46%
Rules Review	23	1%	7%
Case Management (CM)	1,061	36%	27%
Preliminary View	425	15%	9%
Decision	420	14%	10%

*The last column provides figures for all general insurance complaints received by AFCA from 1/2/22 to 30/9/23 to allow comparison with figures for the Major Floods.

3.4.2 Average days to close Major Flood complaints

Flood event	Days
South East Qld & Northern NSW – Feb/March '22	103
Hunter and Greater Sydney - July '22	98
Vic, Tas & NSW – Oct '22	78
Central West NSW – Nov/Dec '22	64

The averages listed above are figures for closed complaints. The table below provides more information by showing, for each of the Major Floods, the numbers of complaints open and closed as at 30 September 2023 along with the closed numbers expressed as percentages.

Flood event	Total	Closed	Open	% closed
South East Qld & Northern NSW – Feb/March '22	3168	2764	404	87%
Hunter and Greater Sydney - July '22	238	199	39	84%
Vic, Tas & NSW – Oct '22	316	226	90	72%
Central West NSW – Nov/Dec '22	23	13	10	57%

3.5 Outcomes of Major Flood complaints

The table below highlights that the number of complaints resolved by financial firms in Major Flood complaints (43%) was lower than the number in all general insurance complaints over the same period (52%).

We note that, of the 585 complaints resolved at Preliminary Assessment or Decision in favour of one party, 221 (38%) were resolved in favour of the complainant.

Outcome	Number	Percentage	Percentage for comparison*
Resolved by Financial Firm	1,261	43%	52%
Negotiation	576	20%	13%
Discontinued	391	13%	11%

Decision in favour of Financial Firm	236	8%	7%
Decision in favour of Complainant	139	5%	3%
Preliminary Assessment in favour of Financial Firm	128	4%	4%
Preliminary Assessment in favour of Complainant	82	3%	2%
Conciliation	41	1%	1%
Outside Rules	42	1%	8%
Assessment	20	1%	1%

*The last column provides figures for all general insurance complaints received by AFCA from 1/2/22 to 30/9/23 to allow comparison with figures for the Major Floods.

The table below provides information recorded by AFCA about payments made by financial firms to complainants as outcomes of Major Flood complaints closed on or before 30 September 2023.

We do not have full records of payment outcomes for all complaints that were received by AFCA. For example, we do not routinely capture outcome amounts where a complaint closes at Registration. However information about such amounts is in some cases given to AFCA by a party to a complaint and, in these cases, we record the information. Insurers will have more complete information about complaint and payment outcomes.

Flood event	Outcome amounts
South East Qld & Northern NSW – Feb/March '22	\$39,536,957
Hunter and Greater Sydney - July '22	\$843,749
Vic, Tas & NSW – Oct '22	\$2,648,103
Central West NSW – Nov/Dec '22	\$120,519
All Major Floods	\$43,135,438

3.6 Insurer responsiveness

3.6.1 Indicators of responsiveness

The table below shows, for the Major Floods, the following indicators of responsiveness:

- Non-response rate (at Registration and Referral)

This rate is the percentage of complaints that progressed to Case Management without an initial response at the Registration and Referral stage. This means there was a lost opportunity to resolve the complaint early in the complaint process resolution process.

- Extension request rate (at Case Management)

A financial firm makes an extension request where it cannot meet AFCA's due date for information but connects with AFCA to agree on a new due date. While requesting an extension is preferable to not providing a response, high extension requests can indicate the insurer has a shortage of resources in their complaints resolution team.

- Overdue response rate (at Case Management)

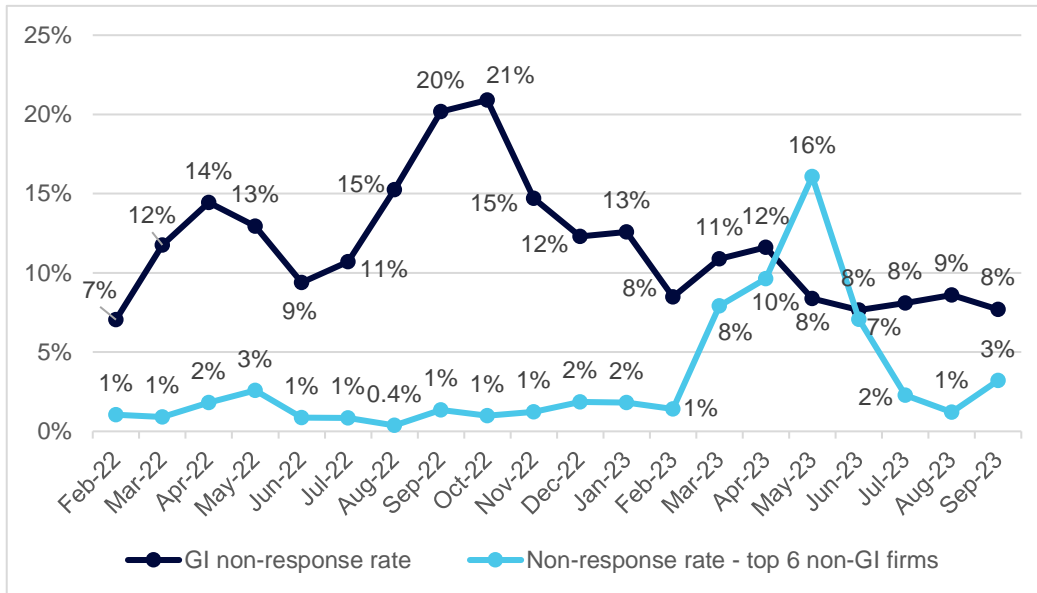
A response is overdue where a financial firm has not met AFCA's due date for information, and has not requested an extension, requiring AFCA to follow up the firm.

Flood event	Non-response rate (R&R)	Extension request rate (CM)	Overdue response rate (CM)
All Major Floods	12.5%	16.1%	10.1%
South East Qld & Northern NSW – Feb/March '22	13.7%	16.2%	10.8%
Hunter and Greater Sydney - July '22	6.6%	15.8%	7.2%
Vic, Tas & NSW – Oct '22	5.7%	15.6%	5.7%
Central West NSW – Nov/Dec '22	7.1%	14.3%	14.3%

Percentage for comparison*	11.8%	9.8%	7.2%
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*The last column provides figures for all general insurance complaints received by AFCA from 1/2/22 to 30/9/23 to allow comparison with figures for the Major Floods.

3.6.2 Non-response rates

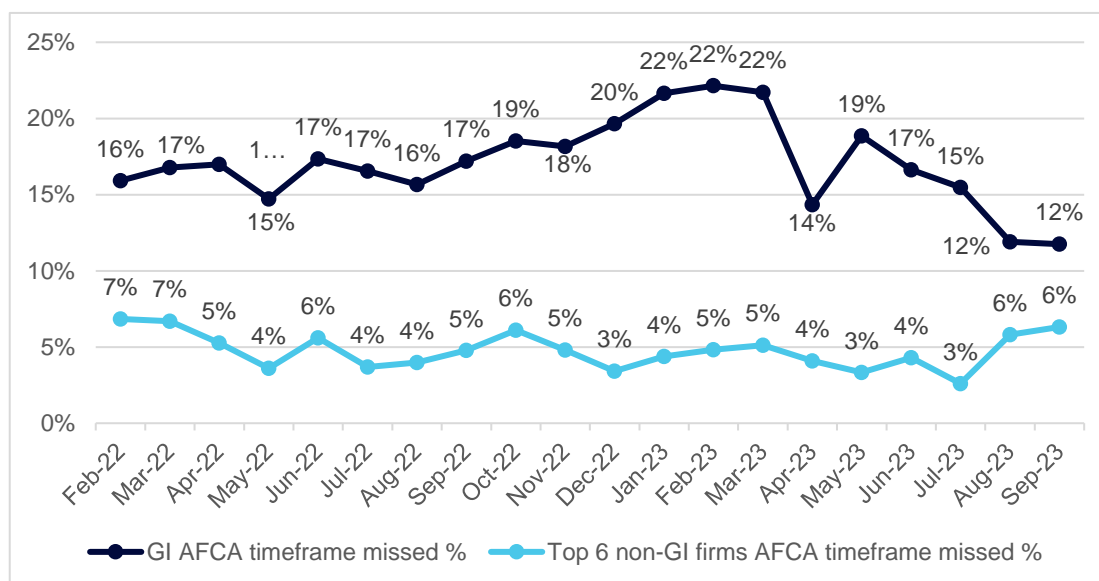


The graph above shows non-response rates for all general insurance complaints and for comparison against the top six non-general insurance firms.

Under AFCA’s Rules and ASIC’s Regulatory Guides, financial firms have an obligation to respond to complainants and AFCA. While non-response rates for general insurers have improved, we consider they are still too high at 8%.

AFCA expects this number should be less than 2%, particularly for large insurers providing such an essential service to Australian consumers. Only exceptional circumstances should result in no response. The top six non-GI financial firms generally meet this requirement. We expect large Australian insurers to be well resourced and set up to respond to AFCA within the required timeframes, particularly given these firms are generally dual regulated by ASIC and APRA and have a range of licensing and approval obligations under the regulatory regime that includes adequate resourcing, training and competence.

3.6.3 AFCA timeframes missed



The graph above shows the percentage of AFCA timeframes missed for all general insurance complaints and for comparison against the top six non-general insurance firms.

Responsiveness is a combination of overdue responses and extension requests received in Case Management. All financial firms have an obligation to respond to AFCA requests. The failure to meet a response due date erodes consumer confidence and hampers AFCA's ability to provide an efficient and timely service.

4 Specific matters referred to in the Terms of Reference

AFCA acknowledges that the magnitude and timing of the Major Floods, commencing in February 2022, placed enormous pressures on communities, Government and on insurers. The complaints that have come through to AFCA represent a very small proportion of actual claims made by affected Australians, however they provide a snapshot of potential and actual weaknesses in the insurance system that it is important to reflect on to ensure better outcomes in the future.

Through case management, community engagement and decision making, AFCA has seen the following issues arising out of the Major Floods which have affected policy holder experiences and outcomes.

