
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

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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)
Office Manager	Ms Claire Young



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;

-
- ⇒ 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.

Introduction

- 1.1 In recent years, extreme weather events such as widespread flooding, bushfires and cyclones have devastated homes, businesses, farms and entire communities across Australia. In 2009, Victoria experienced the tragic Black Saturday bushfires. In 2009 and 2011, fires affected Western Australia. In the summer of 2010–11, floods inundated Queensland, Western Australia, New South Wales and regional Victoria. At the same time, cyclones buffeted Far North Queensland. Victoria was also subject to several hail storms. The Queensland floods alone affected 86 towns and cities, leaving two million people living in areas declared disaster zones and 28 000 Queensland homes needing to be rebuilt.¹
- 1.2 Not only were several of these events the worst in decades, the likelihood of Australia experiencing so many disasters in such a short space of time was estimated to be about one in every 400 years.²
- 1.3 The resulting emotional and financial cost was immense and the number of insurance claims unprecedented. The Queensland floods and cyclones, Victorian floods and storms and Western Australian fires of 2010-11 gave rise to a total of 185 919 insurance claims.³ Some insurers experienced over twice the usual number of claims. For example, Suncorp Group Limited told the Committee that:

At any given time the average number of home claims managed by Suncorp is approximately 50 000 to 60 000 ... Over the

1 L Murdoch, 'Qld Floods "the Worst in History"', 16 January 2011, Brisbane Times <<http://www.brisbanetimes.com.au/environment/weather/qld-floods-disaster-worst-in-history-20110116-19sja.html#ixzz1gfV7273T>> viewed 16 December 2011.

2 Mr Colin Fagen, Chief Executive Officer, Australian Operations, QBE Insurance Australia, *Committee Hansard*, Sydney, 14 October 2011, p. 15.

3 Insurance Council of Australia, 'Cost of 2011's Catastrophes passes \$4.3 Billion as Builders take a Break', Media Release, 21 December 2011.

December 2010 to February 2011 period the total number of home claims under management rose to approximately 130 000.⁴

1.4 The National Insurance Brokers Association of Australia recounted that:

After the Perth hailstorm in Western Australia in 2010, we received over 20 000 home and motor claims. More than six months' worth of claims were received in one day. The scale of these disasters is enormous. After the Melbourne hailstorm, 40 000 claims were received—a year's worth of storm claims was received in two days.⁵

1.5 In the wake of these disasters, questions were raised about the capacity of the insurance industry to respond quickly and in good faith to the high volumes of claims. With unprecedented numbers of insurance claims and high levels of consumer dissatisfaction, focus has turned to how the insurance industry currently self-regulates under the General Insurance Code of Practice, and the provision to suspend this Code during a disaster event.

Purpose of inquiry

1.6 Individual members of this Committee were alerted to insurance issues by their constituents who reported unacceptable delays in claims processing, not being able to contact their insurers or not being updated on the progress of claims. Frustrated and stone-walled, people began to turn to their local, state and federal government representatives.

1.7 Consumer advocates were already well aware of these issues. In January 2011, a coalition of consumer advocacy and legal aid organisations had put together a number of recommendations for insurance industry reform, including the implementation of a six-month timeframe for determining insurance claims and a requirement for insurers to inform consumers calling about a claim about their rights to make a claim,

4 Mr James Higgins, Executive Manager, Queensland Event Recovery, Suncorp Group, *Committee Hansard*, Sydney, 14 October 2011, p. 29.

5 Mr Dallas Booth, Chief Executive Officer, National Insurance Brokers Association of Australia, *Committee Hansard*, Sydney, 14 October 2011, pp. 2–3.

appeal a decision or go to the Financial Ombudsman Service.⁶ Such advocates oppose the industry's exemption from unfair contracts law.⁷

Box 1.0 Disaster events devastate victims

Disasters devastate the physical landscape, but they can also emotionally lay waste to people's lives. The Committee heard many moving stories in the aftermath of the multiple disasters that have torn across Australia in recent years. In speaking to the Committee, many individuals were brought to tears not just by the disaster, but by the emotional and financial loss that had followed and the strain of rebuilding their lives.

The emotional trauma was insidious and all pervading, with many organisations reporting problems manifesting months after the event. A community support worker said poignantly that, 'the event is scary. But it is that aftermath that impacts on the kids, the relationships, each of us, men and women, as individuals.' A Lifeline worker explained that 'nine months after the initial disaster occurred, while a lot of people believe that the communities have moved on, we are in fact seeing a rise in emotional distress at this time.'

'Good, straightforward, normal people' became depressed. Some found the 'pain barrier too much' and moved away from their flood affected community. The Committee was especially distressed to hear of suicides that had occurred in disaster affected areas.

The effect on children was profound. Children were so distressed that their performance at school was affected. 'Parents were very worried about their kids being affected by their stress levels. They were often arguing.' Children could not understand 'why their toys are on the footpath' and why they had to share housing with other families, sometimes with '10 kids in one house'.

The strain on regional and rural communities was immense. Adding to the emotional strain was the financial loss—especially for those who had watched their livelihoods being washed away. A Victorian farmer spoke about how the floods 'absolutely destroyed me. It absolutely broke my heart ... It's been very difficult ... It nearly sent me over the edge ... It absolutely cut me in half.' Another was 'bewildered and felt lost from the flood event. The damage was so huge he didn't know where to start and was diagnosed with depression'.

1.8 Fiona Guthrie, Director of the Australian Financial Counselling and Credit Reform Association, wrote in *The Australian* that action is required

6 Australian Financial Counselling and Credit Reform Association et al, *A Fair Go in Insurance*, January 2011, pp. 4–5 <http://www.bsl.org.au/pdfs/Joint_subm_Fair_go_in_insurance_2011.pdf> viewed 9 January 2012.

7 Under the *Insurance Contracts Act 1984* (Cth), insurance contracts are exempt from the unfair contract provisions of the Australian Consumer Law (in the *Competition and Consumer Act 2010*) or the *Australian Securities and Investments Commission Act 2001* (Cth).

to reform the insurance industry.⁸ In addition, she recommends stopping 'the insurance industry from avoiding laws that apply to everyone else' such as unfair contract laws. Unfair contract terms 'affect the way claims are processed, handled and refused, resulting in significant stress, delay and unfairness to consumers'.

- 1.9 Given this context, the Committee undertook to address concerns about the role of the insurance industry with respect to natural disasters, particularly regarding the timeliness and adequacy of the industry's response to policy-holders. The Committee regarded it necessary to assess the efficacy of current regulation and dispute resolution processes.
- 1.10 The importance of the inquiry is underscored by the fact that at January 2012 there were still a substantial number of outstanding insurance claims from the Queensland floods of January 2011.⁹ The personal and economic recovery of individuals and communities is hampered by these lengthy delays. Moreover, wide-ranging natural disasters have continued to hit Australia, including the Melbourne hailstorm, Margaret River bushfire, and more flooding in New South Wales, resulting in large numbers of insurance claims.

Scope of inquiry

- 1.11 On 2 June 2011, the then Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP, asked the Committee to inquire into and report on the operation of the insurance industry in response to recent extreme weather and disaster events around Australia.
- 1.12 The terms of reference of the inquiry are as follows:
- The claims processing arrangements:
 - ⇒ Information – whether consumers were given accurate and useful information by insurers about their right to make a claim and, if they made a claim, the progress of that claim and their right to external dispute resolution.

8 F Guthrie, 'Insurance Companies make the Rules', 1 February 2011, *The Australian*, <<http://www.theaustralian.com.au/news/opinion/insurance-companies-make-the-rules/story-e6frg6zo-1225997655110>> viewed 16 December 2011.

