

Lack of consumer awareness

- 4.1 This inquiry focused on issues arising out of the handling of catastrophe-related insurance claims. However, during the course of the inquiry, the Committee heard compelling evidence of consumer concerns about issues that precede the claims handling processes.
- 4.2 One issue is the low level of consumer awareness of insurance contracts or policies. The details, and ramifications, of insurance contracts are often not brought to light until the consumer is affected by a natural disaster, at which time it is too late to change or alter insurance policies.
- 4.3 Low levels of consumer rights awareness relating to making claims is another concern. In order to avail themselves of the protection, assistance and recompense that insurance policies provide, consumers need to be aware of their rights to make and pursue a claim. This includes their right to revisit a claim that has been settled quickly in the aftermath of a natural disaster.

Insurance contracts

- 4.4 The *Insurance Contracts Act 1984* (Cth) (Insurance Contracts Act) imposes certain requirements on insurance contracts in terms of a prescribed Standard Cover for home and contents general insurance, which is defined in the *Insurance Contracts Regulations 1985* (Cth). Standard insurance cover includes flood among prescribed natural disasters, along

with fire, storm, earthquake, cyclone and actions of the sea.¹ Total replacement policies are also standard, unlike sum-insured policies.

4.5 However, the regulations allow insurers to deviate, or derogate, from Standard Cover in their products, on the proviso that they ensure that the client is informed in writing or is otherwise aware of the exclusion. Written notice of flood exclusion in a lengthy product disclosure statement (PDS) was deemed sufficient to comply with this stipulation in a 2002 court case.² More recently, the Financial Ombudsman Service (FOS) explained that 'whilst in most circumstances the provision of a PDS will satisfy the need to clearly inform', context is also important and FOS therefore ruled in favour of a consumer who was misled 'at policy inception' by the insurer that the policy provided full flood cover.³

4.6 Australian Securities and Investments Commission (ASIC) noted that:

... financial products are relatively complex compared to many other products that consumers purchase. For example, most financial products cannot be 'tested' before they are bought and most involve estimates of the future risks of particular events. Consumer information problems are therefore a well recognised and persistent feature of the broader financial services market. This is why disclosure requirements are an important feature of regulation in this sector.⁴

4.7 Not many consumers have a good awareness or understanding of the scope of their cover nor do they read insurance policies in detail.⁵ Product Disclosure Statements are often lengthy and highly technical in nature, making them difficult for lay people to read and understand. The Committee supports the Natural Disaster Insurance Review report's

1 The Treasury, 'Natural Disaster Insurance Review: Inquiry into flood insurance and related matters' September 2011, p. 21.

2 *Hams v CGU Insurance Ltd*, [2002] NSWSC 273.

3 Financial Ombudsman Service (FOS), 'Financial Ombudsman Circular,' Issue 7, Update 1, Flood Edition, November 2011, p. 3: 'Whilst in most circumstances the provision of a [Product Disclosure Statement] will satisfy the need to clearly inform, that will not always be the case. When considering whether the applicant has been clearly informed that their policy deviates from standard cover, it is necessary to consider the whole circumstances that have led to policy inception. Any conversations held prior to the inception of the policy, provision of insurance certificate and policy documentation were all considered. The [Financial Service Provider]'s conduct at inception was misleading as the applicant was led to believe that the policy provided full flood cover.'

4 Australian Securities and Investments Commission (ASIC), 'Consumer Understanding of Flood Insurance' Report 7, June 2000, p. 9.

5 ASIC, 'Consumer Understanding of Flood Insurance' Report 7, June 2000, p. 8; The Treasury, 'Natural Disaster Insurance Review' September 2011, p. 101.

recommendation that insurers provide a brief Key Facts Statement that summarises the salient features of the policy, including in particular any exclusions, and defines Standard Cover.⁶

4.8 As noted in Chapter 3, unfair contract terms laws under the ASIC Act do not apply to general insurance contracts. Consequently, there are no penalties for general insurance contracts that contain unfair terms. Mr David Coorey, of Legal Aid NSW, is very critical of this exemption:

The only standard form contract in this country today that does not have unfair terms legislation is insurance, and that is unacceptable. Out of all of the contracts in the country, where a consumer lives or dies, really, on the fine print of a product, you would have thought that insurance contracts would be the one contract where you might have legislation that already applies across the board to every other standard form contract in Australia.⁷

4.9 Insurers claim that unfair contract terms laws need not apply as consumers are already protected through their duty of utmost good faith under the Insurance Contracts Act.