- Complexity and variability in policy terms which can lead to misunderstanding of actual coverage by consumers
- Delays, not all of which are caused or controlled by insurers, but where compounding failures in communication drive complaints and additional distress for consumers already suffering trauma

- Denials based on poor quality, inadequate or non-compelling experts' reports which shift the onus on to consumers to provide countervailing evidence and escalate through IDR or to AFCA
- Issues around cash settlement offers, particularly for vulnerable consumers
- Difficulties relating to temporary accommodation, often exacerbating pre-existing housing shortages, and which can be impacted by unreasonable delays in claims resolution

In this section of the submission we deal with these, and other issues, aligned with the matters specified in item 2 of the Inquiry's Terms of Reference.

4.1 Experiences of policy holders before, during and after making claims

4.1.1 Complexity and variety in flood coverage

Despite the introduction of a standard definition for flood in general insurance policies in 2012, there remains considerable variation in the nature of flood coverage across and between insurers in Australia. Flood cover is not mandatory and where it is available, consumers may opt out of it. Some policies are also drafted so that storm and/or rainwater can be excluded along with flood which significantly reduces the scope of the cover. There are often also different treatments across policies for issues including temporary accommodation, treatment of mould, use of cash settlements and for important exclusions including maintenance and wear and tear.

While AFCA determines individual complaints having regard to the policy terms and conditions that apply to the cover that the particular customer has taken out, we observe that consumers often did not appear to have read and comprehended in full the disclosure documents and/or that they mis-understood the nature of their coverage. This is not intended as a criticism of these consumers but it highlights the complexity of these products and the challenges facing consumers in identifying and assessing comparable products.

AFCA does receive some complaints where consumers claim that they did not know that they were not covered for flood. Where flood is excluded (and this generally occurs by individuals opting out of this cover at inception or policy renewal) AFCA typically finds that insurers have complied with necessary disclosure obligations, including in PDSs, renewal notices and other communications. The reality is that consumers who opt out of flood cover typically do this because they can't afford it.

Our commentary and case studies below about claims denials provide greater insights into the challenges and complexity in interpreting and applying policy terms in practice, especially for consumers who may never have been through a traumatic weather event.

4.1.2 Delay in claims handling

Delay in claims handling has been the most common issue raised in general insurance complaints submitted to AFCA in four of the last five financial years. In 2022-23, we received 7,953 complaints raising this delay issue, which represented a 66% increase from 2021-22.

In complaints relating to the Major Floods received by AFCA from 1 February 2022 to 30 September 2023, delay in claims handling was the most raised issue arising in 1,236 (or 36%) of those complaints.

AFCA considers complaints about delays to be more resolvable by insurers than complaints about other issues. This is because effective engagement and communication with the consumer goes a long way to precluding and resolving these complaints. AFCA has engaged with the insurance sector about the urgency of addressing, in a sustainable way, the persistent rate of delay-related complaints across all lines of general insurance which have been exacerbated by the occurrence of natural disasters including the Major Floods.

We share what we hear from consumers, such as their frustration at not being able to easily contact their insurer, dealing with multiple staff and “hand-offs” about their claim and dealing with uncertainty about wait times, claim progress and outcomes. While some delays are inevitable when there is pressure on scarce supplies and labour, maintaining consistent and informative communication with customers helps the customer recover earlier from often traumatic events. It also reduces the risk of complaints and helps with earlier resolution of complaints when they do occur.

We know of one insurer that implemented a regular communication process with customers to provide updates on the progress of motor vehicle claims. While there were delays in supply of parts and labour, and delays had increased, there was not a similar increase in complaints, which indicates that a straightforward, systematic communication process can help reduce complaints, even if the underlying delays cannot be resolved.

In its [Report 768](#) released in August 2023, ASIC stated that responses from general insurers to the regulator’s letters issued in May 2023 had showed an overall increase in the resourcing of claims handling staff, albeit with a significantly increased reliance on temporary staff. ASIC requested that insurers further analyse the resourcing of claims handling as soon as possible. We have found that even when insurers’ resources are increased, there is a delay in full competency and mistakes and service failures can happen before staff are fully trained and experienced in the insurer’s products and processes.

AFCA handling of delay related complaints

Most of the delay related complaints arising from the Major Floods were or are being dealt with in AFCA Case Management. That is, they did not need a decision-maker to

issue a Determination in order to resolve the complaint. This is appropriate, and we refer to comments above about performance metrics related to early resolution and response rates. Delay complaints relating to claims handling typically fall into two major categories: where the consumer is still waiting on a claims decision but is concerned about ongoing delays and/or lack of communication, and where a claims decision has been made but there are delays in the repair process, or payment of the claim.

In the first category of delay complaint, AFCA will often bring the parties to a common understanding of what is fairly required to finalise the claims process. We may sometimes help consumers by ensuring that the information requested by an insurer is reasonable and necessary to finalise the assessment of the claim. In other cases it may simply be that the insurer has not communicated effectively about the status of a claim or the reasons for any reasonable delays or, for example, that the consumer has had multiple 'hand-offs' to different claims staff or loss assessors and has lost confidence in the process. In terms of remedies, AFCA can work to help the parties 'get back on track' in terms of mutual understanding and commitment to the claims process, recommend an award of non-financial loss for the customer and/or an apology.

Many AFCA Determinations on complaints arising from the Major Floods also include concerns raised about delays – in addition for example to challenging claim denials. AFCA decision makers will consider the parties' submissions on reasons for delays. Issues may include whether the insurer met their obligations such as in the GI Code, how the insurer communicated with their customer and whether the consumer was in a particularly vulnerable situation which warranted much faster response and/or additional care. Where made out, AFCA will typically assess delays in the context of our non-financial loss jurisdiction, which is capped in the AFCA Rules at \$5,400.

Delays in New Zealand

There are parallels between recent experience in New Zealand and our own experience in Australia. A [media release](#) issued on 7 June 2023 by the Insurance and Financial Services Ombudsman (IFSO) in New Zealand reported record-breaking high levels of enquiries 'due to the knock-on effects of the Auckland floods and Cyclone Gabrielle'.

At the time of the surge in enquiries, delays and customer service problems were the issues raised most frequently with the IFSO. The media release pointed out that consumers with insurance claims unrelated to the Auckland floods and Cyclone Gabrielle were experiencing delays because insurers had high volumes of work.⁴

⁴ This year, the NZ Government established a new service – the [NZ Claims Resolution Service](#) – to support homeowners with insurance claims resulting from natural disasters.

4.1.3 Denial of claims

In complaints relating to the Major Floods received by AFCA from 1 February 2022 to 30 September 2023, denial of claims based on exclusions or conditions was the second most common issue raised. This category of claim denial was an issue in 1,123, (or 32%), of the complaints.

In lodging a claim, the consumer has the initial onus to prove, on the balance of probabilities, that the loss or damage falls within the terms of the policy. The insurer is then liable for the loss unless it shows that an exclusion or limiting condition applies. The insurer has the onus of proof in establishing the application of the exclusion, also on the balance of probabilities.

One of the most common reasons for complaints made to AFCA about denied claims arising from the Major Floods relates to the source of the initial inundation causing damage (which could be stormwater run-off, rainwater or flood), and whether in any particular case the home and contents insurance policy held by the claimant covered that particular event. Other disputed claims were denied on the basis of exclusions including maintenance and wear and tear.

Where claims are denied on these bases, insurers will generally obtain a report from a relevant expert to support their decision. When a complaint comes to AFCA about a denied flood claim, we will typically assess the adequacy of the insurer's expert report (and whether it was reasonable for the insurer to rely on that report in reaching a claim decision) and also any other evidence that the complainant might have provided including their own expert reports, photos, videos, eyewitness reports.

Expert reports

Our experience from the Major Floods, and more broadly across our general insurance business, indicates that expert reports relied on by insurers vary in quality and in some cases may be deficient. The reports may, for example, not address important factors including statements or evidence provided by the consumer during the claims process, or they may draw conclusions that are not supported by adequate evidence.

AFCA's [Factsheet](#) on flood claims decisions issued in February 2023, did acknowledge challenges faced by insurers including delays accessing property level hydrology reports, and sought to seek a fair balance between the efficient and fair assessment of these complaints while ensuring relevant information is provided on these complaints. It covered issues such as our expectations of what would be required if an insurer sought to rely on desktop hydrology reports and reminded insurers of the importance of communicating about any delays as soon as possible.

When a complaint reaches EDR and is investigated, AFCA will assess the adequacy of any expert reports relied on, and whether an expert report supported a claim denial.

in resolving complaints involving this issue AFCA will state the reasons for AFCA's position in regard to the expert reports. Examples include Determinations finalising complaints arising from the South East Qld and Northern NSW Flood – [916499](#) and [924813](#) - that are published on our website. In these complaints, we decided expert reports did not support the insurer's decision to deny the claim. Other published Determinations relating to the Major Floods also explain limitations of expert reports.⁵ The following case studies relate to the application of pre-existing damage clauses relating to stumps and to other building defects. Each of these cases were resolved in favour of the complainant and reveal different shortcomings in the generation and reliance on expert reports.

Case Study 1 – Complainant identified shortcomings in expert reports obtained by insurer [Complaint 912215]

The complainant's home was inundated in one of the Major Floods.

When the complainant lodged a claim, the insurer of the home offered a cash settlement that did not include the cost of repairs to damaged stumps and piers, which formed the foundations of the house. The insurer argued that this damage was not covered by the insurance policy due to exclusions for pre-existing damage and the result of ground movement.

The insurer had obtained several expert reports, including:

- a builder's report suggesting the flood did not damage the foundations
- an engineer's report attributing the damage to a pre-existing foundation movement issue – not the flood
- an assessor's report concluding the damage was caused by the flood and no pre-existing issues contributed to it.

The complainant said the findings in the engineer's report were unreliable due to shortcomings in the investigations conducted, the evidence presented in the report and because it included illogical and contradictory statements.

AFCA considered all the circumstances of the complaint including all of the reports and other information. We found there were crucial gaps in the expert evidence on which the insurer relied.

AFCA decided that the insurer had not established the damage to the piers and stumps was excluded and the cost of the damage should be covered in the cash settlement. Various quotes for repairs had been obtained but AFCA decided further investigation was needed to calculate a fair and reasonable settlement figure. AFCA required the insurer to obtain an actionable retail quote and pay that figure with a 20% uplift.

⁵ An example is [Determination 886935](#).

Case Study 2 – Different expert reports about gradual deterioration [Complaint 923872]

The complainant's home was damaged by flood.

The insurer denied the claim on the basis the damage was caused by long term exposure to heightened moisture levels below the property.

The complainant's claim included damage to flooring, cracks in the walls and ceiling as well as mould coming from rising damp throughout the house.