9 M Cranston, 'Pace of Flood Rebuilding Questioned', *Australian Financial Review*, 10 January 2012, p. 7.

- ⇒ Timeframes – the time taken to process claims by the insurance industry and whether these timeframes were reasonable (by event and region).
 - ⇒ 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.
 - ⇒ Internal Dispute Resolution (IDR) – whether industry IDR processes were effective and undertaken in a timely manner.
 - ⇒ 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:
 - ⇒ The effectiveness of dispute resolution within the Financial Ombudsman Service
 - ⇒ Barriers to participation in external dispute resolution for consumers
 - ⇒ 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 2010–11 extreme weather events.
- 1.13 The focus of the inquiry is on general insurance, such as home contents and business insurance, as opposed to other types of insurance such as life insurance. Moreover, the inquiry examined claims arising from natural disasters, not single episode incidents or car accidents.
- 1.14 The inquiry did not investigate the definition of flood which, while a significant issue, is allocated to another review (discussed below). However, the Committee was interested in the definition of flood insofar as it related to its effect on claims processing.
- 1.15 The inquiry also did not examine the mitigation of extreme weather risks, as this is the responsibility of state and local governments.
- 1.16 There were other matters that arose throughout the inquiry, which the Committee felt compelled to investigate, such as consumer knowledge of policy coverage and underinsurance.

Relevant reviews and inquiries

- 1.17 There are a number of reviews and inquiries relating to insurance and the disaster events of 2010–11. The reviews are pertinent to the current inquiry because many arose out of the extreme weather events of 2010-11, in particular the Queensland floods. Thus, the reviews relate to and inform the content and recommendations of the Committee’s inquiry.
- 1.18 However, the other reviews have a different focus and purpose to the Committee’s inquiry. A brief overview of relevant reviews is provided below.

Australian Securities and Investments Commission Reports

- 1.19 The Australian Securities and Investments Commission (ASIC) released a report, ‘Getting Home Insurance Right – A Report into Underinsurance’ on 8 September 2005.¹⁰ This report was a response to the Canberra bushfires in January 2003.
- 1.20 A further ASIC report in 2007 showed that underinsurance remained a problem in the aftermath of Cyclone Larry.¹¹ It noted the positive steps that insurers had taken to address the underinsurance problem but also the responsibility of consumers to research and purchase adequate insurance.

Queensland Floods Commission of Inquiry

- 1.21 The Queensland Floods Commission of Inquiry (Flood Commission) was established on 17 January 2011, with the Hon. Justice Catherine Holmes appointed as Commissioner. This inquiry had a wide ranging remit to conduct an independent and thorough examination of the chain of events leading to the 2010–11 floods in Queensland, all aspects of the response and the subsequent aftermath.
- 1.22 It examined the preparation of government, emergency services and the community for disaster events as well as the management of the supply of power, water and communications during such events. Additionally, it looked at the adequacy of warning systems, operational plans and

10 Australian Securities and Investments Commission (ASIC), ‘Getting Home Insurance Right: A report on home building insurance’, Report 54, September 2005, p. 5.

11 ASIC, ‘Making Home Insurance Better’, Report 89, January 2007, p. 6.

procedures and land use planning.¹² The Flood Commission scrutinised the performance of private insurers in meeting their claims responsibilities, which is of particular relevance to the Committee's inquiry.

- 1.23 The Flood Commission's inquiry focused more on the mitigation and the practical, on-the-ground preparation for and response to floods. It was appropriate for the Queensland Government to commission this review, as states have jurisdiction over emergency services and land planning.
- 1.24 The interim report was published in August 2011 and the final report is due to published on 16 March 2012.

Natural Disaster Insurance Review: Inquiry into flood insurance and related matters

- 1.25 The Natural Disaster Insurance Review (NDIR) was launched on 4 March 2011 and was chaired by Mr John Trowbridge with support from the Commonwealth Treasury, Attorney-General and Finance Departments. The NDIR considered the arrangements for the insurance of the assets of Australian individuals, small businesses and governments for damage and loss associated due to disaster events.
- 1.26 The NDIR had an economic focus on the private insurance market and whether government intervention was justified. It aimed to identify ways that people who are affected by disasters can recover and rebuild quickly and ensure people who are at risk are able to obtain appropriate protection against those risks. It also aimed to identify national measures that will foster more complete sharing of risk and equitable sharing of the cost of disaster events.
- 1.27 As part of its review, the NDIR considered non-insurance and underinsurance, factors which prevented the private market in offering cover for natural disasters, how to enhance consumer awareness and protection, the effect of natural disasters on premiums, the possible subsidisation of premiums and the establishment of a Natural Disaster Fund.¹³

12 Queensland Flood Commission of Inquiry, 'Terms of Reference', <<http://www.floodcommission.qld.gov.au/terms-of-reference>> viewed 29 November 2011.

13 Natural Disaster Insurance Review, 'Terms of Reference', <<http://www.ndir.gov.au/content/Content.aspx?doc=tor.htm>>, viewed 29 November 2011.

1.28 The NDIR reported on 30 September 2011, with 47 recommendations.¹⁴ The recommendations of greatest relevance to the Committee's inquiry are:

- that all home contents and building insurance policies include flood cover;
- that subsection 35(2) of the *Insurance Contracts Act 1984* (Cth) 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 the product disclosure statement;
- the endorsement of a Key Facts Statement;
- the introduction of a standard definition of 'flood';
- that unfair contracts terms be applied to insurance contracts;
- that every insurer authorised by Australian Prudential Regulation Authority adopt and comply with the General Insurance Code of Practice;
- that insurance claims be resolved within four months;
- the removal of the provision that the General Insurance Code of Practice does not apply during natural disasters;
- that the General Insurance Code of Practice be amended so as to extend the time within which claimants in natural disasters have the right to make further claims or lodge reviews after the finalisation of an initial claim to seven months from the date of the relevant natural disaster, regardless of when the initial claim was finalised;
- that the General Insurance Code of Practice be amended regarding claims and complaints handling, namely that:
 - ⇒ internal dispute resolution processes be independent of the claims handling department and internal dispute resolution officers have the authority to overturn the original decisions and accept claims;
 - ⇒ internal dispute resolution complaints be finalised within 45 days and if this time limit is not met, the insurer must advise the claimant of the right to lodge an external dispute resolution complaint with the Financial Ombudsman Service and to seek legal advice;

14 The Treasury, 'Natural Disaster Insurance Review: Inquiry into flood insurance and related matters' September 2011, pp. 9-16.

-
- ⇒ time limits on internal dispute resolution complaints commence immediately after a policy holder notifies the insurer of a complaint, whether verbally or in writing; and
 - ⇒ a general fairness test be applied to claims and complaints handling; and
 - that appointments to the General Insurance Code Compliance Committee be conducted in the same fashion as Financial Ombudsman Service Panels, with the Code Compliance Committee to take on record-keeping, investigative, compliance and reporting roles.
- 1.29 The Australian Government responded on 14 November 2011, resolving to:
- introduce a standard definition of ‘flood’ with all policies offering flood insurance required to contain this definition;
 - implement a requirement for insurers to provide customers with a one-page Key Facts Sheet for all home and contents policies;
 - remove the provision that the Insurance Code of Conduct does not apply during natural disasters;
 - provide for time limits for the completion of experts reports;
 - consult with industry to impose a time limit on claim resolution and strengthen internal dispute resolution processes;
 - commit substantial funds to a flood risk information portal; and
 - consult on a proposal for mandatory flood cover for home building and home contents policies.¹⁵
- 1.30 The Australian Government introduced legislation on 23 November 2011 to mandate the standard definition of flood and implement a Key Facts Statement. The Insurance Contracts Amendment Bill 2011 is currently before Parliament.
- 1.31 The House of Representatives Standing Committee on Economics inquired into the Insurance Contracts Amendment Bill 2011, and tabled their advisory report on 16 February 2012.¹⁶ The report recommended that the bill be passed, although Mr Steven Ciobo MP, Ms Kelly
-

15 The Hon. Bill Shorten MP, Assistant Treasurer and Minister for Financial Services and Superannuation, and the Hon. Robert McClelland MP, Attorney General, ‘Fixing Flood Insurance’, *Media Release 52*, 14 November 2011.

16 House of Representatives Standing Committee on Economics, ‘Advisory Report on the Insurance Contracts Amendment Bill 2011’ February 2012.

O'Dwyer MP and Mr Scott Buchholz MP made supplementary remarks about what they consider to be unresolved issues regarding the operation of the bill.

