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The Parliament of the Commonwealth of Australia

# In the Wake of Disasters

**Volume One: The operation of the insurance industry during  
disaster events**

House of Representatives  
Standing Committee on Social Policy and Legal Affairs

February 2012  
Canberra

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ISBN 978-0-642-79619-6 (Printed version)

ISBN 978-0-642-79620-2 (HTML version)

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Image of banana plantation destroyed by cyclone courtesy of ThinkStock. Other images supplied by Mr Perrett, Mrs Moylan and Dr Stone.



# Contents

Foreword .....	vii
Membership of the Committee .....	ix
Terms of reference .....	xi
List of acronyms and abbreviations .....	xiii
List of recommendations .....	xv

## **THE REPORT**

<b>1 Introduction .....</b>	<b>1</b>
<b>Purpose of inquiry .....</b>	<b>2</b>
<b>Scope of inquiry .....</b>	<b>4</b>
<b>Relevant reviews and inquiries .....</b>	<b>6</b>
Australian Securities and Investments Commission Reports .....	6
Queensland Floods Commission of Inquiry .....	6
Natural Disaster Insurance Review: Inquiry into flood insurance and related matters .....	7
<b>Conduct of the inquiry .....</b>	<b>10</b>
<b>Structure of the report .....</b>	<b>11</b>
<b>2 The general insurance industry in Australia .....</b>	<b>13</b>
Background to the general insurance industry .....	13
Regulatory framework .....	15
Contract law .....	16
Government bodies .....	16
Insurance Council of Australia .....	20
Financial Ombudsman Service .....	20

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<b>3</b>	<b>General Insurance Code of Practice .....</b>	<b>23</b>
	<b>About the Code .....</b>	<b>23</b>
	Proposed amendments .....	25
	<b>Monitoring and enforcement of the Code .....</b>	<b>26</b>
	Effectiveness.....	30
	Committee comment.....	34
<b>4</b>	<b>Lack of consumer awareness .....</b>	<b>37</b>
	<b>Insurance contracts .....</b>	<b>37</b>
	Policy coverage.....	39
	Underinsurance.....	42
	Committee comment .....	43
	<b>Consumer awareness of rights in making a claim .....</b>	<b>46</b>
	Committee comment.....	50
<b>5</b>	<b>Lack of consumer protections.....</b>	<b>51</b>
	<b>Claims handling process.....</b>	<b>52</b>
	Delays in processing claims .....	54
	Third-party assessments.....	57
	Independence and accuracy of third-party assessments .....	60
	<b>Lack of information.....</b>	<b>64</b>
	Difficulties with communication .....	65
	Access to documents .....	68
	Committee comment.....	70
<b>6</b>	<b>Dispute resolution processes.....</b>	<b>73</b>
	<b>Internal dispute resolution .....</b>	<b>74</b>
	Consumer awareness of IDR .....	74
	Timeliness.....	76
	Effectiveness.....	77
	Committee comment .....	80
	<b>External dispute resolution.....</b>	<b>80</b>
	Duty of insurers.....	81

Barriers to participation in EDR.....	83
Impact of legal aid.....	85
Effectiveness of dispute resolution.....	89
Committee comment.....	90
<b>7 Recommendations.....</b>	<b>91</b>
<b>Insurance contracts.....</b>	<b>92</b>
Standard cover.....	93
Standard definition of flood.....	94
Unfair contracts terms.....	95
<b>Claims-handling process.....</b>	<b>96</b>
<b>Managing disputes.....</b>	<b>101</b>
<b>Topics for further investigation.....</b>	<b>104</b>
Premium increases.....	104
Emotional impact.....	107

## APPENDICES

Appendix A—List of Submissions.....	109
Appendix B—List of witnesses appearing at public hearings and community forums..	113
Appendix C—List of Exhibits.....	125
Appendix D—Survey results.....	127

## TEXTBOXES

Box 1.0	Disaster events devastate victims.....	3
Box 3.0	What Code?.....	34
Box 4.0	Mixed experiences in Western Australia.....	45
Box 4.1	Settling for less.....	49
Box 5.0	Claims processing—‘another hurdle to jump’.....	53
Box 5.1	Third-party expert reports a poor excuse for delays.....	59
Box 5.2	‘I was ignored, fobbed off and lied to’.....	66
Box 6.0	Perth Hills fires.....	76
Box 6.1	Victoria floods—inequity and frustration for rural residents.....	85





## Foreword

Australia is a country of fires, floods, cyclones and other extreme weather events. Recent natural catastrophes have revealed a number of gaps in consumer protection when it comes to general insurance. The mass lodgement of business, home and contents insurance claims in the wake of multiple natural disasters that have hit Australia in recent years showed up these consumer protection gaps in stark detail.