The complainant obtained an engineering report which found the house was structurally sound and that the February 2022 flood was an extraordinary one in 1,000 year event. The complainant also provided photographs of ventilation holes on the sides of the house and time stamped photos of the house surrounded by flood water.

The insurer obtained an engineering report which found the internal cracking to walls and ceilings were long standing prior to the event, and that the proximate cause of the damage to the flooring was long term moisture levels and therefore excluded under the policy exclusion for general deterioration.

After reviewing all available evidence from both parties, AFCA found that the proximate cause of damage to flooring was the flood event covered by the policy but that cracks were more likely covered by long term earth movement and therefore not caused by an insured event.

AFCA also found that the damage was widespread through the house and that previous claims records did not show the claimed damage was pre-existing.

The Determination was substantially in favour of the complainant. The insurer was required to accept the claim for replacement of the flooring and for mould or dampness that had emerged.

The insurer was also required to pay \$1,500 in non-financial loss. The insurer acknowledged that there were unnecessary delays and that it provided inconsistent information and it also apologised to the complainant. This payment recognised the undue stress and inconvenience suffered by the complainant because of the poor claims experience.

Evidence gathered by property owners

People in areas affected by the Major Floods were encouraged to, and did, gather their own evidence to show how water damaged their property. We acknowledge the effort and strength in adversity this would have required, and the continued effort required to later pursue denied claims based on the evidence gathered.

To use one complaint as an illustration, Appendix 3 sets out AFCA's Determination 950175 in full. It explains how two people remained in their home while it was

damaged by water, observing and recording the extensive damage. Their insurance claim was partly denied based on expert hydrology reports. In a complaint about the denial, pursued through to an AFCA Determination, the complainants provided a detailed timeline of the events causing damage to their home supported by photos taken at crucial stages. AFCA's Determination was substantially in favour of the complainants.

We note that some insured property owners may not have been able to keep records of water damage to their property as it occurred or gather other evidence themselves. Without their own evidence, these people may not have been able to challenge adverse expert reports – including reports that, if scrutinised thoroughly, would be found deficient. This highlights the critical importance of insurers getting it right in the claims process, particularly in the context of a natural disaster, and ensuring that they have internal systems that address consistency and quality of expert reports, including ensuring that experts are clearly instructed before they assess a claim.

'Wear and tear' exclusions

In AFCA's community engagement, consumer organisations consistently highlight consumer dissatisfaction and disputes arising from insurance claim denials based on wear and tear exclusions.⁶

The report on the General Insurance Code Governance Committee's inquiry released in July 2023⁷ demonstrates that application of these exclusions is an area of concern and should be addressed on a systemic level. Our experience accords with the findings in the report and we support its recommendations.

The report suggests that denials based on wear and tear exclusions are relatively often overturned when the claimants make complaints through IDR. In an overturn, prompted by a formal complaint, the insurer decides it should not have relied on the exclusion. Complaints resulting in overturns would not proceed to AFCA.

When resolving a complaint, we will weigh up the evidence provided by the parties. We will consider the strength of any expert reports provided and whether the expert reports prove, on the balance of probabilities, that the proximate cause of the loss fits the exclusion that the insurer seeks to rely on. In our work we see examples of insurers' reports not sufficiently proving the matters they seek to establish to enable them to rely on an exclusion in the policy.

Multiple issues raised in decline dispute

Complaints to AFCA about declined claims relating to the Major Floods frequently involve multiple issues affecting the consumer. These illustrate the range of challenges consumers face and how some of these can be exacerbated the longer it

⁶ These denials include denials of claims relating to the Major Floods.

⁷ Code Governance Committee's Thematic Inquiry [Making Better Claims Decisions](#), July 2023.

takes to resolve a complaint, for example issues relating to mould, adequacy of temporary accommodation and compensation for non-financial loss. Case Study 3 is provided as one example.

Case Study 3 – Multiple issues where claim denied [Complaint 906759]

The complainant's home was damaged by stormwater in one of the Major Floods.

The complainant lodged a claim with her insurer for damage which she said was caused by extreme rainfall from the storm.

The insurer denied the claim and said pre-existing building defects were the proximate cause of damage, and it obtained a range of reports including a make-safe report, loss assessment reports and a roof inspection undertaken using a drone.

The complainant also obtained reports from an expert, showing the building met applicable standards and that although the roof's drainage system was compliant, it would not have been able to cope with the amount of rainfall received when the damage occurred. The complainant had only recently purchased the house and provided other evidence about the condition of the house when she bought it.

The insurer argued the findings of the complainant's expert should not be given any weight as the expert was not a registered engineer. Her expert's final report, which restated and elaborated on the key findings in their series of reports, was co-signed by a registered engineer, however.

After reviewing all the evidence. AFCA was not satisfied that the insurer had established that the roofing or gutters were defective and noted the expert reports did not provide specific evidence as to which building laws, codes or other standards were not met. AFCA found that the intensity of the deluge caused the damage.

The parties were also in dispute about the scope of works. The first estimate provided by the insurer's loss assessor was found not to be reliable because of delays and further deterioration to the property. The full claim from A was also deemed unreasonable, however AFCA agreed that a certain level of mould remediation was required and noted that the complainant was allergic to mould. The insurer had separately contested the extent and cause of the mould. AFCA determined a cash settlement with a 20% uplift to allow for contingencies and the transfer of risk for repairs was fair.

AFCA also found that it was unsafe and unreasonable to expect the complainant to move back into the premises and required the insurer to cover temporary accommodation and to apply statutory interest to the costs already incurred.

AFCA also required the insurer to pay \$2,000 in non-financial loss, noting that the insurer's experts and overall claims handling were less than ideal and there had been multiple delays and poor communication. There had been difficult dealings between the parties and AFCA accepted that the complainant was under immense financial pressure and emotional stress.

Finally, AFCA found that it was fair for the insurer to contribute to the complainant's costs in obtaining her own expert reports.

4.1.4 Systemic issues relating to the Major Floods

AFCA's systemic issues function

As well as handling complaints, AFCA plays a role in the broader consumer protection framework by identifying, investigating and reporting systemic issues (SI). This role extends to sharing information and insights gained through SI work with the financial services industry to help improve practice and reduce complaints.

We use the term 'systemic issue' to refer to an issue likely to have an effect on consumers in addition to any person who has submitted a complaint to AFCA. A SI may be raised in several complaints, a single complaint or otherwise be identified by information that we obtain.

Our work in this area benefits consumers impacted by SI including consumers who have not made any complaints about the issues. Our role in relation to SI is explained fully on our [website](#) and summarised in our publications.⁸

AFCA's recent and current SI work

In 2022-23 AFCA identified and investigated issues resulting in remediation to 378,830 consumers and small businesses, achieving remediation and refunds of \$100,528,522. We resolved 94 SI investigations with financial firms and reported 94 SI to regulators in line with our legal obligations. There were 17 confirmed SI relating to general insurance.

AFCA's specialist team worked recently to resolve a flood-related SI⁹ with an insurer by clarifying their documentation around cash settlements. The insurer had previously included inconsistent explanations as to builders' margin to its policyholders, and because of the SI investigation the insurer updated its builder contracts on 1 July 2023 to remove any ambiguity and provide clearer, more transparent documentation to support customers receiving cash settlements.

The SI Team has also reported two insurers to the regulators for failures to give effect to AFCA Determinations. Both Determinations related to flood complaints, where the complainant's property suffered water damage. In one instance the failure to implement the AFCA Determination was due to an internal communication breakdown (within the insurer). The SI Team is currently engaging with the second insurer to

⁸ See the [Operational Guidelines](#) to Rule A.17 of the AFCA Rules and pages 115 to 118 of our [2022-23 Annual Review](#). Also see our fact sheet [Systemic issues, serious contraventions and other breaches](#).

⁹ We reported this SI to ASIC in June 2023.

determine whether the insurer has adequate policies and procedures in place to ensure it gives effect to AFCA Determinations within the stipulated timeframes.

These examples highlight the very real benefit of AFCA applying a systemic lens to complaints which can result in changes or improvements to insurer conduct or processes which will reduce future complaints (and therefore costs and time for insurers) and consumer harm or confusion.

Beyond these specific matters, the SI Team currently has 24 potential systemic issue referrals that it is investigating relating to the Major Floods. Some common issues identified by AFCA complaint handlers and decision makers are:

- insurers failing to provide IDR responses to complaints in accordance with ASIC's [Regulatory Guide 271 Internal Dispute Resolution](#) (RG 271)
This includes insurers delaying and providing IDR responses later than 30 calendar days from the date of initial complaint, not providing the consumer with an IDR response, and failing to include relevant AFCA details in IDR responses.
- insurers not assessing claims under 'Accidental Damage' policy provisions, when the policy has accidental cover as a listed coverage type
- adequacy of claims handling and delays in claims handling
- conduct of assessors acting on behalf of insurers
- barriers to policyholders nominating third party representatives (including financial counsellors and other professional representatives).

4.1.5 Dealing with vulnerability

AFCA's general view is that most consumers lodging claims in the context of a natural disaster, particularly of the scale of the four events making up the Major Floods, should be treated at least as suffering situational vulnerability. Floods are traumatic and can be life-altering. Consumers can be displaced from their homes and communities, have suffered extensive loss of property and find themselves in acute states of uncertainty about their future. For some consumers the impact of the Major Floods compounded existing states of vulnerability or impairment.

AFCA's online complaint form asks complainants to self-identify if they need special assistance, and in what form. Our data for the Major Floods shows that 176 cases of special assistance were recorded, with the majority of these citing mental health as the underlying reason for requiring special assistance. Special assistance was therefore needed in about 5% of the 3477 Major Flood complaints received by AFCA up to September 2023. The table below provides further detail. These results should be considered in the context of complainants typically under-reporting vulnerability.

Special assistance - reason	Number of complaints where identified	Percentage
Cognitive condition	10	6%
Family Violence	11	6%
Hearing	6	3%
Literacy	8	5%
Mental health	96	55%
Other help needed	53	30%
Physical impairment	23	13%
Sight/vision	3	2%
Text telephone	2	1%

AFCA adjusts its services based on the individual needs of consumers who are presenting to us. For example, we can:

- expedite and prioritise the handling of complaints and tailor our communications as required
- help people understand and read information, including using interpreters
- give extended time for preparing information or obtaining advice
- refer to external support services when necessary - for example, in domestic violence circumstances
- engage with authorised representatives, such as disability workers or other advocates, to help clients understand and navigate the complaints process.