Conduct of the inquiry

- 1.32 The inquiry's terms of reference and a call for written submissions were advertised in *The Australian* on 15 June 2011. The Committee also wrote to a number of organisations seeking submissions.
- 1.33 The terms of reference and other information about the inquiry are advertised on the Social Policy and Legal Affairs Committee homepage at www.aph.gov.au/insurance.
- 1.34 The inquiry received 79 submissions, three supplementary submissions and three exhibits. A list of the submissions received can be found at Appendix A and a list of exhibits at Appendix C.
- 1.35 Eighteen public hearings were held in 2011 in Canberra and Sydney as well as disaster-affected areas in Western Australia, Queensland and Victoria. Transcripts from these hearings are available through the Committee's website. A number of witnesses gave evidence to the Committee at these public hearings, and their names are listed at Appendix B. The Committee thanks the witnesses for giving their time to the inquiry and sympathises with the predicament of those affected by natural disasters. It realises that it is not an easy thing for residents to tell their stories publicly, to relive the trauma of events and to recount in many instances the financial hardship and emotional impact of pursuing insurance claims. The Committee is grateful for the assistance it has received from individuals and organisations during its inquiry.
- 1.36 The Committee conducted site inspections of damaged properties at Toodyay and Carnarvon in Western Australia and Grantham, Fernvale and Innisfail in Queensland.
- 1.37 Additionally, the Committee created an online survey targeting members of the community who have made a disaster-related claim on their insurance policies in the last five years. It was advertised online, in *The Australian*, through community organisations and through the electorates of individual Committee members. The survey was open to the public from June 2011 to January 2012, with the responses remaining anonymous. The survey results can be found at Appendix D. There were

almost 700 respondents to the survey, although not all respondents answered all questions in the survey.

- 1.38 The survey provided a mechanism of participation for people who wished to provide comment to the Committee but did not want to make a formal submission or speak at a public hearing, perhaps because they did not have the time or because they were afraid it might affect their ongoing insurance claim.
- 1.39 The Committee recognises that the survey methodology, which relied on respondent self-selection, means that the results cannot be interpreted as statistically rigorous. Furthermore, as responses to the survey were anonymous, the veracity of the input cannot be guaranteed. However the number of respondents and the consistent themes in responses has provided the Committee with valuable information when reading its findings.

Structure of the report

- 1.40 The report is comprised of seven chapters, containing 13 recommendations.
- 1.41 Chapter Two provides an introduction to the general insurance industry and its regulatory framework.
- 1.42 Chapter Three discusses the General Insurance Code of Practice, the voluntary code by which the industry self-regulates. The effectiveness of the Code and its enforcement by the Financial Ombudsman Service are examined.
- 1.43 Chapter Four considers the lack of consumer awareness around insurance policies that leads to misunderstandings about the extent of policy coverage as well as underinsurance in times of total loss. It also discusses the lack of awareness around the consumer rights in making claims against insurance policies.
- 1.44 Chapter Five assesses the lack of consumer protections in dealing with insurance claims. Consumers have little recourse when the regulations for claims-handling processes, such as delays, investigations and communication as set out in the General Insurance Code of Practice, are not followed.
- 1.45 Chapter Six explores dispute resolution processes, including internal and external dispute resolution. The effectiveness of the Financial

Ombudsman Service as the external dispute resolution system for general insurers and the role of free legal assistance are examined.

- 1.46 Chapter Seven concludes the report and presents the Committee's recommendations.
- 1.47 Textboxes of personal experiences and anecdotes are inserted throughout the report. These capture a selection of people's stories as told in submissions, at hearings and through survey comments. Individuals have not been identified but their comments are derived from the publicly available evidence. The Committee notes the importance of giving voice to the people affected by insurance issues. These personal stories and accounts act as a powerful reminder to governments, policy makers and the insurance industry that people's livelihoods are at the heart of insurance codes of practice, regulations and reforms. In a country of bushfires, cyclones, floods and damaging storms, it is critical the insurance industry has the capacity to rise to these situations.

The general insurance industry in Australia

- 2.1 This chapter provides first a description of the general insurance industry in Australia. It then details the complex regulatory framework within which the industry operates.

Background to the general insurance industry

- 2.2 Australia has a large, profitable and long-established general insurance market. Statistics from 2011 show that the private sector insurance industry generates gross premiums of \$34.9 billion per annum and has total assets of \$113.9 billion.¹ The industry employs approximately 60 000 people and on average pays out \$95 million per working day in claims costs.²
- 2.3 In 2011, the insurance industry in Australia earned \$42.1 billion in revenue with \$5.6 billion constituting profit. Suncorp, Insurance Australia Group (IAG), QBE Insurance Group Ltd and Allianz Australia Ltd are the main players in this market. The industry is characterised by high revenue volatility and high levels of competition.³

1 Australian Prudential Regulation Authority, 'Statistics: Quarterly General Insurance Performance, September 2011', pp. 9-10 <<http://www.apra.gov.au/GI/Pages/quarterly-general-insurance-statistics.aspx>> viewed 20 December 2011.

2 Mr Robert Whelan, Chief Executive Officer, Insurance Council of Australia (ICA), *Committee Hansard*, Sydney, 14 October 2011, p. 38.

3 IBISWorld, 'IBISWorld Industry Report K7422: General Insurance in Australia', May 2011, p. 3, <<http://www.ibisworld.com.au/industry/default.aspx?indid=526>> viewed 9 January 2012.

2.4 The Global Financial Crisis greatly reduced the profitability of the insurance industry. A series of consecutive severe disaster events during 2010–2011, occurring over several regions, further exacerbated this problem.⁴ There were floods and cyclones in Queensland, floods and storms in Victoria and bushfires in Western Australia, as well as earthquakes in New Zealand. It was noted that:

Undoubtedly the most significant contributing factor to the overall increase in general insurance claims during this year has been Australia's extreme weather events.⁵

2.5 The combination of these disaster events increased workload as well as stretching the resources of insurers and related external experts. Compared with 2008–09, the number of insurance claims lodged in 2009–10 across all classes of business rose seven per cent. The Insurance Council of Australia subsequently stated:

Delays in processing claims are inevitable ... when extreme demand is placed upon supply infrastructure, skills and labour availability within Australia and internationally.⁶

2.6 The insurance industry stated that it incurred unusually high financial costs as a result of these events. The Insurance Council of Australia noted that as at 24 June 2011, the industry had received for the extreme weather events an unprecedented number of 180 410 claims with an insurable cost of \$4.149 billion.⁷ Industry research by IBISWorld estimated that the Queensland floods alone set insurers back \$500 million, with Suncorp and IAG being especially affected.⁸ However, much of the risk was distributed amongst global reinsurers such as Swiss Re and Munich Re.

2.7 Most people purchase insurance directly through the insurer. A survey by legal aid groups showed that 63.55 per cent of respondents purchased their insurance by phone.⁹ A minority of people purchase insurance through brokers and agents.

2.8 An important distinction must be made between brokers and agents of insurance. Brokers are independent while agents have loyalty to the

4 IBISWorld, 'IBISWorld Industry Report K7422: General Insurance in Australia', May 2011, p. 4.

5 Financial Ombudsman Service (FOS), 'General Insurance Code of Practice – Overview of Year 2009/2010', p. 41 <http://www.fos.org.au/centric/home_page/publications/general_insurance_code_of_practpra_yearly_overview.jsp> viewed 10 January 2012.