4.10 The Committee found that many consumers around Australia have understood their insurance policy only after the recent extreme weather events, often to their detriment. The following section discusses the consequences of widespread industry derogation of Standard Cover and the impact of:

- lack of awareness of policy coverage; and
- underinsurance.

Policy coverage

4.11 The lack of awareness of insurance coverage is not a new issue of consumer concern. More than a decade ago, ASIC published a report based on a national review of disclosure and sales processes by general insurers.⁸ The review found that many consumers were not aware whether they were covered for flood or of the difference between 'storm' and 'flood'.

6 The Treasury, 'Natural Disaster Insurance Review' September 2011, p. 103.

7 Mr David Coorey, Senior Solicitor, Legal Aid New South Wales, Graceville, 27 September 2011, p. 25.

8 ASIC, 'Consumer Understanding of Flood Insurance' Report 7, June 2000.

4.12 Circumstances do not appear to have improved since the release of that report. The devastating Queensland, Western Australian and Victorian floods in 2011 have exposed widespread ignorance of adequate protection from flooding.

4.13 Although it is not known how many internally-handled disputes arose from insurance claims related to natural disaster events, the latest FOS annual review of the General Insurance Code of Practice indicates that the number of insurance claims disputes did not increase dramatically from 2008–09 to 2009–10.⁹ However, non-claims related disputes for home insurance, such as disputes about buying insurance, increased by 71 per cent in that time, which may attest to the flood events' role in making a large number of consumers aware for the first time of their policy coverage.

4.14 The Queensland Minister for Finance, Natural Resources and the Arts, the Hon. Rachel Nolan, described the situation in Queensland where:

... many thousands of people who in good faith believed that their comprehensive insurance included flood cover were shocked to find that their policies accommodated flash but not riverine flooding.¹⁰

4.15 Legal aid organisations observed similar low levels of consumer awareness of insurance policies. The Victorian Legal Assistance Forum (VLAFF) noted that people have limited understanding of 'the scope of coverage for different types of water inundation and particular exclusions'.¹¹ The Insurance Law Service (ILS) advised the Committee that:

Our contact with consumers in the wake of this event showed the extent to which what they were actually covered for mismatched their expectations of insurance. I think, if a product is that far out of line with what people think it is and think it should be, then we have an issue.¹²

9 FOS, 'The General Insurance Code of Practice: Overview of the Year 2009/2010, p. 53 <<http://www.fos.org.au/public/download.jsp?id=14819>> viewed 9 January 2012.

10 Queensland Government, *Submission 13*, p. 1.

11 Victorian Legal Assistance Forum (VLAFF), *Submission 50*, p. 4.

12 Ms Karen Cox, Coordinator, Insurance Law Service, *Committee Hansard*, Graceville, 27 September 2011, p. 24.

- 4.16 In fact, most insurance policies do derogate from Standard Cover when it comes to flood.¹³ In some cases, certain types of flood, such as storm water inundation, are covered but not others, such as riverine. Furthermore, where flood is included, or offered as an extra option, there may be a clause located somewhere in the lengthy PDS that caps the amount recoverable from flood damage.
- 4.17 In contrast, BT Financial Group, which manages the Westpac Group of insurance businesses Westpac, St. George, BankSA, Bank of Melbourne and RAMS, offers flood cover in all their policies. The Chief Executive Officer of BT Financial Group explained that 'in our experience, expecting Australians to understand the nuances of flood cover is tough.'¹⁴
- 4.18 The general insurance industry blames the lack of flood mitigation measures and flood mapping data for difficulties in pricing risk accurately and therefore being able to provide flood cover. However, Ms Jenny Lawton, Victoria Legal Aid lawyer, counters that:
- ... until we can achieve better mitigation, better flood mapping and better information, there is a case to be made for preventing the insurance industry from derogating from the provision of flood cover.¹⁵
- 4.19 The 2000 ASIC report also expressed concerns that insurance sales representatives were not adequately trained to offer or provide information on the complexities of flood insurance.¹⁶
- 4.20 Insurance Australia Group (IAG) argues that their employees have a script for advising clients of the exclusions, such as flood cover. The IAG advised the Committee that 'in Victoria and Queensland the number one issue on that list of key exclusions would be flood.'¹⁷
- 4.21 However, FOS has found against insurers where a consumer believed that their policy covered all instances of flood and the insurer cannot prove

13 Mr Robert Whelan, Chief Executive Officer, Insurance Council of Australia, *Committee Hansard*, Sydney, 14 October 2011, p. 40.