ASIC's Report 768 *Navigating the storm: ASIC's review of home insurance claims* involved data and file reviews of home insurance claims lodged between 1 January 2022 and 31 March 2022 and included a focus on vulnerability. AFCA supports ASIC's three related recommendations for insurers which were about: tailoring responses and services to consumers experiencing vulnerability; ensuring insurance representatives are appropriately trained and enhancing claims and complaint systems and processes to facilitate flagging of vulnerability. According to ASIC's

review no more than 3% of the files reviewed (which were not exclusively flood-related) had vulnerability flags attached.

4.2 Timeframes for resolving claims

This part of the submission focusses on the obligations of insurers to resolve claims promptly and outlines relevant guidance issued by AFCA. Data on complaints about delays in claims handling is set out in Sections 3.3.2 and 4.1.2 above.

4.2.1 Obligations under law and industry code

As explained in Section 6.5 of this submission, the Corporations Act requires licensed insurers to resolve claims in a timely manner. Guidance to licensees in [INFO 253 issued by ASIC includes these statements](#):

You should act without undue delay, acknowledging and balancing the negative effects of delay on the claimant against your reasonable requests for information. This includes following up outstanding information, and reviewing the ongoing need for this information, on a regular basis.

Insurance fulfilment and other service providers acting on your behalf should be sufficiently overseen by you to ensure they do not cause delays. This includes being responsive to complaints about the quality and timeliness of work they perform.

Part 8 of the General Insurance Code of Practice sets timeframe obligations on subscribers for several steps in claims handling that include:

- providing regular updates on the progress of claims
- managing claims by people in urgent financial need
- deciding claims.

Paragraph 77 of the GI Code requires a claim to be decided within four months of receipt unless paragraph 78 applies. Paragraph 78 extends the timeframe to twelve months in certain situations such as where communication with the claimant is difficult due to circumstances beyond the insurer's control. Departures from the specified timeframes are also permitted under provisions for 'changes to timeframes' in Part 8 of the GI Code.¹⁰

Under the GI Code, insurers' timeframes can be extended to 12 months where the claim arises from an extraordinary catastrophe. An extraordinary catastrophe is defined as a catastrophe that is so significant in size or magnitude or one that coincides with multiple other catastrophes that the Board of the ICA declares it to be extraordinary. To date the Board has not made such a declaration. This means that the timeframes under the GI Code have not been extended for the Major Floods.

¹⁰ Also see [Guidance Note 3](#) on varying claims handling timeframes issued by General Insurance Code Governance Committee, dated June 2022.

4.2.2 Guidance issued by AFCA

AFCA's published guidance explains how we approach complaints about delays in resolving insurance claims. This material, which focusses on explaining obligations of insurers in delay scenarios, includes:

Fact sheet – [Home insurance claim delays and COVID-19](#)

This fact sheet makes it clear that an insurer is required to progress a claim fairly, promptly and transparently. It also answers questions including:

- How should an insurer communicate that a claim is likely to be delayed?
- What should an insurer do when issues arise out of its control?
- Have negotiations been open and fair?
- Is a cash settlement appropriate and fair?
- What information might AFCA ask for?

Fact sheet – [General Insurance complaints about flood claim decisions](#)

Key points in this fact sheet relevant to delays deal with:

- Triaging
The insurer should be able to show they triaged claims appropriately considering the circumstances of each claimant – including anything that makes them vulnerable – and their property.
- Communication
The insurer should clearly communicate expected timeframes and any delays to a claimant as early as possible. This information should be updated regularly as the claim progresses.

4.3 Obstacles to resolving claims, including internal and external factors

Leading up to and since the Major Floods, general insurers have faced a range of external obstacles to resolving claims such as difficulty in accessing flood-affected areas, supply chain problems, global economic conditions including arising out of COVID 19, and skilled labour shortages. Insurers themselves would be best placed to explain these obstacles to the Inquiry and what steps they are taking to mitigate these factors into the future.

Our engagement with insurers has focussed on those issues which we consider to be within their control, for example: communicating effectively with their customers; ensuring good quality IDR responses particularly where claims are denied; ensuring appropriate consideration of and reliance on expert reports; taking a broad approach to vulnerability in a natural disaster scenario; and applying approaches taken in AFCA Determinations to other complaints and claims as appropriate (eg applying uplifts or contingencies in cash settlements).

4.4 Insurer communication with policy holders

We have raised earlier in this submission the opportunities for insurers to reduce costs, delays and complaints through improvements in communications with their customers. We also note that:

- The General Insurance Code Governance Committee's **General Insurance Industry Data Report 2021-22** highlighted that four of the top five reasons for non-compliance to GI Code related to communication failures.
- ASIC's Report 768 (including quantitative and qualitative consumer research) found that open communication and a map of the claims process led to higher consumer satisfaction and in some cases even if the claim was delayed or denied, and that satisfaction remained high so long as expectations were appropriately managed by insurers and, crucially, by third parties.

4.5 Accessibility and affordability of hydrology reports and assessments to policy holders

After major or frequent natural disasters, or severe weather events, delays in obtaining site-specific hydrology reports may be unavoidable including due to actual skills shortages. This was one of the issues addressed in AFCA's engagement with industry shortly after the South East Qld and Northern NSW Floods.

In terms of complaints that are made to AFCA, we do not expect a complainant to provide a site-specific hydrology report. Our processes provide for exchange of information, giving the complainant access to any hydrology report or alternative information relied on by the insurer. AFCA is then able to interrogate the quality and weight given to the expert report, as an independent third party.

We emphasise, however, that the approach taken by AFCA applies in EDR. It does not alleviate issues relating to accessibility and affordability of hydrology reports in preceding claims and IDR processes. We consider that given the difficulties encountered by insurers in getting access to hydrology reports, consumers would find this at least as hard, and probably harder. Cost is another factor that would inhibit consumer access to a property specific hydrology report. The fact that the vast majority of claims and complaints (arising from natural disasters or otherwise) are finalised without complaints proceeding to AFCA supports our earlier observation about the need for insurers to ensure that they have systems and expertise in place to fairly and effectively apply expert reports in all cases.

4.6 Affordability of insurance coverage

Generally, complaints about levels of premiums or premium increases are outside AFCA's jurisdiction. We can, however, consider certain complaints relating to premiums such as:

- complaints about a failure to properly disclose, or a misrepresentation about, a premium
- complaints that a premium was calculated or applied incorrectly
- complaints that an insurer breached a legal obligation or duty owed to the complainant, such as a duty of utmost good faith.¹¹

Case Study 4 provides an example related to the Major Floods where a consumer had flood cover but altered his insurance policy to exclude that cover (and reduce premiums) before the Major Floods occurred. It reveals the choices and affordability challenges that consumers are faced with when renewing their insurance coverage.¹²

Case Study 4 – Policy altered to exclude flood cover [Complaint 879287]

The complainant's home was inundated in one of the Major Floods.

The complainant said he had been insured with his insurer for 40 years and believed he was always covered for flood.

In 2019, the insurer had sent the complainant renewal documents for his home and contents policies that set out changes to the cover for flood, rainwater runoff and storm surge (flood cover). The premiums on renewal would total about \$27,000 with flood cover, or \$2,225 without flood cover.

On renewal in 2019, the complainant chose to pay the lower premiums. The insurance was then altered to exclude flood cover and was later renewed on that basis.

There was no evidence indicating the complainant was misled as to the cover provided or given inadequate information about the change in cover.

AFCA found the insurer was entitled to rely on the terms and conditions of the policy to refuse payment of the complainant's claim.

AFCA's Determination acknowledged that premiums for flood cover were not affordable for most people.

On our website, we provide a [fact sheet](#) to answer common questions we receive about insurance premium increases.

5 Making complaints about general insurance

In order to assess the performance of insurers in the context of the Major Floods, it is useful to have a comprehensive understanding of how consumer complaints relating to claims are dealt with. Complaints handling in the financial system is regulated

¹¹ AFCA Rules, Rule C.1.2a).

¹² See Determination 879287 under '[Search published decisions](#)'.

under the Corporations Act. All holders of an Australian Financial Services Licence (AFSL) which includes retail general insurers, must as a general condition of their licence:

- have IDR procedures that meet the standards and requirements specified by the ASIC; and
- maintain membership of AFCA.¹³

This legal framework therefore enshrines a two-step dispute resolution process which starts with the requirement for consumers who have a complaint to first lodge this with their insurance company.

Complaints about a general insurance claim differ from other types of consumer complaints about financial products because the consumer has typically already gone through, or least commenced, a separate claims process before they embark on making a complaint. We raise this to acknowledge that consumers who have had a poor claims and/or complaints experience may have to participate in up to three separate 'processes' in order to finalise an outcome. For consumers who have been adversely affected by a natural disaster and may for example be displaced from their home or have suffered a complete loss of records and belongings, this can be an overwhelming challenge.

5.1 Internal dispute resolution

In September 2021 ASIC published RG 271 - [Regulatory Guide 271 Internal Dispute Resolution](#) - which sets out detailed IDR standards that all retail AFSL holders including general insurers must comply with. These standards are enforceable and include requirements about:

- the definition of what is a complaint that must be accepted by a financial firm
- maximum IDR timeframes
A general insurer must (with some exceptions) provide a formal response to a standard insurance complaint no later than 30 calendar days after receiving the complaint.
- what an IDR response must contain
Responses to complaints about a declined insurance claim, or about the value of an insurance claim, must always be provided in writing. They should also set out the insurer's findings on material questions of fact and provide enough detail for the consumer to be fully informed when deciding whether to escalate the complaint.

¹³ AFCA can consider complaints against AFCA members.

The links between IDR processes and AFCA are also explained in RG 271 which notes that *for the financial dispute resolution system to be fully effective, financial firms need to establish appropriate links between their IDR process and AFCA*: RG 271.111. If a complaint about general insurance goes through the IDR process but remains unresolved, or if it is not resolved within the 30-day timeframe, then the insurer must:

- inform the consumer that they have a right to pursue their complaint with AFCA; and
- provide details about how to access AFCA.

At this point it is up to the consumer to decide whether or not to escalate their complaint with AFCA. There is no automatic referral out of IDR to AFCA. For an insurer, the IDR lodgement provides a critical opportunity to review internally the service or decision that the consumer is complaining about, and where appropriate to fix this. Within the guardrails set by RG 271, this is a process that is therefore within each insurers' direct control.