Claimants had nowhere to turn and no means of redress when they were unable to have their insurance claims resolved in a timely manner. Victims of extreme weather events all over Australia faced unacceptable delays in the assessment of their claims; misunderstandings about the scope and extent of their policies; a lack of information or communication from insurers; discrepancies or inaccuracies in damage assessments or third-party expert reports; and token efforts at dispute resolution. Those who tried to assert their rights in the labyrinth of the claims process found themselves on the wrong side of a power imbalance.


The Committee understands that the events of the past years presented an unprecedented workload on the insurance industry. However, policyholders do not agree to forego the benefits of their policy in the event of a natural catastrophe. In fact, it is precisely at those times that they are in greatest need of their insurance policy. The insurance industry needs to plan and resource itself effectively so that it can deliver to its customers in times of need.

The Committee concluded that consumer protections need to be increased, particularly in the claims-handling process. The best way to do this is to remove the legislative exemptions that the insurance industry currently enjoys, and bridge the gaps in consumer protection. I urge governments and the insurance industry to implement these recommendations with the utmost speed so that policyholders can have peace of mind for future, inevitable natural disasters.

Mr Graham Perrett MP  
Chair







## Membership of the Committee

**Chair**            Mr Graham Perrett MP

**Deputy Chair**   Hon. Judi Moylan MP

**Members**        Mr Shayne Neumann MP

Ms Michelle Rowland MP  
(to 7 February 2012)

Ms Laura Smyth MP

Hon. Dr Sharman Stone MP

Mr Mike Symon MP  
(from 7 February 2012)

Mr Ross Vasta MP

## Committee Secretariat

Secretary	Dr Anna Dacre
Inquiry Secretary	Ms Natalya Wells
Research Officer	Ms Alicia Lin (from 13 October 2011)
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## Terms of reference

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

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





## List of acronyms and abbreviations

ACCC	Australian Competition and Consumer Commission
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
CILS	Collaborative Insurance Law Service
Corporations Act	<i>Corporations Act 2001 (Cth)</i>
Cr	Councillor
Cth	Commonwealth
EDR	External Dispute Resolution
Flood Commission	Queensland Floods Commission of Inquiry
FOS	Financial Ombudsman Service
IAG	Insurance Australia Group
ICA	Insurance Council of Australia
IDR	Internal Dispute Resolution
ILS	Insurance Law Service
Insurance Contracts Act	<i>Insurance Contracts Act 1984 (Cth)</i>

LAQ	Legal Aid Queensland
NDIR	Natural Disaster Insurance Review
NIBA	National Insurance Brokers Association
NSW	New South Wales
PDS	Product Disclosure Statement
RG	Regulatory Guide
The Code	The General Insurance Code of Practice
VLAFF	Victorian Legal Assistance Forum



# List of recommendations

## Recommendation 1

The Committee recommends that the Australian Government amend the *Insurance Contracts Act 1984* (Cth) to make it obligatory that insurers offer to consumers the option of a general insurance policy that conforms to Standard Cover, as prescribed in the *Insurance Contracts Regulations 1985* (Cth), from 1 July 2012, so that all insurers carry a product that provides full replacement in the event of total loss and cover for damages resulting from flood.

## Recommendation 2

The Committee recommends that the Australian Government amend the *Insurance Contracts Act 1984* (Cth) so that from 1 July 2012 any derogation from Standard Cover is required to be communicated to policyholders as a departure from ideal standards:

- in clearly understood terms and separately from the policy or the Product Disclosure Statement;
- with specific reference to the fact that the policy derogates from Standard Cover; and
- with specific reference to the manner in which the policy derogates from Standard Cover.

## Recommendation 3

The Committee recommends that the Australian Parliament pass the *Insurance Contracts Amendment Bill 2011* and ensure its enactment by 1 July 2012. The Committee further recommends that the standard definition of 'flood' be included in the definition of Standard Cover in the *Insurance Contracts Regulations 1985*.

#### Recommendation 4

The Committee recommends that the Australian Government introduce legislative changes required to remove the exemption for general insurers to unfair contract terms laws, and ensure its enactment by the end of 2012.