14 Mr Mark Smith, General Manager, Bank Distribution and Insurance, BT Financial Group, *Committee Hansard*, Sydney, 14 October 2011, p. 20.

15 *Committee Hansard*, Bridgewater, 26 October 2011, p. 10.

16 ASIC, 'Consumer Understanding of Flood Insurance' Report 7, June 2000, p. 2.

17 Mr Alexander Harrison, Chief Operating Officer, Direct Insurance, Insurance Australia Group, *Committee Hansard*, Canberra, 13 October 2011, p. 2.

that it advised through a PDS or via telephone of the derogation of cover from Standard Cover.¹⁸

4.22 The ICA has suggested that the industry should make a:

... commitment to simplify and improve insurance product disclosure statement summary arrangements to enhance consumer understanding of insurance cover.¹⁹

4.23 In order to reduce the confusion over policy coverage and definitions of 'flood', the Australian Government drafted the Insurance Contracts Amendment Bill 2011 (Cth). The bill, which was introduced in Parliament in November 2011, makes it a requirement of insurers to provide and clearly inform clients of key policy information in a Key Facts Statement. In addition, insurers will be required to utilise a standard agreed definition of 'flood' in policy wording. The Australian Government will define both the Key Facts Statement and the definition of 'flood' in the Insurance Contracts Regulations.

Underinsurance

4.24 Underinsurance is not a new issue. In 2005, ASIC issued *Getting Home Insurance Right*, a report on widespread underinsurance in the wake of the Canberra bushfires of 2003.²⁰ This report was followed by *Making Home Insurance Better* in 2007, which examined how the situation had improved since the 2005 report, as well as the extent of underinsurance following Cyclone Larry in Queensland.²¹

4.25 Underinsurance is attributed in large part to the prevalence of sum-insured policies over total replacement policies.²² A sum-insured policy provides insurance cover only up to a specified sum whereas a total replacement policy provides insurance for the total cost of replacing or repairing a home, regardless of the final cost. Where there is a difference between the sum agreed and the final cost, sum-insured clients must pay for the difference out of their own pocket.

18 FOS, 'Financial Ombudsman Circular,' Issue 7, Update 1, Flood Edition, November 2011, p. 5, citing FOS Case No: 239225, available at <<https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/239225.pdf>>.

19 Insurance Council of Australia (ICA), '10 Point Plan to tackle Disasters', *Media Release*, 27 January 2011.

20 ASIC, 'Getting Home Insurance Right: A report on home building insurance', Report 54, September 2005.

21 ASIC, 'Making Home Insurance Better', Report 89, January 2007.

22 ASIC, 'Making Home Insurance Better', Report 89, January 2007, p. 4.

4.26 Moreover, there are many risks inherent in sum-insured policies, which ASIC covers comprehensively in its reports. In summary:

- calculating future rebuilding costs is difficult and complex but is the responsibility of the client;
- calculations may not be updated on a yearly basis to consider renovations, changes in building codes or increases in the cost of building materials and labour; and
- calculations cannot predict the drastic price increases that follow a large-scale natural disaster due to high demand on materials and labour.

4.27 Again, sum-insured policies deviate from the prescribed Standard Cover. The Committee is concerned that consumers are not aware that sum-insured policies can leave them underinsured in the event of large-scale or total damage or loss. The VLAf encountered low consumer awareness of the difference between sum-insured and total replacement policies.²³

4.28 Insurers point out that sum-insured policies:

... provide clarity on values for the consumer, limiting insurers' potential loss, keeping the exposure stable for reinsurers and therefore keeping products more affordable for consumers.²⁴

However, the Committee heard that total replacement policies are not necessarily more expensive than sum-insured policies.²⁵

4.29 The lack of available insurance cover is another reason for underinsurance. For example, while farms may have access to home and contents insurance, equipment such as fencing, bores, and water tanks may not be covered. Flood insurance for crops and livestock is not available in Australia, and neither is multi-peril crop insurance that protects from all disasters.

Committee comment

4.30 The Committee believes that deviation from the prescribed Standard Cover for general insurance has led to extensive confusion for consumers over what a particular insurance policy covers. Not only do some policies cover flood and others omit flood, various policies contain different

23 VLAf, *Submission 50*, p. 4.

24 Insurance Australia Group (IAG), *Submission 38*, p. 7.

25 Ms Bridget Lawton, Coordinator, Consumer Law Service, Caxton Legal Centre, *Committee Hansard*, Bridgewater, 26 October 2011, p. 13.

definitions of flood, including some types and excluding other types. In the event of heavy rain, storms and flooding, this requires insurers to make significant efforts to differentiate between types of water behaviour. Such investigations can be the cause of the lengthy delays and protracted disputes that have outraged many consumers around the country.