6 Insurance Council of Australia (ICA), *Submission 16*, p. 2.

7 ICA, *Submission 16*, p. 2.

8 IBISWorld, 'IBISWorld Industry Report K7422: General Insurance in Australia', May 2011, p. 6.

9 Legal Aid NSW, *Submission 57*, Attachment 2, p. 20.

insurer. Insurance brokers arrange insurance on behalf of their clients. The National Insurance Brokers Association of Australia, described the role of the broker:

... to discuss with the client the nature of their risks, give some advice where appropriate on the management and mitigation of those risks, work with the client to identify appropriate insurance coverage for those risks and ultimately negotiate coverage to the market. [If] a claim has to be pursued, the broker then assists the client with the pursuit of that claim to the insurer and the resolution of the claim.¹⁰

- 2.9 Evidence showed that there is confusion among some consumers as to whether they approach the broker or the insurer directly if they have a dispute. The Committee received evidence that some insurers refused to deal with consumers who had engaged a broker.¹¹ Legal Aid Queensland reported that some of their clients who had engaged a broker had trouble obtaining a copy of their policies from the insurers themselves.¹²

Regulatory framework

- 2.10 Insurers must comply with general contract law and a statute which deals with insurance contracts specifically.
- 2.11 Australian Government bodies are responsible for some elements of regulation, such as oversight of consumer protection and licensing, and by extension, internal and external dispute resolution. Insurers must adhere to capital adequacy laws.
- 2.12 However, the industry is self regulated with regard to the specifics of claims processing. The Insurance Council of Australia, as the peak body for insurers, and the Financial Ombudsman's Service, as the main provider of external dispute resolution for insurers, play vital roles.
- 2.13 The following provides a simplified overview of the regulatory framework and oversight bodies.

10 Mr Dallas Booth, Chief Executive Officer, National Insurance Brokers Association of Australia, *Committee Hansard*, Sydney, 14 October 2011, p. 5.

11 Bruce Gillan, *Submission 64*, p. 3.

12 Legal Aid Queensland, *Submission 44*, pp. 6–7.

Contract law

- 2.14 A contract of insurance protects against the adverse consequences of future events by transferring the risk of economic loss which might flow from the insured to the insurer. Australia has adopted and applied English laws relating to insurance.
- 2.15 The *Insurance Contracts Act 1984* (Cth) (Insurance Contracts Act) is the main legislation governing insurance contracts and came into effect in 1986.
- 2.16 Under an insurance contract, parties must act with utmost good faith towards each other. This means that each party must voluntarily disclose to the other during pre-contractual negotiations, any fact of which he or she is aware which would be 'material' to the negotiations. A fact is 'material' if it would have affected the mind of a prudent insurer in determining whether to accept the insurance, on what terms and at what premiums.
- 2.17 The intent of the Insurance Contracts Act is to:
- ... improve the flow of information from the insurer to the insured so that the insured can make an informed choice as to the contract of insurance he enters into and is fully aware of the terms and limitations of the policy; and to provide a uniform and fair set of rules to govern the relationship between the insurer and insured.¹³
- 2.18 However, the Insurance Contracts Act does not codify the law relating to insurance contracts.
- 2.19 The Insurance Contracts Act, like much legislation, has regulations which clarify its operation. The relevant regulation is the Insurance Contracts Regulations 1985 (Cth). For an insurance policy to provide 'standard cover', it must satisfy certain requirements set out in these regulations. However, under section 35(2) of the Insurance Contracts Act, insurers can provide cover which deviates from the standard if they inform the consumer of this fact.

Government bodies

- 2.20 The government agency with a key responsibility for regulating insurers is the Australian Securities and Investments Commission (ASIC), an independent Commonwealth Government body. ASIC is Australia's

13 Senator Gareth Evans, former Attorney-General, 'Second reading speech: Insurance Contracts Bill 1983', *Senate Hansard*, 1 December 1983, p. 3135, viewed 21 December 2011.

corporate, markets and financial services regulator. Its remit therefore includes insurers.

2.21 There are two laws pertaining to ASIC, the *Australian Securities and Investments Act 2001* (Cth) (ASIC Act), and the *Corporations Act 2001* (Cth) (Corporations Act). The ASIC Act provides consumer protection, while the Corporations Act provides for a licensing system for financial services providers. The licensing system includes a requirement for internal dispute resolution and external dispute resolution schemes.

2.22 With regard to the ASIC Act, ASIC told the Committee that:

The ASIC Act is that part of Australian Consumer Law that applies to financial services, and it has broad prohibitions, including prohibitions on misleading and deceptive conduct and unconscionable conduct.¹⁴

2.23 ASIC's jurisdiction over consumer protection in relation to claims handling is limited to its governing Act. This is because although the Corporations Act contains consumer protection provisions:

The Corporations Regulations exempt claims handling and settlement from the definition of a financial service. This means that some Australian financial services licence obligations – for example, the obligation to ensure that their financial services are provided efficiently, honestly and fairly – do not apply to the handling of general insurance claims.¹⁵

2.24 In 2010, legislative changes were introduced to the Parliament aiming to address this gap.¹⁶ However the bill was not passed before the parliament was prorogued prior to the 2010 federal election. The bill is discussed further in Chapter 5 in the context of a mechanism to address consumer protections for the handling of insurance claims.

2.25 The Corporations Act established the licensing system for financial services. The *Financial Services Reform Act 2001* (Cth) came into effect from 2002 with a 'phase in' period to 2004. These reforms are primarily contained in Chapter 7 of the Corporations Act and are relevant to:

- the licensing and conduct of providers of general insurance products;

14 Mr Greg Kirk, Senior Executive Leader, Deposit Takers Credit and Insurers, Australian Securities and Investments Commission (ASIC), *Committee Hansard*, Canberra, 22 September 2011, p. 1.

15 Mr Kirk, *Committee Hansard*, Canberra, 22 September 2011, p. 1.

16 The Insurance Contracts Amendment Bill 2010 was passed by the House of Representatives on 23 June 2010 and introduced in the Senate on 24 June 2010.

- the licensing and conduct of insurance intermediaries; and
 - financial services and financial product disclosure to retail consumers of general insurance products.
- 2.26 Australian financial services licensees, including insurers, must have a complaints dispute resolution system that consists of:
- an internal dispute resolution process that meets ASIC approved standards; and
 - be a member of an ASIC approved external dispute resolution scheme such as the Financial Ombudsman Service.
- 2.27 Formal regulatory guidance on these matters is contained in ASIC's Regulatory Guide 165 (RG 165), which is about the requirements for internal and external dispute resolution, and Regulatory Guide 139 (RG 139), which sets out guidance on the approval and oversight of external dispute resolution schemes.
- 2.28 Like insurers, brokers must hold an Australian Financial Service licence. Thus, brokers are subject to the same legal requirements as general insurers.¹⁷ Brokers must provide services efficiently, honestly and fairly, and cannot engage in misleading or deceptive conduct. An ASIC report also notes that brokers may have common law fiduciary obligations.¹⁸
- 2.29 The Australian Prudential Regulation Authority (APRA) was established in 1998 to oversee the financial services industry, including the insurance industry. It is important to note that the APRA has responsibility only for the capital adequacy of insurers. This aspect of regulation, while important, is not the focus of the Committee's inquiry.
- 2.30 The APRA regulates 130 general insurers which collectively hold \$99.2 billion in assets. The APRA is funded largely by the industries it supervises, with levies from insurance companies constituting around 22 per cent of its income.
- 2.31 The APRA's mission is to establish and enforce prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by institutions under supervision are met within a stable, efficient and competitive financial system. The APRA stated:

17 For more information about the regulation governing brokers, please see ASIC, *Insurance Broker Remuneration Arrangements*, Report No. 42, June 2005.

18 ASIC, *Insurance Broker Remuneration Arrangements*, Report No. 42, June 2005.

We are here to help ensure that customers' interests are protected and that benefits are delivered as promised. That is fundamental to what we do ... Our aim is to reduce the probability that a general insurer will fail so that, in all reasonable circumstances, it will meet its contractual obligations.¹⁹

- 2.32 The APRA administers the following Commonwealth legislation and regulations:
- *APRA Act 1998*;
 - *APRA Regulations 1998*;
 - *Insurance Act 1973*;
 - *Insurance Regulations 2002*; and
 - *Financial Sector (Collection of Data) Act 2001*.
- 2.33 This regulatory framework gives APRA the authority to issue mandatory prudential standards, non-enforceable prudential practice guides and reporting standards.
- 2.34 Another government body of some relevance is the Australian Competition and Consumer Commission (ACCC), which promotes competition and fair trade in the market place to benefit consumers, businesses and the community. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws.²⁰ However, as mentioned above, ASIC deals with consumer protection issues relating to financial services.
- 2.35 The operation of the general insurance industry is self regulated and operates under a voluntary code. The ACCC does not regulate voluntary codes of conduct and cannot enforce the breach of a voluntary code. The ACCC can only take action if a mandatory code of conduct is breached.
- 2.36 Consequently, neither the ACCC nor ASIC have jurisdictional oversight for insurance claims handling. This leaves consumers with few protections.