We understand that only a small proportion of IDR complaints about financial firms, including about general insurers, are escalated by consumers to AFCA. Data about the volume of IDR complaints, and the escalation rates to AFCA are currently unknown, but will be available in the near future as financial firms are now required to report standardised IDR data to ASIC, and ASIC has power to publish this IDR data including by naming individual financial firms. Guidance on these standards is provided in RG 271 and [ASIC's IDR Data Reporting Handbook](#) which was issued on 28 April 2023. This will enable an end-to-end picture of each firm's dispute resolution effectiveness.

In the case of general insurance complaints relating to a claim, any AFCA lodgement will typically happen after the consumer has exhausted both the claims and IDR processes (or earlier if they are frustrated by delays in the processes). This means that AFCA does not necessarily obtain information about conduct or community concerns as and when they arise. There are time lags in complaints handling that may be considerable and in some cases consumers may be discouraged from pursuing issues at all – especially if smaller amounts of money are at stake, rights and obligations (for example entitlement to coverage under an insurance policy) are unclear or a consumer is in very difficult circumstances.

Whether in the context of a natural disaster, or BAU claims, it is clearly in the best interests of both consumers and insurers for as many complaints as possible to be resolved fairly and promptly by the firm at IDR.

AFCA provides guidance for consumers who may want to make a complaint concerning financial services. [Tips](#) on our website explain, in simple terms, the steps consumers can take.

5.2 EDR: AFCA's complaints handling processes

AFCA's complaint resolution process is shown in Appendix 2 in the form of a flow chart. The three key stages of the process are 'Registration and Referral', 'Case Management' and 'Decision'.

When a consumer makes a complaint to AFCA, the complaint starts in the Registration and Referral stage of our process. The complaint is typically referred back to the financial firm to give them a final opportunity to resolve the complaint before it enters formal Case Management at AFCA. AFCA collects and publishes data about the rate at which firms resolve complaints at this stage.

We welcome early resolution at this stage, as long as the outcome is fair for both parties. It is efficient and cost effective for financial firms and minimises anxiety and uncertainty for complainants.

When the complaint is referred back to it, a financial firm can request a Rules review if it believes the complaint falls outside AFCA's jurisdiction. Generally, our dedicated Rules Team will review the firm's submission and either seek to close the complaint as outside our jurisdiction or progress the complaint to Case Management, explaining at the same time to the firm why we consider we hold jurisdiction to consider the complaint.

During the refer-back period, it is the responsibility of the financial firm to engage with and respond to their customer's complaint and to also include AFCA in this response. Financial firms are required to reply to AFCA within a certain timeframe to confirm that the complaint is resolved, or to provide a final IDR response if this has not already been provided, or to request a Rules review if the firm believes that the complaint falls outside AFCA's jurisdiction.

Depending on the response from the complainant, AFCA will either close the complaint (if it appears that the complaint has been resolved and where necessary after confirming this with the complainant) or we will progress the complaint to Case Management for allocation. Where a financial firm does not respond by the due date, or if the response is insufficient, we refer to this as 'non-response at registration'. AFCA also collects and publishes data about the 'non-response' rate as changes over time or outlier peer performance can indicate that a particular firm is not adequately resourcing or dealing with IDR complaints.

AFCA can use services such as conciliation and negotiation to help parties to a complaint reach agreement. Where agreement cannot be reached, we can use more formal methods, where we may provide a preliminary assessment about the merits of

the complaint or make a Determination. A Determination, if accepted by the complainant, is binding on the financial firm.

The vast majority of complaints submitted to AFCA are resolved by agreement between the parties, whether through our initial refer back process, or through negotiation, conciliation or a preliminary assessment provided to the parties. In 2022-23, only five per cent of all complaints made to AFCA needed to progress to a final Determination.

5.3 'User pays' design of external dispute resolution

The AFCA scheme is funded by financial firms on a user pays basis. Our funding model is designed to incentivise firms to resolve complaints early. The current funding model was developed following a review in 2021 and 2022 which involved extensive stakeholder consultation. [Key features](#) of the model, including the fee structure, are outlined on our website.

Calculation of a financial firm's fees reflects the number of complaints against the firm handled by AFCA and how far individual complaints proceed through the complaints handling process. General insurers are amongst the heaviest users of the scheme, reflected by their share of total complaints volumes, however each individual insurer has the opportunity to minimise the AFCA fees that they pay by:

- resolving as many complaints as possible through IDR (so they do not reach AFCA)
- where complaints reach AFCA, resolving them at an early stage.

As described earlier in this submission, recent trends have been increases in volumes of general insurance complaints received by AFCA and resolution at later stages of our process.

5.4 Remedies available to consumers through AFCA

Section D of AFCA's Rules allows us to provide a wide range of remedies to complainants. Examples of remedies to resolve insurance complaints include payments of money for financial or non-financial loss and responses to claims by repairing, reinstating or replacing items of property. Our Operational Guidelines explain our remedies in detail and, on page 158, explain how AFCA decides on a remedy where an insurer has refused the complainant's insurance policy claim.

AFCA has jurisdiction to consider insurance complaints involving claims of up to \$1,085,000. The amounts we may award as monetary compensation for loss – per claim¹⁴ – in complaints relating to insurance are capped as follows.¹⁵

Type of loss	Monetary limit per claim
Direct financial loss	\$542,500
Indirect financial loss	\$5,400*
Non-financial loss	\$5,400*

*AFCA cannot award compensation for indirect financial loss or non-financial loss in a complaint relating to a claim on a general insurance policy that expressly excludes liability for such loss.¹⁶

AFCA decision makers have applied non-financial loss awards in appropriate cases involving the Major Floods, as illustrated in some of the case studies in Section X of this submission. AFCA generally takes a conservative approach to non-financial loss compensation and the maximum we can award is \$5,400. We will typically make an award where there has been an unusual amount of physical inconvenience, time taken to resolve a situation and/or interference with a consumer's peace of mind.

Where AFCA decides a financial firm must pay compensation, we can also require payment of interest. AFCA can also require a financial firm to contribute to costs incurred by a complainant in the course of a complaint. Usually, these contributions are capped at \$5,000.¹⁷

5.5 General Insurance Code of Practice

The [General Insurance Code of Practice](#) (GI Code), developed by the ICA, sets standards of good industry practice in areas including claims handling. Compliance with the code is monitored by an independent committee – the General Insurance Code Governance Committee.

Code monitoring, secretariat and administrative services are provided to the committee by AFCA's Code Compliance and Monitoring Team. This team is a separately operated and funded business unit of AFCA that is not involved in our core business of complaint resolution, but has specific expertise in industry codes.

The GI Code plays a direct role in AFCA's complaint resolution process. When resolving general insurance complaints, including about natural disasters, AFCA

¹⁴ More than one claim may be made in a complaint considered by AFCA.

¹⁵ See AFCA Rule D.4 for further information. The capped amounts are indexed and will increase from 1 January 2024 for complaints submitted on or after that date.

¹⁶ Our Operational Guidelines on AFCA Rules D.3.2 and D.3.3 provide more detail.

¹⁷ AFCA Rules D.5 and D.6 provide for interest and costs contributions, as explained in our Operational Guidelines.

considers what is fair in the circumstances, having regard to matters including applicable industry codes or guidance and good industry practice.¹⁸ This in effect requires financial firms to meet standards set in the GI Code where complaints may reach EDR.

Important parts of the GI Code that relate to issues raised in the Major Floods include standards for Making a claim (Part 8), Supporting customers experiencing vulnerability (Part 9) and Financial hardship (Part 10). The GI Code therefore plays an important role in setting standards of behaviour that either elaborate on or exceed minimum legal requirements. Regulation of claims handling and settling services

5.6 Regulation of claims handling and settling services

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in 2018 recommended law reforms to raise standards in the handling of insurance claims. Historically insurance claims handling and settling services had been excluded from the definition of 'financial services' in the Corporations Act. On 10 December 2020 legislation was passed that required persons who provide claims handling or settling services to be either licensed or authorised by ASIC, as explained in ASIC's Information Sheet 253 ([INFO 253](#))¹⁹.

One of the significant changes resulting from these reforms is to require claims handling and settling services to be provided 'efficiently, honestly and fairly' under paragraph 912A(1)(a) of the Corporations Act. INFO 253 explains that, to meet this requirement, an insurer or other licensee generally needs to handle and settle claims:

- in a timely way
- in the least onerous and intrusive way possible
- fairly and transparently
- in a way that supports consumers, particularly ones who are experiencing vulnerability or financial hardship.²⁰

We highlight the obligation under paragraph 912A(1)(a) because it addresses issues that feature in claims handling complaints such as timeliness, fairness and support needed by consumers experiencing vulnerability or financial hardship. INFO 253 also addresses other matters relevant in this Inquiry. An example is the requirement (discussed on page 19 of INFO 253) to have adequate human and technological resources for claims handling, including processes to upscale resources to deal with increased demands due to natural disasters.

We note that there are exemptions from the requirement to be licensed or authorised in relation to claims handling or settling. These include loss assessors and specialists

¹⁸ See Operational Guidelines relating to AFCA Rule A.14.2 for more detail.

¹⁹ Key changes have applied since 1 January 2022.

²⁰ Table 4 in INFO 253 explains each element of this requirement.

who are providing an expert opinion to help an insurer assess a claim, for example hydrologists in a flood event.

6 AFCA's engagement with the insurance sector and communities

External engagement is one of AFCA's five strategic themes. We seek to be targeted and purposeful in our engagement and use our insights to build trust in, and contribute to, a better financial sector.

6.1 Ongoing engagement about general insurance

AFCA has arrangements in place to ensure we engage effectively and proactively with the industry and the community. Our general engagement program includes forums, liaison groups, meetings, events, consultations, webinars, newsletters and contact through social media.²¹ AFCA's stakeholders give us valuable feedback that contributes to continuous improvement of our services. We obtain information about issues from the industry and consumer perspectives.