4.31 The Committee agrees with the argument put to the NDIR by consumer groups that:

... the duty of utmost good faith in the Act is not equivalent to unfair contract terms laws as reliance by an insurer upon a term of an insurance contract (such as an exclusion clause) is not, as a matter of law, a breach of the duty of utmost good faith and, in any event, there are no penalties applicable to a breach of the duty.²⁶

4.32 Noting that the Treasury Department has released an options paper and a draft Regulation Impact Statement for feedback on unfair terms in insurance contracts, the Committee recommends that the exemption for general insurers to the unfair contract terms laws contained in the ASIC Act be rectified.

4.33 The Committee supports the Insurance Contracts Amendment Bill 2011, which proposes a standard definition for flood, and recommends that the Australian Parliament pass the bill. Moreover, the Committee recommends that insurers not be allowed to derogate from this definition.

4.34 Although underinsurance is a problem for any total loss, it can prove to be a disaster in times of catastrophes and mass devastation. The resulting surge in demand for building resources and labour increases the cost of rebuilding by large margins. The Committee heard consistently about this problem in its travels to disaster-affected communities.

4.35 Derogation from Standard Cover has also led to a total replacement policies becoming the minority. Many consumers may not be aware of what sum-insured policies mean, or that alternatives are available in the market. When addressing this issue, the NDIR recommended:

That subsection 35(2) of the *Insurance Contracts Act 1984* be amended so that policyholders are not deemed to be clearly informed of a deviation from 'standard cover' by simply being provided a copy of the insurance policy or product disclosure statement.²⁷

26 The Treasury, 'Natural Disaster Insurance Review' September 2011, p. 106.

27 The Treasury, 'Natural Disaster Insurance Review' September 2011, p. 102.

Box 4.0 Mixed experiences in Western Australia

Toodyay, Northam and York are semi-rural townships located in the wheat belt region in Western Australia. The region experienced a bushfire in 2009 and dust storms and multiple thunderstorms in 2011. Although the scale of the disaster events was smaller than more-publicised flood events in other parts of Australia, claims processing and underinsurance issues nevertheless have left some scars on this community.

Residents who spoke to the Committee had mixed experiences and sometimes that inequity of treatment led to tensions. One person commented 'On the whole, I think most people were reasonably happy with the service [that the insurers] provided. There were some disaster stories. I believe different insurance companies were not as helpful as they could have been.'

Some residents expressed appreciation for the Insurance Council of Australia, who visited the area after the disaster event. However, while good advice was provided by the Insurance Council representative, there was little follow up activity undertaken, leading some to describe the visit as a 'complete waste of time'.

Residents felt the General Insurance Code of Practice was not adhered to with regard to time frames and that they were not provided with information about internal dispute resolution. Communication was one-sided and people were not updated on the progress of their claim: 'We were the ones who always were ringing them.' These experiences left a cynicism amongst some with one resident commenting that 'insurance companies are quite notorious in bullying their way out of paying.'

- 4.36 While the Committee supports the above NDIR recommendation, it also considers that the further step of making Standard Cover mandatory would minimise the distress and financial problems of underinsurance caused by sum-insured policies.
- 4.37 The Committee makes a number of recommendations for the Australian Government to implement with regard to the frequent derogation of insurers from Standard Cover. In order to set out the comprehensive and extensive set of reforms for the insurance industry, the Committee presents all of its recommendations in Chapter 7.
- 4.38 The Committee is concerned that some types of insurance are simply unavailable in Australia, such as flood and multi-peril insurance for farmers. The Committee notes that in the few countries where multi-peril crop insurance is available, it is heavily subsidised by the government. On the other hand, the absence of insurance means that in the event of major catastrophes, governments are likely to step in and meet some financial costs.