19 Mr Ian Laughlin, Member, Australian Prudential Regulation Authority, *Committee Hansard*, 24 November 2011, p. 1.

20 Australian Competition and Consumer Commission, 'About Us' <<http://www.accc.gov.au/content/index.php/ml/itemId/142>> viewed 29 November 2011.

Insurance Council of Australia

- 2.37 The Insurance Council of Australia (ICA) represents the interests of the Australian general insurance industry. It was established in 1975 to act as the peak body for general insurance companies in Australia licensed under the Insurance Act. The ICA is funded by 53 industry members.²¹ One of its objectives is to 'encourage improved service standards across the insurance sector and promote appropriate self-regulation'.²²
- 2.38 The ICA is governed by a Board of Directors, which develops and has some responsibility for the General Insurance Code of Practice. This Code is discussed in greater detail in Chapter 3.

Financial Ombudsman Service

- 2.39 The Financial Ombudsman Service (FOS) is an accredited external alternative dispute resolution provider under ASIC's requirements. It is a national, independent, impartial and non-profit body that takes complaints on a wide range of financial services.
- 2.40 When deciding disputes, FOS also has the discretion to award remedies which are not provided for in the Code.²³ Many of its decisions are based in general law rather than the Code; for example, it can consider general principles of contractual law²⁴ and the Insurance Contracts Act.²⁵
- 2.41 Originally, there existed the Insurance Ombudsman Service, which assisted in resolving disputes between consumers and participating companies. The Insurance Ombudsman Service was merged with the Financial Industry Complaints Service and the Banking and Financial Ombudsman Service to form FOS on 1 July 2008.
- 2.42 Notably, the service is free to consumers. It operates as a user-pays service, funded by the insurance industry. That is, if a complaint is initiated against a particular insurance company, that company pays for

21 ICA, 'Insurance Council of Australia Members' <<http://www.insurancecouncil.com.au/AboutUs/OurMembers/tabid/1690/Default.aspx>> viewed 11 January 2011.

22 ICA, 'About Us' <<http://www.insurancecouncil.com.au/AboutUs/OurRole/tabid/1288/Default.aspx>> viewed 1 December 2011.

23 FOS, 'Terms of Reference', p. 23 <<http://www.fos.org.au/public/download.jsp?id=17224>> viewed 10 January 2012.

24 See for example, FOS, 'Determination, Case number: 211177' <<https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/211177.pdf>> viewed 19 December 2011. General principles of contract law are mostly based in case law, i.e. law decided by the courts.

25 See for example, FOS, 'Determination, Case number: 213228' <<https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/213228.pdf>> viewed 19 December 2011.

the dispute to be resolved, including for any expert reports that are required to be commissioned.²⁶ The Ombudsman General Insurance told the Committee that:

Our aim is to provide consumers with a fast, efficient, independent and, importantly, free service to resolve disputes as quickly as possible. Our processes, unlike courts, are inquisitorial rather than adversarial. We emphasise that we are not a court but an alternative, with our determinations binding on a financial service provider but not binding on a consumer ... Our decisions are based on fairness, and our terms of reference require that we do what is fair in the circumstances, having regard to relevant legal principles and, in terms of insurance policies, good industry practice and prior determinations that we may have made, although they do not bind us going forward.²⁷

- 2.43 Under RG 139, all insurers are required to be members of an external dispute resolution service. Most insurers use FOS, which has 59 participating insurance companies as well as 87 cover holders and third party administrators.²⁸ As part of ASIC's approval and continuing oversight of external dispute resolution schemes, it meets quarterly with representatives of the schemes, including FOS. At those meetings, the schemes update ASIC on emerging issues and complaints.
- 2.44 For general insurers, FOS also monitors and enforces the Insurance Code of Practice, and this role is discussed further in Chapter 3.
- 2.45 RG 139 obliges FOS to identify, seek to resolve and report to ASIC on complaints, systemic issues and serious misconduct. A 'systemic issue' affects people beyond the parties to the dispute.²⁹ 'Serious misconduct' is conduct that may be fraudulent, grossly negligent or involves wilful breach of applicable laws.³⁰ The FOS reports quarterly to ASIC on systemic issues and serious misconduct relating to the previous quarter, with the names of financial services providers involved generally remaining anonymous. Each quarter FOS also meets with ASIC to discuss individual cases.

26 FOS, 'Terms of Reference', p. 2.

27 Mr John Price, Ombudsman General Insurance, Financial Ombudsman Service, *Committee Hansard*, 15 September 2011, p. 1.

28 FOS, 'General Insurance Code of Practice – Overview of Year 2009/2010', Appendix A.

29 FOS, 'Terms of Reference', p. 22.

30 FOS, 'Terms of Reference', p. 22.

- 2.46 Whereas FOS is expected to address the merits of individual complaints, ASIC acts only where widespread public detriment is present, but FOS assists ASIC by sharing information. In this way, the two organisations are intended to act as a holistic and mutually supporting regulatory check on the insurance industry.

General Insurance Code of Practice

- 3.1 This chapter provides an explanation of the application, content and history of the General Insurance Code of Practice (the Code). The chapter then examines in detail the monitoring and enforcement measures available.

About the Code

- 3.2 The Code is a voluntary code written by the industry itself. The Code is designed to operate in conjunction with the regulatory framework within Australia that applies to the general insurance industry. It provides guidelines for insurers regarding customer interaction and claim management. These apply when selling insurance, dealing with insurance claims, responding to catastrophes and disasters, and handling complaints. The Code applies to all general insurance products except those expressly excluded.
- 3.3 The Code was first developed and introduced by the Insurance Council of Australia (ICA) in 1994 and revised in 2005. The revised Code commenced operation in July 2006. The ICA is required to review the Code every three years, with an Independent Reviewer appointed to undertake this

process.¹ The first review of the Code occurred in 2009 and was conducted by Mr Robert Cornall AO.

3.4 The Code is monitored and enforced by the Financial Ombudsman Service (FOS).

3.5 The Code contains a specific section on responding to claims in times of catastrophes. According to clause 4.3 of the Code, the provisions can be suspended during disaster events. Wesfarmers defended the inclusion of this clause, asserting that:

... it is important to acknowledge that there are times when physically [claims] cannot be dealt with within the time frames and there needs to be some form of leeway built into the code.²

3.6 Due to this clause, consumers are not protected by the Code's provisions in the aftermath of disaster events. However, the Code provides that participating companies will:

- respond to catastrophes and disasters in a fast, professional and practical way and in a compassionate manner; and
- establish internal processes for responding to catastrophes and disasters.³

3.7 Additionally, there is a provision allowing for a review of claims resulting from a catastrophe or disaster.⁴

3.8 The Code has provisions for claims processing, internal and external dispute resolution. These apply in normal circumstances, i.e. when a natural disaster is not occurring.

3.9 There are time limits set for each discrete stage of claims processing, such as when an assessor should be appointed. However, the time limits add up to a substantial block of time, with no maximum limit imposed on the entire claims processing process.

3.10 Under the Australian Securities and Investments Commission (ASIC) Regulatory Guide 165, a 45 day timeframe is imposed on the internal dispute resolution process. The Code sets out more detailed obligations for this requirement.

1 Insurance Council of Australia (ICA), 'General Insurance Code of Practice', p. 2 <<http://www.codeofpractice.com.au/>> viewed 9 January 2012.

2 Mr John Ripepi, Chief Executive Officer, Wesfarmers Federation Insurance, *Committee Hansard*, Sydney, 14 October 2011, p. 13.