In relation to general insurance, AFCA's engagement includes, for example:

- sharing our complaint resolution data and insights with insurers, with a view to raising standards and improving practices in the industry
Data and insights are presented directly in meetings and correspondence with insurers. We also publish an extensive range of complaint information including the updated complaints data published every six months in the Datacube on our website.
- all member firms having access to data, including about their complaint volumes, resolution rates, complaint types and response rates
This data is updated daily and provides a current and historical snapshot of each firm's performance.
- discussing emerging insurance issues in events such as forums, webinars and regular meetings and in publications such as our Member News
- explaining, and inviting feedback on, our approach to the resolution of particular types of insurance complaints
- providing information, advice and training to consumer advocates relating to insurance issues or complaints
- attending community forums in person around Australia to meet directly with people affected by natural disasters, alongside insurers and community organisations

²¹ AFCA's Annual Reviews explain our engagement program in detail.

- using feedback from a diverse range of consumer advocates to learn about insurance issues affecting consumers and ensure we are meeting community expectations and promoting accessibility and trust.

6.2 Responding to floods as 'significant events'

For events that could result in significant numbers of related complaints coming to AFCA, we activate our Significant Event Response Plan. The plan was activated for each of the Major Floods examined in this Inquiry.

AFCA's Significant Event Response Plan provides for early communication with relevant stakeholders and a more streamlined, expedited process for the resolution of related complaints. To ensure our approach to handling the complaints is appropriate, we regularly liaise with industry representatives, ASIC, APRA and Treasury. We also stay in touch with relevant State government departments and Members of Parliament to help ensure we are effectively engaged with affected communities.

6.2.1 AFCA Communication

We have published comprehensive information on the AFCA website to explain our response to each of the Major Floods²² and how we can help consumers and AFCA members impacted. Our consistent message is that affected consumers should first raise their concern with their insurer. If they are not happy with the response, they can then lodge an internal dispute with their insurer. The insurer has 30 days to resolve the complaint. If the consumer is not happy with the outcome, they can come to AFCA.

For example, for the South East Qld & Northern NSW Flood, the published information includes:

- [SE Qld & NSW severe weather and flooding February 2022](#)

This provides clear advice on practical steps to take, outlines available services and links to forms consumers can use to submit complaints.

- [AFCA support for consumers and members impacted by the NSW and Qld floods and storms](#)

This sets out guidance on dealing with damaged property and making insurance claims. It also highlights how AFCA can assist with complaints relating to insurance claims.

When we activated our Significant Event Response Plan for each of the Major Floods, members were alerted through our monthly newsletter, [Member News](#). We also used this channel to promote the publication of a new fact sheet – [General insurance complaints about flood claim decisions](#) – and provide monthly updates about

²² See '[Significant events](#)' under 'News and Outreach' on www.afca.org.au.

complaint volumes at AFCA, which highlighted the increase in insurance complaints and prevalence of delays and service issues.

Media releases have confirmed AFCA's messages to insurers relating to the Major Floods. An example is our media release on 27 February 2023²³, which highlighted:

- AFCA's concern about the volume of complaints reaching EDR about delays by insurers
- a rise in complaints about general insurance overall – beyond the floods
- action AFCA expected insurers to take to address complaints as quickly as possible, through IDR or early in EDR
- action AFCA had taken to facilitate faster complaint resolution and improve ways to keep complainants updated on the progress of their complaints.

6.2.2 Streamlined, expedited complaint resolution

AFCA has systems to identify complaints made by people impacted by significant events such as the Major Floods and ensure they are handled as efficiently as possible. The complaints may, for example, be allocated to staff with extensive experience in handling flood-related complaints or be prioritised if complainants are experiencing housing insecurity or other forms of vulnerability.

6.2.3 AFCA Hotline

AFCA has in place a dedicated hotline for inquiries or requests relating to significant events. This is an additional channel for provision of support and information.

6.3 Meetings with insurers

At our regular meetings with insurers and the ICA, AFCA shares up-to-date complaints data, identifies trends observed and suggests steps to improve performance in IDR and EDR. To ensure we engage effectively, we meet not only with insurance staff directly responsible for complaint resolution, but also with executives and directors.

Since early 2022 these engagements have included operational meetings with individual insurers, quarterly meetings with group executives of large insurers and attendance by senior AFCA staff, including the AFCA CEO and the Lead Ombudsman for Insurance, at meetings of the Board of general insurers as well as meetings with the ICA. The number and frequency of these meetings has enabled AFCA to provide updated and consistent messages to general insurers about what we are seeing through case management relating to the Major Floods and their business-as-usual, as well as hearing from insurers about their own experiences.

²³ AFCA Media Release [AFCA receives over 2000 complaints in year since SEQ/NSW floods](#).

The CEO and Chair of the ICA attended an AFCA Board meeting on 31 August 2023 where the AFCA Board engaged directly with the insurer representatives on issues including complaint volumes and response to natural disasters including the Major Floods.

6.4 Industry Roundtable in May 2023

On 23 May 2023, AFCA and the ICA co-chaired an industry roundtable to discuss complaint data and how AFCA and regulators could work with the industry to reduce the number of disputes and resolve them as early as possible. This was the first roundtable of its kind. Attendees included:

- AFCA's Chief Ombudsman & CEO, Chief Operating Officer, Lead Ombudsman – Insurance and Executive General Manager – Operational Delivery
- representatives of the ICA
- executives of the six largest general insurers (by complaint volume)
- senior leaders from ASIC and APRA.

At the roundtable, AFCA presented detailed complaint data for the two years from April 2021 to March 2023 and insights on the performance of insurers, based on that data. We also provided each insurer with a confidential tailored data set for their business before the meeting. The insurers in attendance were: AAI/Suncorp, Allianz, Auto & General, Hollard, IAG and QBE.

Examples of key points addressed in the shared data include:

- In the year to 31 March 2023, there had been a large increase in general insurance complaints reaching AFCA. Most of the increase was due to complaints unrelated to significant or catastrophic events such as the Major Floods.
- Insurers had missed opportunities to resolve complaints early and, by doing so, had missed opportunities to enhance customer satisfaction and minimise customer harm and costs to AFCA and insurers.
- Insurers' responsiveness in complaint resolution had deteriorated.
- Delay in claims handling remained the key driver of consumer dissatisfaction in the year to 31 March 2023.

The insurers at the roundtable undertook to take action including a review of their claims and complaints handling staff resourcing and training and opportunities for earlier complaint resolution. The ICA also agreed to identify ways to improve a customer's claims and complaints experience and remove barriers or friction points. Attendees at the roundtable agreed to reconvene to consider progress made. We are planning a further roundtable to be held early in 2024.

Following the roundtable, we understand that ASIC wrote to large general insurers seeking further information on resourcing efforts to deal with significant issues and

delays with claims handling and dispute resolution. According to ASIC Report 768 *Navigating the storm: ASIC's review of home insurance claims* the responses to these letters revealed under-resourcing of dispute resolution, which ASIC requested the insurers to address immediately.²⁴

6.5 Visits to areas affected by floods

Since the floods in early 2023 the ICA has organised a series of community engagement sessions in areas affected by the Major Floods to enable community members to discuss the progress of their claims and work through any issues with their insurers. The ICA has routinely invited AFCA to these meetings, along with community legal centres. This has provided AFCA an excellent opportunity to engage with local affected communities and explain our role and when and how to lodge a complaint with AFCA. Examples of meetings AFCA attended are listed below.

Flood	Location and date of meeting attended
SE Qld & Northern NSW – Feb & March 2022	Mullumbimby – 24/5/22, 19/9/22 Lismore – 25/5/22, 27/9/22, 6/3/23, 28/3/23 Lennox Head – 2/6/22 Brisbane North – 5/9/22 Casino – 20/9/22 Ballina – 21/9/22
Vic, NSW & Tas – Oct 2022	Echuca – 25/11/22 Rochester – 18/1/23, 25/7/23, 26/7/23
Central West NSW – Nov & Dec 2022	Eugowra – 21/3/23 Parkes – 22/3/23 Forbes – 23/3/23 Molong – 9/8/23

At the meetings, we provided information to community members to raise awareness of AFCA's independent EDR services and to outline options available to consumers with problems relating to insurance or experiencing financial hardship. In addition to meetings held in flood-affected areas, the ICA organised online events for

²⁴ For more detail, see page 4 of [ASIC's Report 768 Navigating the storm: ASIC's review of home insurance claims](#), August 2023.

communities such as forums and webinars. AFCA staff presented at several of these online events in 2022 and 2023.

6.6 Other assistance provided by AFCA

AFCA's response to the Major Floods has also included expanding regular engagement activities to address new demands. Examples are noted below.

- Training financial counsellors

AFCA regularly provides training to financial counsellors. Our program includes bespoke training for counsellors helping people affected by floods and we have delivered that training in locations affected by the Major Floods including Brisbane, Northern NSW, and South Australia.

The specialised training stepped through how to represent a complainant in a complaint at AFCA, featuring issues relevant to flood claims. It used flood case studies and provided tips on issues that may arise in flood-related complaints.

- Contributing to community support initiatives

AFCA contributes to a range of community support initiatives. To provide an example, we refer to [Disaster Legal Help Victoria](#). Its services include support for people affected by recent flooding in Victoria. At its information session on 29 March 2023, AFCA shared insights on insurance issues.

- Using social media

AFCA posted both organic and paid content on Meta to:

- promote meetings in flood-impacted areas organised by the ICA (discussed above)
- increase awareness of AFCA's services
- explain what someone should do if they have a complaint about an insurer.

Our paid content targeted people living in postcodes of impacted communities across South East Qld, Northern NSW and Northern Vic.

Appendix 1 – About AFCA

AFCA is the independent EDR scheme for the financial sector. It replaced the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal.

AFCA provides fair, independent and effective solutions for financial complaints. It does this not only by providing complaint resolution services free to consumers, but also by working with its members to improve their processes and drive up industry standards of service, thereby minimising complaints.

More broadly, AFCA plays a key role in restoring trust in the financial services sector. In addition to providing solutions for financial complaints, AFCA has responsibilities²⁵ to identify, resolve and report on systemic issues and to notify ASIC, and other regulators, of serious contraventions of the law. A separately operated and funded team within AFCA provides services to support independent committees that monitor compliance with several financial services industry codes.

AFCA's service is offered as an alternative to tribunals and courts to resolve complaints about financial firms made by individual and small business consumers. We consider complaints about:

- credit, finance and loans
- insurance
- banking deposits and payments
- investments and financial advice
- superannuation.

AFCA's role is to assist consumers to reach agreements with financial firms about how to resolve their complaints. We are impartial and independent.

If a complaint does not resolve between the parties, we will decide an appropriate outcome, including awarding compensation for losses suffered or substituting the trustee's decision in the case of a superannuation complaint.