Consumer awareness of rights in making a claim

- 4.39 Consumer awareness of rights is a crucial element of adequate consumer protection. It is 'an important element of good practice in self-regulation.'²⁸
- 4.40 The lack of understanding of policy coverage described above contributed to consumer confusion over whether they could lodge a claim. Legal Aid NSW posits that 'the most fundamental right that consumers have in relation to insurance is to be advised of the right to make a claim in relation to their insurance policy'.²⁹
- 4.41 For a claim to be processed and assessed, it first needs to be lodged. For a claim to be lodged, consumers require accurate information about their right to make a claim. The Committee received evidence of consumers being advised at first contact (usually via telephone) that they were ineligible to make a claim according to the terms of their insurance policy. On the basis of this advice, made without any visual or evidentiary assessment, some consumers were excluded from the claims process.
- 4.42 Legal aid organisations are concerned about this practice, which deprives affected consumers of a proper assessment of their policy. Caxton Legal Centre reported that:
- ... while not a majority, a disturbing number of our clients were advised over the telephone at the time of making their initial claim that they should or could not make a claim. The concern regarding this figure is that our clients all subsequently went on to make a claim, disregarding the advice they were provided by their insurer. We can only estimate that for all those who disregarded the advice, there will be a number who took the advice and did not claim at all.³⁰
- 4.43 Legal Aid Queensland found a similar practice among its clients, who:
- ... were told over the phone that they would not be covered and ought not to bother lodging a claim or ... were led to believe lodging a claim would be futile.³¹

28 Taskforce on Industry Self-regulation, *Industry Self-regulation in Consumer Markets*, August 2000, p. 68.

29 Legal Aid NSW, *Submission 57*, p. 11.

30 Caxton Legal Centre, *Submission 53*, p. 22.

31 Legal Aid Queensland, *Submission 44*, p. 2.

- 4.44 The Committee was appalled to received a joint submission from consumer and legal groups that reported some of their clients had been ‘advised summarily by call centre staff that their policy wouldn’t cover the loss and there was no point submitting a claim’ and had not been told of their right to make a claim.³²
- 4.45 The Collaborative Insurance Law Service (CILS) survey shows that of their clients whose claims had been denied, 20 per cent had been told on the phone that they were not covered for the particular event.³³ A claimant reported in the Committee’s survey that an insurance claim was denied immediately on the basis of the property’s postcode.³⁴
- 4.46 The Committee heard similar evidence from Buloke Shire Council. Naomi Grant, Council Recovery Manager, told the Committee that:
- A lot of claimants were simply told, ‘No, you’re not covered,’ at the first phone call. ... Whereas their next-door neighbour has called and that call person has said, ‘Oh, I think we should check this out; let me give you a claim number.’ It can be as simple as that.³⁵
- 4.47 Campaspe Shire Council undertook a survey of 180 flood-affected residents in Rochester, Victoria, which found that ‘many people reported that they were not given accurate or useful information about their right to make a claim’.³⁶ Buloke Shire Council reported that a resident had been advised at initial telephone contact that his claim would not be accepted, and it was only at the persistence of family members that four months later his claim was lodged and accepted.³⁷
- 4.48 The IAG advised the Committee that its staff are trained to encourage claims to be lodged:
- When a customer calls to lodge a claim for an incident/event that is not covered under their policy, we advise them directly that the policy does not provide cover. If there is uncertainty of cover or

32 Choice, the Consumer Action Law Centre, Financial Counselling Australia and the Footscray Community Legal Centre, *Submission 35*, pp. 2–3.

33 Insurance Law Service, *Submission 54.1*, p. 41.

34 Committee survey.

35 *Committee Hansard*, Charlton, 26 October 2011, p. 3.

36 Mr Keith Oberin, Municipal Emergency Response Manager, Campaspe Shire Council, Rochester, *Committee Hansard*, 27 October 2011, p. 2.

37 Buloke Shire Council, *Submission 45*, p. 15.

insufficient information, consultants encourage customers to lodge a claim for consideration.³⁸

- 4.49 In August 2011, ASIC reported their concern that decisions made at the point of first contact tended not to be recorded or confirmed in writing, 'reducing the opportunity a policy holder may otherwise have to seek further advice and/or dispute the decision'.³⁹ Their report recommended that 'decisions by frontline staff that result in a claim being denied should be reviewed before the decision is confirmed'.⁴⁰
- 4.50 The national consumer advocacy organisation, Choice, awarded the entire general insurance industry a Shonky Award in 2011 for its shoddy customer service practices in relation to that year's flood events.⁴¹ Choice identified the practices of dissuading clients from lodging claims and denying claims without assessment as two particularly 'shonky' tactics.
- 4.51 Concurrently with this inquiry the Insurance Council of Australia (ICA) has been in consultation with ASIC and other relevant bodies regarding the necessity of advising clients that they can make a claim even if the policy they hold indicates that the claim would not be successful. The ICA advised the Committee that it is working on amendments to the General Insurance Code of Practice (the Code) that include mandatory training of employees to give all clients who contact the insurer the opportunity to make a claim and have its validity properly assessed.
- 4.52 Specifically in relation to claims arising from natural disasters, the Code advises that clients, whose claims have been within one month of lodgement, can request a review of the cash amount in the subsequent six months.⁴² This clause is a type of 'cooling-off period' to protect claimants who may feel differently many months after a traumatic event than they did in the immediate aftermath. They may come upon additional information of relevance or may find, upon commencing building or making repairs to their damaged home, that the extent of the damage was greater and more costly to address than initially thought.