3 ICA, 'General Insurance Code of Practice', p. 9.

4 ICA, 'General Insurance Code of Practice', p. 9.

- 3.11 The Code also requires each participating company to have appropriate systems and processes in place to enable it to monitor its own compliance with the Code.⁵ This can consist of customer surveys as well as internal and external audits.
- 3.12 According to the Code, employees of insurers should conduct their services in an honest, efficient, fair and transparent manner. Insurers must train employees adequately so they can carry out their claims handling tasks and functions competently. Additionally, employees should be trained in insurance and consumer protection law, as well as requirements of the Code.⁶
- 3.13 Due to clause 4.3 of the Code, insurers have no obligation to meet these guidelines when natural disasters occur.

Proposed amendments

- 3.14 The Insurance Council of Australia advised the Committee that the Insurance Council Board has agreed in principle to a number of draft changes to the Code for implementation no later than 1 July 2012.⁷ The changes have been made in response to criticisms of the handling of insurance claims in the aftermath of recent catastrophes. At the time of writing, in February 2012, the draft changes outlined below were still under consideration by the Insurance Council Board:
- The provision which provides for a suspension of the Code during a catastrophe or disaster will be removed.
 - A time limit of four months will be imposed for a claim to be settled. If no decision is forthcoming within that time, the insurer will ask the insured whether they would like to access an internal dispute resolution process. This provision will not apply where exceptional circumstances exist such as fraud, the insured unreasonably failing to supply documents, or where an 'extraordinary catastrophe or disaster' is declared. The Insurance Council Board stated that it will consult with stakeholders such as the Australian Government, ASIC, FOS and consumer advocates to develop the criteria for such a declaration.
 - There will be a 'right to claim' in the sense that an insurer will ask policy holders if they would like to lodge claims and then explain that the question of coverage will be fully assessed. If a claim is denied,

5 ICA, 'General Insurance Code of Practice', pp. 11-12.

6 ICA, 'General Insurance Code of Practice', p. 7.

7 Proposed changes to the General Insurance Code of Practice, 28 November 2011.

consumers will be provided with written reasons and information about complaints handling procedures.

- A time limit of 12 weeks will be imposed on the provision of external expert reports. Consumers will be able to access external expert reports used to decide the claim. Insurers will need to provide copies of these reports if requested within 10 business days.
- Staff will be trained to deal with customers professionally. Training will also be conducted with regard to consumer protection laws, product knowledge, the requirements of the Code and understanding the consumer situation particularly in the aftermath of a catastrophe or disaster.

3.15 It is not clear if all provisions of the Code, or just the proposed four-month time limit for determining claims, are exempt in 'exceptional circumstances'.

Monitoring and enforcement of the Code

3.16 Under the Code, FOS is responsible for monitoring compliance.⁸ The Code Compliance Committee within the ICA is responsible for imposing and enforcing sanctions. The Code Compliance Committee consists of a consumer representative appointed by FOS, an industry representative appointed by the ICA and an independent Chair jointly appointed by FOS and the ICA. Insurers also have duties to provide information and report to FOS.

3.17 Although FOS is funded by insurers, it must remain accessible, independent, fair, accountable, efficient and effective in order to maintain its status as an ASIC-approved external dispute resolution scheme.⁹ Also, FOS asserted that membership levies are low and exist mostly to cover administrative costs and that the user-pays nature of FOS encourages the internal settlement of disputes.¹⁰

3.18 There are specific provisions in the Code detailing how monitoring and enforcement activities are to be conducted.¹¹

8 ICA, 'General Insurance Code of Practice', p. 2.

9 Financial Ombudsman Service (FOS), *Submission 47*, p. 12.

10 Mr John Price, Ombudsman General Insurance, Financial Ombudsman Service, *Committee Hansard*, Canberra, 15 September 2011, p. 2.

11 ICA, 'General Insurance Code of Practice', pp. 12-14.

- 3.19 FOS receives and investigates allegations about Code breaches and determines whether a breach has occurred. FOS will monitor the completion of corrective action and determine whether corrective actions have been implemented.
- 3.20 FOS reports failure to correct breaches to the Code Compliance Committee within 10 business days of the agreed time frame. However, FOS must consult with the insurers as to corrective action and time frames.
- 3.21 FOS produces an annual public report on participating insurers' compliance with the Code. The report contains aggregated industry data and consolidated analysis on compliance. FOS supplies aggregated breach data on a quarterly basis to the Code Compliance Committee.
- 3.22 Alleged breaches are reported to FOS mostly by FOS staff (59 per cent) and decision makers (19 per cent) with some complaints being registered from consumers/businesses (18 per cent) and a small number from community legal centres (three per cent) and private lawyers (one per cent).¹²
- 3.23 According to FOS statistics, in 2009–10, there were 314 instances of non-compliance with the Code, 42 per cent down on the previous year. FOS conducted 124 Code compliance reviews during the year, identifying 68 Code breaches across 23 companies. This means that one third of the 59 participating companies breached the Code. However, all breaches were addressed by participating companies to FOS' satisfaction.¹³
- 3.24 In 2009–2010, FOS investigated 616 alleged breaches of the Code arising from 119 matters across 30 companies. That is, half of all participating companies were alleged to have breached the Code.
- 3.25 Of particular relevance to the Committee's inquiry is the fact that there were 96 breaches of the Code which related to the conduct of claims handling. The clauses involved require claims handling to occur in a fair, transparent, timely, efficient and honest matter.¹⁴ Thus, such complaints constituted a third of all breaches of the Code.

12 FOS, 'General Insurance Code of Practice – Overview of the Year 2009/2010', p. 11 <www.fos.org.au/public/download.jsp?id=14819> viewed 9 January 2012.

13 FOS, 'General Insurance Code of Practice – Overview of the Year 2009/2010', p. 11.

14 The complaints were with respect to clauses 3.4.1, 3.6.1 and 6.1.1 of the Code.

- 3.26 The investigations show that the reasons for non-compliance are varied and included:
- misunderstanding how a service standard applied to general insurance operations;
 - underestimating the time required to implement the service standards;
 - applying the service standards in practice but failing to document the underlying compliance requirements appropriately or at all;
 - changes made to processes/systems/documents without the knowledge of compliance personnel;
 - incorrectly concluding that compliance measures were sufficient;
 - failing to provide adequate training; and
 - failing to adhere to established procedures.¹⁵
- 3.27 The Code requires participating companies to report an identified significant breach of the Code to FOS within 10 business days.¹⁶ A 'significant breach' is one that is deemed to be significant with reference to:
- similar previous breaches;
 - adequacy of arrangements to ensure compliance with the Code;
 - the extent of any consumer detriment; and
 - the duration of the breach.¹⁷
- 3.28 In 2009–10, FOS received four reports of significant breaches of the Code relating to the timeliness of claims settlements. These reports related to three companies, with three 'serious' breaches related to the timeliness of claim settlement.¹⁸
- 3.29 There are common themes. Delays occurred because of an unexpected increase in the number of claims, and a resulting lack of resources to address them. The first company reported that customers were advised about the delays and urgent/priority claims were dealt with in time. For the second company, absenteeism, high staff turnover and technology problems contributed to delays. The third company cited poor

15 FOS, 'General Insurance Code of Practice – Overview of the Year 2009/2010', p. 16.

16 ICA, 'General Insurance Code of Practice', p. 12.

17 FOS, 'General Insurance Code of Practice – Overview of the Year 2009/2010', p. 16.

18 The other complaint related to technology problems.

communication as a factor, but asserted that although delays were experienced by customers, the quality of decision making was unaffected.¹⁹

3.30 Corrective actions included:

- reviewing outstanding claims for action;
- agreeing with customers on alternative timeframes of claims assessment;
- recruitment and secondment of staff as well as requesting staff to work overtime in order to deal with the increased workload;
- increasing and improving compliance monitoring, including by:
 - ⇒ developing and enforcing more stringent internal standards; and
 - ⇒ allocating staff to compliance work;
- developing new claims systems to better manage workflow;
- developing forecasting tools to enable better strategic management and allocation of resources;
- requiring workers to specialise to enable fast tracking and more timely responses; and
- improving internal communication.