AFCA's website – www.afca.org.au – provides comprehensive information about our role and the services we provide.

This submission refers frequently to our [Rules and Operational Guidelines](#). The Rules set out our jurisdiction and explain important matters such as our complaint resolution processes and remedies. The Operational Guidelines explain in detail how the Rules apply in practice.

²⁵ See [ASIC's Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority*.

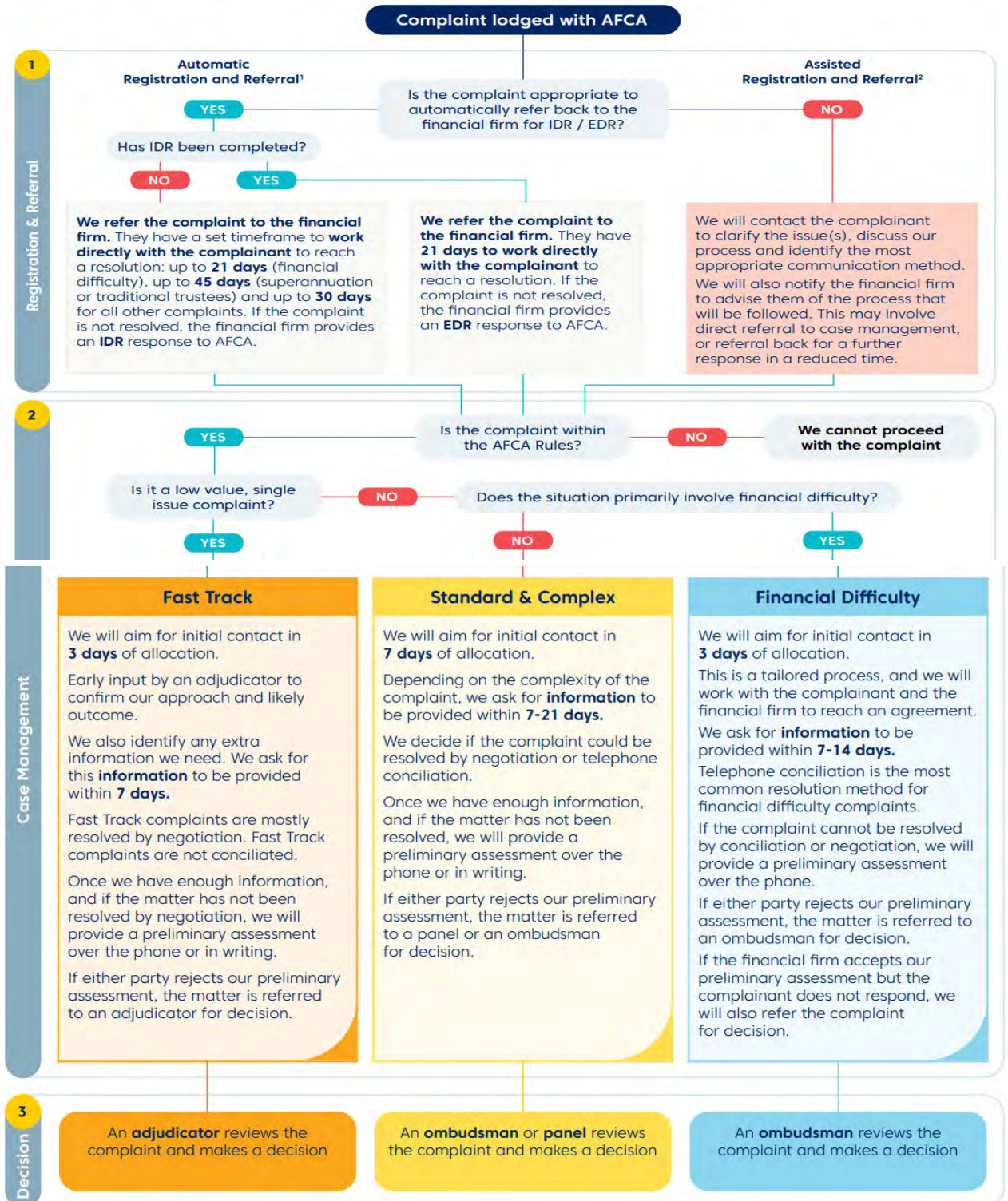
Other material published on our website that may assist the Inquiry includes:

- [Annual Reviews](#) for years from 2018-19 to 2022-23
- our [process for resolving complaints](#), including a [flow chart](#) showing every stage of the process
- [publications](#) including brochures, fact sheets and approach documents that explain how we reach decisions on key issues
- a full set of published [final decisions](#) we have made on complaints – 'Determinations'
- guidance on [insurance complaints](#)
- our directory of [floods and storms disaster support](#), covering matters such as -
 - what to do after a flood
 - making an insurance claim
 - complaints about flood claim decisions.

Appendix 2 – AFCA complaint resolution process

AFCA complaint resolution process

Effective from 27 February 2023



To find out more about current timeframes please visit afca.org.au/delays

¹ Most complaints will progress through the automatic Registration and Referral process.

² Some complaints may not be appropriate to automatically refer back to the financial firm because of the subject matter, urgency or the accessibility needs of the complainant.

Appendix 3 – Determination 950175

Case number: 950175

Financial firm: Allianz Australia General Insurance Limited

1. Determination overview

1.1 Complaint

The complainants, DM and LC, hold home building and contents insurance issued by the financial firm (insurer). On 28 February 2022, they lodged a claim after their home was inundated during a severe weather event.

The insurer partially accepted the claim on the basis that stormwater ingress through the roof had taken place and damaged ceilings and internal walls. However, it said most of the damage had been caused by floodwaters which the policy excludes from cover.

The complainants maintain that all the internal damage occurred due to the stormwater ingress before the floodwater entered the home. They want the insurer to cover all aspects of the internal damage to the home as well as to contents. They also seek amounts for temporary accommodation (TA) and compensation for stress caused by the insurer.

1.2 Issues and key findings

Is the insurer entitled to deny the disputed damage claim?

No. The complainants have established a claimable loss under the policy terms. Given the information provided on timing, the insurer has on balance not shown the disputed damage was first caused by floodwater. Therefore, it has not shown the exclusion relied upon applies.

Is the insurer required to pay for TA?

No. The complainants were able to stay rent free in a late relative's home while their property was being repaired. Further, while they state that home would otherwise have been rented out meaning an income loss occurred, the policy does not cover consequential losses.

Is non-financial loss compensation payable?

Yes. The insurer's claim handling unreasonably caused the complainants stress and inconvenience. It is to pay a total of \$2,000 in compensation.

Why is the outcome fair?

The complainants have established a claimable loss and the insurer has not shown the flood exclusion applies. It is therefore fair to expect the insurer to cover the disputed damage claim. It would be unfair to expect the insurer to pay TA costs given that the complainants did not incur any. It is fair that the insurer compensates them for the stress it unreasonably caused.

1.3 Determination

This determination is substantially in favour of the complainants. If the complainants provide written notice they accept this determination, the insurer is to:

- settle the disputed damage claim in accordance with section 2.1 below, and
- within 14 days of receiving the notice, pay them \$2,000 in total as non-financial loss compensation.

2. Reasons for determination

2.1 Is the insurer entitled to deny the disputed damage claim?

No. The complainants have established a claimable loss under the policy terms. Given the information provided on timing, the insurer has on balance not shown the disputed damage was first caused by floodwater. Therefore, it has not shown the exclusion relied upon applies.

Complainants have shown a claimable loss under the policy

The complainants are required to show, on the balance of probabilities (that it is more likely than not), that they suffered a claimable loss under the policy. This means they must show the loss was caused by a risk for which they are insured.

Subject to the terms and conditions set out in the product disclosure statement (PDS), the policy covers damage to the complainants' home and contents caused by a listed insured event. One of those events is 'Storm, cyclone, rainwater or run-off'.

While the complainants could have added 'Flood' to the policy as an insured event, they did not do so. The PDS defines 'flood' as 'the covering of normally dry land by water that has escaped or been released from the normal confines of [relevantly]...a river...[or]...a creek...'

On 28 February 2022, the complainants the complainants lodged the claim. They informed the insurer that during a severe storm earlier that day, their home had been inundated resulting in water damage to internal aspects of the building and to contents.

It is not in dispute that there was a major storm with intense rainfall on 27 and 28 February 2022, or that the home and contents were water damaged.

The insurer accepts that the storm damaged ceilings and upper sections of internal walls. It has offered a cash settlement for related repair costs. Accordingly, the insurer accepts that to that extent the complainants have established a claimable loss. However, it says most of the damage claimed was caused by flooding on 28 February 2022, which the PDS excludes.

Once the complainants prove the existence of a claimable loss, the insurer is liable for the loss unless it shows an exclusion or limiting condition applies. The insurer has the onus of proving on the balance of probabilities the application of the exclusion or condition.

Insurer says the disputed damage claim is excluded

On 29 March 2022, the insurer's expert hydrologist WM inspected the property. In its report dated 22 July 2022, WM said:

- it estimated floor level heights in the home at 3.26mAHD (front) to 3.56mAHD (back)
- at about 4am on 28 February 2022, complainant DM observed water covering the road in front of his home. This coincided with water levels reaching 3.98mAHD at CB gauge 2.7km away. This would have caused inundation of the road via the stormwater drains
- noting the garage gate motor was fully submerged, the minimum peak inundation at the home was about 3.21mAHD
- the peak water level at CB gauge was 4.28mAHD at 6.30am on 28 February 2022. This coincided with DM observing water coming up the drains in the toilet and laundry [although, WM also recorded that the complainant said the backflow was occurring from 5.30am to 6am], with the peak inundation level inside the home being about 3.51mAHD
- at peak inundation, the water from the street lapped at the front door (3.26mAHD), but did enter the home
- there was a rainfall burst in the hours leading up to the peak water level at around 6.30am on 28 February 2022, and in the hours after the peak
- initially, the rainfall may have accumulated on the surrounding streets, unable to drain away through subsurface drains due to the rapidly rising creek levels.
- however, once the creek levels rose above the lot levels on either side of the street, rainfall would have combined with creek water and flowed downstream
- 'The contribution of local rainfall to the peak depth of water inundation experienced at the property is thus considered to be very small'
- 'Based on the information gathered both through inspection of the site, review of the data and the discussion provided by the claimant, the inundation of the property...was caused by floodwater escaping from [T] Creek. Additionally, the damage caused by cracks forming on ceiling, internal walls, and brick perimeter wall was caused by direct rainfall'.