#### Recommendation 5

The Committee recommends that the Australian Government work with the Insurance Council of Australia to make the following amendments to the General Insurance Code of Practice by 1 July 2012:

- remove the clauses that set aside the Code standards in times of disasters;
- require insurers to refrain from advising policyholders against making a claim under their insurance policy, and incorporate a 'right to claim' so that policyholders who contact their insurer about their eligibility to make a claim are offered the opportunity to lodge a claim and have it assessed fully;
- ensure that a full explanation of the claims-handling process, including the right to escalate decisions to internal dispute and external dispute resolution systems, is given when policyholders lodge a claim;
- ensure that an acknowledgement of the claims lodgement, contact details of the claims officer, and expected timeframes for the claims-handling process are provided to policyholders in writing;
- require that copies of external expert reports used in the determination of a claim to be provided to claimants within 10 days of request; and
- introduce the following minimum standards for claims handling in times of exceptional circumstances such as declared disasters:
  - ⇒ a timeframe for informing claimants of the progress of the claim;
  - ⇒ a timeframe for advising claimants if an external expert has been appointed;
  - ⇒ assurance that external experts are fully qualified to undertake assessments;
  - ⇒ an undertaking to provide claimants with information about the qualifications, employer, and role of external experts that are appointed to assist with their claim;



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- ⇒ a maximum timeframe of 12 weeks for external experts to provide reports;
  - ⇒ a maximum timeframe for accepting or denying a claim;
  - ⇒ a timeframe for responding to requests for information;
  - ⇒ an undertaking to communicate all decisions about insurance claims to the claimant in writing with clear and explicit reasons relating to their particular claim; and
  - ⇒ a timeframe for informing claimants of the progress of their complaint or dispute.

#### Recommendation 6

The Committee recommends that the Australian Securities and Investments Commission amend Regulatory Guideline 139 by 1 July 2012 to require the Financial Ombudsman Service to report regularly to the Australian Securities and Investments Commission and also to make public:

- the names of insurance companies that have breached the Code or are involved in systemic issues, and the types of breach; and
- the annual number of internal dispute resolution and external dispute resolution cases for each insurance company.

Further, the Committee recommends that, following declared disaster events, the Financial Ombudsman Service should be required to provide a report to the Australian Securities and Investments Commission on breaches and dispute resolutions specific to the disaster area.

#### Recommendation 7

The Committee recommends that the Australian Government empower the Australian Securities and Investments Commission to regulate claims handling and settlement of financial service providers. This can be achieved by the Treasurer introducing legislation by 1 July 2012 to give effect to the measures contained in Schedule 1, Part 1 of the lapsed Insurance Contracts Amendment Bill 2010, so that breaches of the duty of utmost good faith in relation to claims handling constitute a breach of the Insurance Contracts Act.

This would enable the Australian Securities and Investments Commission to:

- monitor and regulate claims handling and settlement processes;

- impose sanctions on insurance companies, under Australian Financial Services Licence remedies, on behalf of consumers; and
- negate the current exemption of claims handling and settlement from the definition of financial services for the purpose of the *Corporations Act 2001*.

#### Recommendation 8

The Committee recommends that the Australian Government introduce legislation by 1 March 2013 to make adherence to the General Insurance Code of Practice a compulsory requirement for all general insurers.

#### Recommendation 9

The Committee recommends that the Australian Securities and Investments Commission amend Regulatory Guideline 165 to:

- require general insurers to provide clear and comprehensive information about both Internal Dispute Resolution and External Dispute Resolution to clients at time of claim lodgement;
- require general insurers to provide information to clients at the time of claim lodgement on the right to seek from Financial Ombudsman Service an independent external expert report (such as a hydrology report);
- prohibit general insurers from commenting to policyholders on the merits of a dispute;
- prescribe an Internal Dispute Resolution model which avoids multi-tiered components; and
- automatically escalate a claim that has not been settled within four months to an internal dispute should the General Insurance Code of Practice amendment to this end not be implemented.

#### Recommendation 10

The Committee recommends that the Australian Government and relevant State and territory governments jointly allocate additional and continuing funding in the 2012–13 budget to the Insurance Law Service for the mobilisation of a temporary physical presence in areas of need following natural disasters.

The service should be available to all persons in an affected disaster area and not subject to means-testing.

**Recommendation 11**

The Committee recommends that the Australian Government allocate additional and continuing funding in the 2012–2013 budget to the Insurance Law Service to establish a consumer advisory position at the Financial Services Ombudsman. The position should be co-funded by the Insurance Law Service and the insurance industry.

**Recommendation 12**

The Committee recommends that the Australian Government investigate ways to reduce the cost of calling 1300 numbers from mobile telephones in areas of natural disasters.

**Recommendation 13**

The Committee recommends that the Minister for Financial Services and Superannuation immediately establish a joint industry-Government action group to address evidence of the rising costs and market failure of insurance premiums across Australia.