38 IAG, *Submission 38*, p. 20.

39 ASIC, 'Review of general insurance claims handling and internal dispute resolution procedures' Report 245, August 2011, p. 23.

40 ASIC, 'Review of general insurance claims handling and internal dispute resolution procedures' Report 245, August 2011, p. 24.

41 Choice, 'The 2011 Shonky Awards' <<http://www.choice.com.au/reviews-andtests/awards/shonky-awards/shonkys/the-2011-shonky-awards.aspx>> viewed 26 October 2011.

42 ICA, 'General Insurance Code of Practice', p. 9 <<http://www.codeofpractice.com.au/>> viewed 8 December 2011.

Box 4.1 Settling for less

In the wake of a disaster, when tradespeople are scarce and residents simply want to repair or rebuild, a cash settlement in lieu of insurer-contracted rebuilding seemed an attractive option for many. Cash settlements absolve the insurer of time, cost and administrative burden. For some people, getting on with life and also struggling with the insurance company is just too much, and they opt to take a cash settlement which may not be sufficient to cover the damage but which prevents further delays. For example, a 'family in Rochester was sick of waiting for the insurance company and took \$75 000 to do the work themselves'.

This 'claim fatigue' was a common plight. A survey respondent wrote: 'We were forced to settle on an amount that would not fix the house—less than 50 per cent of what we were insured for, or the fight with them would have made us wait for another one or two years to get any money.' Another respondent said, 'I could have claimed for carpets, fittings, and damage to the home but did not because I was tired of arguing and wanted to avoid a long and stressful process.'

While taking a cash settlement may be a positive choice for some, it should not be a choice people feel driven to make out of fatigue. With a shortage of tradespeople and materials after a disaster, and rising costs, it can also be a risky option as some discovered. One set of problems can easily be exchanged for another, and people can find themselves high and dry in a half-built house with no funds left to complete the rebuild. In light of this, one person felt that 'the industry has an amazing focus on paying claims quickly. I am not sure that that is necessarily in the interests of claimants' because the claim may not have been settled properly.

4.53 Consumers, however, must be aware of their right to request that their claim be re-visited in order to avail themselves of this right. This is another piece of information that consumers should be made aware of at the time they lodge a claim.

4.54 Mr John Price, Ombudsman General Insurance, FOS, explained that:

They should be informed of their rights ... when there is a cash settlement of a matter within the first early period of a dispute. That is, you still have six months to go back and review that. Now, that is something that [insurers] have to inform them of. The code requires the industry to inform people of that.⁴³

4.55 Disconcertingly, FOS advised that five insurers had failed to advise 3 549 clients of their right to have early determinations arising from recent natural disaster-related claims reviewed, before FOS identified the problem and directed the insurers to address the error.⁴⁴

43 Mr John Price, Ombudsman General Insurance, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 9.

44 FOS, *Submission 47*, p. 10.

Committee comment

- 4.56 The Committee finds it disgraceful that initial contact with insurers may have deterred some policyholders from making claims and thus having them properly assessed. It is not the position of frontline staff to make decisions about the strength of a claim, particularly when it hinges on the identification of the cause of damage, something that cannot be done over the telephone.
- 4.57 The Committee commends the Insurance Council Board for putting forward a clause for inclusion in the Code that specifies that policyholders have a right to make a claim.
- 4.58 However, the Committee is of the opinion that FOS will need to monitor carefully insurers' compliance with this measure. Even where specific provisions, such as informing claimants of their right to a review of a claim determination relating to a catastrophe, are made in the Code, insurers have overlooked or neglected their responsibilities to adhere to these regulations.
- 4.59 The Committee commends FOS for rectifying the situation where five insurers failed to advise of review rights, but finds it worrying that this occurred in the first place, affecting 3 549 policyholders before the issue was brought to light.