The insurer then obtained a report from DB, roofer. DB concluded:

Given the good condition of the roof as of 24/8/22 (time of [DB] inspection) we believe due to the volume of rain experienced in February 2022 the causation of the water ingress was due to not having a vapor barrier.

Based on the reports of WM and DB, the insurer accepted the damage to ceilings and internal walls. It has offered to pay a \$35,308 cash settlement for the cost of strip out, plastering repairs and painting. The offer was based on quotes and invoices the complainants provided.

However, the insurer says the rest of the damage was caused by flood, so is not covered because:

- the 'Storm' insured event does not cover loss or damage caused by flood or run-off combined with flood waters (PDS, page 17), and
- the policy contains a general exclusion for loss or damage as a result of, caused by or arising from flood.

The insurer accepts it gave the complainants permission to complete 'necessary repairs' to mitigate the risk of further damage. However, they proceeded to complete all repairs before it had the chance to fully determine the extent of damage from stormwater ingress. The insurer says it has given them the benefit of the doubt on several items in its cash settlement offer.

Complainants say stormwater caused all the internal damage

The complainants maintain that all the internal damage was caused by stormwater ingress before floodwater entered the home. They say they know this to be so as they remained in the home at all relevant times.

The complainants have provided a timeline of what occurred on 28 February 2022 based on their observations:

Time (approx.)	Event/Observation
5.30am	Heavy rain. Rainwater leaking through ceiling and walls onto floors. Cracking and swelling of ceiling and walls in some rooms. Water inside the home is clear. Floodwater outside the home and in the front yard. Water outside is dirty and sediment laden.
6.00am	Large volume of clear rainwater running down internal walls, penetrating light fittings and pouring onto floors in most rooms. Inundation levels vary. Floodwater level outside rising and getting closer to front door.

6.30am	Floodwater outside about 10cm below door and floor level. Rainwater continuously running down walls Rainwater inside house not draining away but pooling in most rooms.
7.00am	Rainwater pouring through ceiling, at times gushing like a waterfall, and down walls. Cracks worsening. Clear rainwater unable to drain away, pooling in rooms and flowing through house. Water rising in drains, toilets and sinks but not yet overflowing.
7.30am	Water now covering all floors in the house. The water is flowing directly from the ceiling and walls, is clear and visibly different to the floodwater outside. The water inside is now damaging contents as well as lower areas such as skirting boards, kitchen/laundry cupboards, electrical and whitegoods. Floodwater yet to enter the home.
8.00am	Floodwater level reaches door/floor level, begins to enter the home through doorways and external walls and mixes with the accumulated rainwater. The water inside the home begins to change colour from clear to dirty brown. Gradually becomes darker, especially when toilet and laundry drains overflow (backflow), around 8am [the complainants also estimate the backflow commenced between 7.45am and 8am]. Attempts are made to 'dam' backflow.
8.30am to 9.00am	Floodwater inundates inside the home by 20-25cm. Water is increasingly dirty. Some inundation is via the backflow from toilet and laundry drains and some is from floodwater flowing directly into the house. Water level peaks at around 9am as rain stops.
9.30am	Water level in the house begins to lower and empty out.

The complainants have provided photos taken before and after 8am on 28 February 2022. The 'before' photos show clear water inside the home at levels up to about 10cm, as well as brown floodwater outside. There is also a photo of lighter brown water in the laundry, which depicts the attempt to dam that water in the room. The 'after' photos show brown floodwater inside (up to about 20cm) and outside the home.

DM does not recall telling WM that floodwater from the street did not inundate the home. He says he may have said that did not occur prior to 8am but accepts that floodwater did come in through doorways and external walls after 8am. However, he denies that backflow of toilet and laundry drains occurred at 6.30am, saying that did not start until around 7.45am.

The complainants say in March 2022, the insurer confirmed they should proceed with repairs due to risks posed by sewage water and electricity. They claim \$164,396.83

for repairs undertaken (including \$1,250 for the garage gate motor as the insurer told them to fix it for security reasons) and \$35,743 for contents.

Insurer is not entitled to deny the disputed damage claim

Based on the provided information, the panel is not satisfied that the insurer has established it is more likely than not that the disputed damage was caused by flood. This is because:

- WM does not state the time of initial inundation of the home, or its cause
- WM's conclusion that most of the damage was due to floodwater rests heavily on DM stating that water was backflowing from the toilet and laundry drains at 6.30am. However, the complainants are adamant that did not occur until around 45 minutes later Determination | Case number: 950175 Page 5 of 7
- the complainants have provided a firsthand account of the events, supported by photos
- no persuasive evidence has been provided to erode the complainants' credibility
- the insurer has not adequately explained how the ingress of clear rainwater through the roof damaged ceilings and upper walls but did not damage flooring, lower walls and contents below, despite the complainants' photos of clear water up to 10cm above floor level, before the water changed colour to match that of the floodwater outside.

Based on the information provided, the panel is not satisfied that the disputed damage was first caused by floodwater. Rather, the damage was on balance sustained due to stormwater ingress before the inside of the home was affected by the flood. The insurer has not established the flood exclusion applies, meaning it must accept the disputed damage claim.

The insurer has had the opportunity to assess the cost of repairing the disputed damage. It notes that the scope of works provided by the complainant's builder totalling \$98,984.60 set out repairs for each room but not a costing per item. However, the insurer has not said that figure or any of the other internal repair costs the complainants incurred were excessive.

Further, the insurer has not established the extent to which its interests were prejudiced by the complainants proceeding with repairs (noting it acknowledges that it authorised them to proceed with at least some repair work).

In the circumstances and noting that the insurer has already agreed to reimburse the complainants for repairs it previously accepted as covered, the insurer is required to reimburse the complainants the repair costs they paid to rectify the internal damage, including carpet replacement, as supported by the invoices they have already provided.

However, the insurer is not required to reimburse them the cost of repairing the garage gate motor. The motor was outside, close to the street. It was submerged by floodwater.

The complainants claim \$35,743 for damaged furniture, whitegoods, clothing, books, etc. They have provided a list of the items and their cost price. They note that not all items have yet been replaced. The insurer is required to accept the contents claim but is entitled to assess the amounts claimed pursuant to its usual claim process.

Within 21 days of the complainants accepting this determination, the insurer is to:

- reimburse the repair costs they paid to rectify the internal damage, including carpet replacement, as supported by the invoices they have provided (but not including the cost of repairing the garage gate motor)
- contact the complainants to commence assessment of the contents claim.

The insurer is entitled to impose applicable policy excesses, limits and sub-limits.

2.2 Is the insurer required to pay for TA?

No. The complainants were able to stay rent free in a late relative's home while their property was being repaired. Further, while they state that home would otherwise have been rented out meaning an income loss occurred, the policy does not cover consequential losses.

Policy includes cover for TA costs

The PDS sets out on page 28 an additional benefit for TA costs:

If your home building is damaged by an insured event during the period of insurance to such an extent that you can't live in it, we'll pay the rental costs for accommodation for you and your pets for the period it reasonably takes, to repair or rebuild your home building.

Insurer is not required to pay for TA

The complainants say that, on 10 July 2022, they moved into the home of LC's late mother as repair work had begun. They stayed there until they moved back home on 15 October 2022.

The complainants accept that they were able to stay in the home of LC's mother rent free. However, they submit that had they not been forced to move in, the property would have been rented out. They estimate a rental income loss of \$15,200.

The panel is satisfied that the insurer is not required to pay the complainants for TA because:

- they did not incur any TA costs, and
- the PDS excludes cover for consequential losses, such as loss of income. Under the AFCA Rules, compensation for consequential loss may not be awarded where such loss is excluded under the relevant insurance policy terms.

2.3 Is non-financial loss compensation payable?

Yes. The insurer's claim handling unreasonably caused the complainants stress and inconvenience. It is to pay a total of \$2,000 in compensation.

AFCA can award compensation for poor claim handling

Under paragraph D.3 of the AFCA Rules, we may award compensation for non-financial loss (capped at \$5,400) where the insurer's actions have caused an unusual amount of:

- physical inconvenience
- time taken to resolve the situation
- interference with the complainant's expectation of enjoyment or peace of mind.

Insurer has caused stress and inconvenience

The complainants say the insurer took more than nine months to reach a claim decision, and that the decision was unreasonable given the information they had provided. They say the insurer's claim handling and delays has caused them extreme stress and inconvenience.

The insurer acknowledges delays occurred but says that it in fact issued a claim decision within seven months, well within the 12 month period set out in the General Insurance Code of Practice for claims arising from an extraordinary catastrophe.

Having reviewed the insurer's claim notes, the panel is satisfied there were instances where the insurer missed deadlines, failed to keep the complainants adequately updated and poorly communicated. These issues caused the complainants stress and inconvenience. The insurer is to pay them a total of \$2,000 in non-financial loss compensation.

2.4 Why is the outcome fair?

The complainants have established a claimable loss and the insurer has not shown the flood exclusion applies. It is therefore fair to expect the insurer to cover the disputed damage claim. It would be unfair to expect the insurer to pay TA costs given that the complainants did not incur any. It is fair that the insurer compensates them for the stress it unreasonably caused.

3. Supporting information

3.1 The AFCA process

AFCA's approach is based on fairness

AFCA has determined this complaint based on what is fair in all the circumstances, having regard to:

- the legal principles
- applicable industry codes or guidance
- good industry practice
- previous decisions of AFCA or its predecessor schemes (which are not binding).

The respective parties have completed a full exchange of the relevant information, and each party has had the opportunity to address any issues raised. We have reviewed and considered all of the information the parties have provided.

While the parties have raised several issues in their submissions, we have restricted this determination to the issues that are relevant to the outcome.

A panel determined this matter

Due to the nature of this complaint, we referred it to a panel for determination. The panel includes:

- an ombudsman
- a member with significant experience in consumer and small business advocacy
- a member with extensive experience in the insurance industry.

We assess complaints on available information and circumstances

AFCA is not a court of law. We do not have the power to take or test evidence on oath, or to require third parties to give evidence.

When we assess complaints, we consider:

- available documents
- the recollections of the parties
- all relevant circumstances.

We give more weight to documents created at the time the events occurred. If there are no relevant documents, we will decide what most likely occurred based on the available information.

If there are conflicting recollections and these are evenly weighted, we may find that a claim cannot be established.