3.31 Responsibility for monitoring the Code lies with FOS, which has the discretion to provide reports, recommendations and information to any regulator, such as ASIC, or a disciplinary body.²⁰

3.32 FOS must identify 'systemic issues' and refer these to the relevant financial services provider for remedial action. These issues can arise with respect to the Code. FOS must obtain a report from the provider as to the remedial action taken and continue to monitor the matter until a resolution is achieved that is acceptable to FOS.²¹

3.33 FOS must also report systemic issues to ASIC in accordance with obligations under RG 139. FOS must report all serious misconduct to ASIC and ASIC can then take regulatory action if necessary.

19 FOS, 'General Insurance Code of Practice – Overview of the Year 2009/2010', pp. 17-25.

20 FOS, 'Terms of Reference', p. 22 <<http://www.fos.org.au/public/download.jsp?id=17224>> viewed 10 January 2012.

21 FOS, 'Terms of Reference', p. 22.

- 3.34 If insurers fail to meet their obligations under the Code, the Code Compliance Committee can impose sanctions.²²
- 3.35 Where FOS has reported a failure by an insurer to correct a Code breach, the Code Compliance Committee may dismiss the FOS findings or request FOS to reconsider further consultation with insurers. The Code Compliance Committee will 'consider any response by [insurers] before making a final determination and imposing sanctions.'²³
- 3.36 The sanctions for a breach of the Code are minimal. They are:
- a requirement that particular rectification steps be taken by an insurer within a specified timeframe;
 - a requirement that a compliance audit be taken;
 - corrective advertising; and/or
 - publication ('naming and shaming') of the insurer's non compliance.
- 3.37 Mr Price, an Ombudsman of FOS, noted that these sanctions had not been utilised during his time there since 2004.²⁴
- 3.38 Insurers must have appropriate systems and processes in place to enable FOS to monitor compliance with the Code. They also prepare an annual report to FOS on Code compliance and have a governance process in place to report on compliance to internal Boards of Directors or executive management.²⁵

Effectiveness

- 3.39 FOS collects and publishes information on the insurance industry.
- 3.40 However, insurers remain anonymous, both when FOS reports to the public in its compliance reviews and when FOS exchanges information with ASIC. This means neither consumers nor the government have information about which companies are breaching the Code or have been alleged to breach the Code. Ultimately, disputes remain private.
- 3.41 A voluntary code of practice is less effective than a mandatory code. Enforcement can be difficult. Self-regulation in general is only effective
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22 ICA, 'General Insurance Code of Practice', p. 2.

23 ICA, 'General Insurance Code of Practice', p. 14.

24 Mr Price, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 9; FOS, 'Our Ombudsmen', <http://www.fos.org.au/centric/home_page/about_us/our_ombudsmen.jsp> viewed 9 January 2012.

25 ICA, 'General Insurance Code of Practice', p. 12.

under good accountability, compliance, and enforcement.²⁶ The Insurance Law Service (ILS) opposes the voluntary nature of the Code, noting that:

There seems to be little incentive to comply with the Code as there are no consequences of the failure to do so.²⁷

- 3.42 The insurance industry views their compliance as being satisfactory. Wesfarmers assured the Committee that they take the Code 'seriously'.²⁸ BT Financial Group, which includes Westpac, said that they took the:

... strong view that you have to abide by the code regardless of whether you are dealing with a catastrophe or not.²⁹

- 3.43 Insurance Australia Group told the Committee the standards that they set internally are higher than those that are prescribed by the Code.³⁰ Additionally, Wesfarmers noted:

Our claims people are always aware that they have obligations under the code, whether during catastrophe events or not.³¹

- 3.44 Legal aid groups dealt with many clients making insurance claims in the aftermath of the 2010-11 extreme weather events and were thus in a position to assess the operation of the Code in that context. These groups regarded the Code as being ineffective.

- 3.45 Ms Karen Cox, Coordinator, Insurance Law Service, Consumer Credit Legal Centre (NSW) Inc., described the Code as setting 'an incredibly low standard.'³² The ILS commented at length that:

... industry compliance with the Code of Practice is poor. The Code Compliance Monitoring is inadequate and ineffective. It has not led to any improvements that ILS can see in practices. The Code does not represent best practice which is one of the main purposes of having a Code. Unfortunately, the General Insurance Code of

26 For more information on self regulation, see Australian Securities and Investment Commission, 'Institutional self-regulation: what should be the role of the regulator?' <[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/NIGConf_081101.pdf/\\$file/NIGConf_081101.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/NIGConf_081101.pdf/$file/NIGConf_081101.pdf)> viewed 20 December 2011.

27 Insurance Law Service (ILS), *Submission 54*, p. 13.

28 Mr John Ripepi, Chief Executive Officer, Wesfarmers Federation Insurance, *Committee Hansard*, Sydney, 14 October 2011, p. 8.

29 Mr Mark Smith, General Manager, Bank Distribution and Insurance, BT Financial Group, *Committee Hansard*, Sydney, 14 October 2011, p. 21.

30 Mr Michael Wilkins, Managing Director and Chief Executive Officer, Insurance Australia Group, *Committee Hansard*, Canberra, 13 October 2011, p. 9.

31 Mr Ripepi, Wesfarmers Federation Insurance, *Committee Hansard*, Sydney, Friday 14 October, p. 13.

32 *Committee Hansard*, Graceville, 27 September 2011, p. 17.

Practice represents one of the worst operating Codes in Australia.³³

- 3.46 Ms Bridget Burton, Coordinator, Caxton Legal Centre, criticised the Code for being ‘completely inadequate’.³⁴ She stated that it is not designed to protect consumers after a disaster event and that it was ineffective in protecting consumers after the extreme disaster events of 2010–11.
- 3.47 Ms Burton advocates for an enforceable instrument that has inbuilt penalties and where consumers can seek penalties in their own right so they do not have to go through ASIC, and which FOS itself can initiate.³⁵
- 3.48 Ms Jenny Lawton, of Victoria Legal Aid, said that ‘it is timely to consider ... strengthening the protections to consumers in this code’.³⁶
- 3.49 Mr Keith Oberin, Municipal Emergency Response Manager, Shire of Campaspe, noted that many Campaspe residents felt that the Code was not adhered to by insurers.³⁷
- 3.50 Since the Code can be suspended during disaster events, this means that consumers are not protected by its provisions in the aftermath of a disaster.
- 3.51 The Committee heard that some consumers did not feel well-treated by insurance companies in the aftermath of the 2010-11 disaster events, suggesting that insurers did not act compassionately or professionally, as required by clause 4.2 of the Code. Consumers spoke of ‘frustration’ and ‘second class’ treatment.³⁸ These sentiments were echoed again and again by respondents to the inquiry survey.
- 3.52 ASIC raised a pertinent point in that while the industry is under an obligation to deal with claims as effectively and efficiently as possible, to have a sufficient workforce that is trained, skilled and available at all times in case a disaster event occurs would involve significant cost and potentially increase the cost of insurance overall.³⁹

33 ILS, *Submission 54*, p. 13.

34 *Committee Hansard*, Graceville, 27 September 2011, p. 21.

35 *Committee Hansard*, Graceville, 27 September 2011, p. 21.

36 *Committee Hansard*, Bridgewater, 26 October 2011, p. 14.

37 *Committee Hansard*, Rochester, 27 October 2011, p. 2.

38 Cr Graeme Lehman, Mayor, Somerset Regional Council, *Committee Hansard*, Ipswich, 27 September 2011, p. 16; Mr John Braga, *Committee Hansard*, Graceville, 27 September 2011, p. 36.

39 Mr Greg Kirk, Senior Executive Leader, Deposit Takers Credit and Insurers, Australian Securities and Investments Commission (ASIC), *Committee Hansard*, Canberra, 22 September 2011, p. 7.

3.53 In addition, ASIC commented on the time frames for claims processing.

If you want to put in a standard time frame for claims but make it long enough to allow the management of big influxes of claims, then the standard time frame is going to be higher. If you were going to have a definitive time frame on natural disaster claims, you would certainly want to have it as a separate thing to your standard time frame because, otherwise, you would have to make your standard time frame longer. Whether you have that longer time frame for a natural disaster event or whether you just allow general flexibility and rely on the goodwill of the industry, their desire to do the right thing and public pressure is really a matter for government, at the end of the day.⁴⁰

3.54 Additionally, it does not appear that consumers are aware of the Code. Legal aid groups were able to gauge consumer awareness of the Code in their dealings with clients. The Victorian Legal Assistance Forum stated that:

... people generally have low levels of awareness around the General Insurance Code of Practice and their rights to refer a disputed claim to EDR [external dispute resolution] through the Financial Ombudsman Service.⁴¹

3.55 This view was echoed by WA Legal Aid, who stated that people's knowledge of their rights in relation to the code of practice was 'very limited' and that people were not aware of their rights to internal dispute resolution.⁴²

3.56 The ICA website contains a link to the Code, but the Code is not consistently advertised on the websites of member insurance companies.

40 Mr Kirk, ASIC, *Committee Hansard*, Canberra, 22 September 2011, p. 8.

41 Victorian Legal Assistance Forum, *Submission 50*, p. 5.

42 Mr Justin Stevenson, Director Civil Law, Legal Aid Western Australia, *Committee Hansard*, Kelmscott, 2 August 2011, p. 9.

- 3.57 It follows that the low level of public awareness of the Code means that few people will be aware of breaches and report them to FOS. This diminishes the effectiveness of the Code.

Box 3.0 What Code?

The General Insurance Code of Practice may set out a range of consumer protections and industry standards, but many people across Australia—professionals and claimants alike—were unaware of the Code's existence, let alone its specific provisions. One person told the Committee that 'of all the insurance companies I have ever dealt with in my life, I have never had that code of practice explained to me.'

When the Committee asked people about the Code, most responded, 'what's that?' Even months into their insurance claim, or after having taken their claim to dispute resolution, claimants still had not been made aware of the Code at any time during the claims process.

One person who was aware of the Code found that the employees of his insurer did not take it seriously: 'When we raised the Code and its requirements, [the insurance representative] was not interested, nor did he appear to be worried and it was very clear that he was not intending to act any different.'

From bitter experience, this person had no faith in the provisions of the Code to provide any consumer protections or assurance of industry standards. 'The [Code] is unenforceable and was not adhered to ... IT'S NOT WORTH THE PAPER IT'S WRITTEN ON! It is clear from the ... events in 2011 that self-regulation of the insurance industry by a voluntary code of practice is neither practicable nor workable'.

Committee comment

- 3.58 The Committee finds the voluntary Code very unsatisfactory and with scant regulatory effectiveness. The voluntary nature of the Code makes the instrument inherently less effective than a mandatory one.
- 3.59 In particular, the Committee is of the strong opinion that the clause suspending the Code during disaster events is unmerited. The suspension of the Code robs consumers of protection when they are most vulnerable – as victims of natural disasters that cause terrible damage not to only their homes and businesses, but also affect their emotional state and personal relationships.
- 3.60 The Committee notes that the ICA has proposed changes to the Code that take into account some of the concerns raised in the wake of recent natural

disasters. However, based on the findings of this inquiry, the Committee considers that they do not go far enough. The proposed revisions to the Code still include a caveat that the Code can be disregarded in the event of a catastrophe so designated by the ICA. The Committee recognises that in times of disasters there will be greater demands placed on the industry's resources; however, the industry needs to factor such considerations into its business model.

- 3.61 The Committee was alarmed at the lack of consumer awareness surrounding both the existence of the Code and its exact provisions. The lack of knowledge was prevalent across Australia, even amongst individuals for whom it would be useful or necessary to have such knowledge. This speaks again to the ineffectiveness of the Code as a regulatory instrument and a failure of the insurance industry and FOS to inform consumers.
- 3.62 In the wake of negative media attention and disgruntled messages in the front yards of affected clients, the reputation of the industry has taken a hit. The industry needs to regain credibility and consumer confidence. It is not the role of the Australian Government to promote consumer awareness and confidence; rather the industry must assume responsibility for improving consumer perception. The industry can begin to restore its integrity by raising awareness of the Code and of consumer rights.
- 3.63 Later in the report, the Committee makes recommendations to the Australian Government for regulatory reform of the insurance industry. To address consumer awareness of the Code and consumer rights, the Committee makes the following recommendations to the ICA in the strongest terms possible. The ICA should implement the following recommendations in 2012:
- review its procedures and plan for effective contingency measures in times of disaster events;
 - prominently advertise the revised Code on the ICA website as well as all member websites; and
 - conduct a consumer awareness campaign with the purpose of increasing awareness of consumer rights in relation to insurance.
- 3.64 Besides the Code being inherently unsatisfactory, the Committee views non-compliance with the Code as a problem.
- 3.65 Many of the excuses for non-compliance are not compelling. It does not appear that the Code is enforced rigorously within insurance companies. Insurers have not established and maintained the systems necessary for

Code implementation. The multiple breaches and feeble reasons for non-compliance reinforce the conclusion that the Code is an ineffective instrument of regulation.

- 3.66 The Committee understands that insurers suffered additional workload as a result of the disaster events. However, although it may be reasonable for different standards to apply when disasters occur, insurers must make clear the benchmarks that they intend to adhere to. They are an industry which will be called on during natural disasters. It is patently obvious that any reasonable business plan must include adequate response procedures for natural disasters, even those of a magnitude experienced in recent years. Australians plan for disasters by taking out insurance coverage. We expect those insurance companies to similarly have in place plans for disasters. After all, that is their business!
- 3.67 Further, many employees of insurance companies remain unaware of the Code's importance. This omission extends to all arms of the insurance business, including operations, customer service and human resources, and should be addressed by insurance companies through internal processes.
- 3.68 Finally, the sanctions for a breach of the Code are minimal and not applied. The Committee notes that sanctions have not been imposed since at least 2004, despite a myriad of natural disasters. In addition, of the nearly 700 respondents to the Committee's survey, the overwhelming majority were negative regarding the insurance industry. If the Code is to act as an effective benchmark for performance, then it must be both rigorous and enforced. Insurers also have too much input into corrective action and time frames for implementing corrections in the event of a breach.
- 3.69 Preserving the anonymity of companies in compliance and reporting activities greatly reduces the usefulness of data provided by FOS. Neither ASIC nor members of the public can act effectively on anonymous data, such as taking necessary regulatory action or making discerning consumer decisions.
- 3.70 The Committee makes a number of detailed recommendations in Chapter 7 for the general insurance industry's self-regulatory practices, how these are embodied in the Code, and a broader regulatory context to monitor performance.

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.

Lack of consumer protections

- 5.1 Consumer advocates argue that existing regulations pertaining to insurance claims processes focus on the handling of complaints and disputes and do not adequately protect consumers in the areas of claims handling and assessment practices.¹
- 5.2 As discussed in Chapter 2, under the *Corporations Act 2001* (Cth), the Australian Securities and Investments Commission (ASIC) regulates the conduct of financial service providers, including general insurers. However, claims handling and settlement are exempted from regulation.²
- 5.3 Insurers have a duty of utmost good faith under the *Insurance Contracts Act 1984* (Cth), but ASIC does not have any oversight responsibilities. The Insurance Contracts Amendment Bill 2010 was introduced into Parliament to remedy this exclusion by giving ASIC power to ‘take licensing action for a breach of the duty of utmost good faith in relation to claims handling’ and ‘take representative action on behalf of third-party beneficiaries’ and ‘intervene in any proceedings under the Insurance Contracts Act’.³ Pertinently, ASIC advised the Committee that ‘we think it would be better if the claims-handling process was within the broader regulatory system’.⁴ The Committee’s view and recommendations are outlined in Chapter 7.

1 Choice, the Consumer Action Law Centre, Financial Counselling Australia and the Footscray Community Legal Centre (Choice et. al.), *Submission 35*, p. 4.

2 Australian Securities and Investments Commission (ASIC), *Submission 14*, p. 2.

3 ASIC, ‘Review of general insurance claims handling and internal dispute resolution procedures’ Report 245, August 2011, pp. 15–16.

4 Mr Greg Kirk, Senior Executive Leader, Deposit Takers Credit and Insurers, ASIC, *Committee Hansard*, Canberra, 22 September 2011, p. 5.

- 5.4 The bill was passed in the House of Representatives in June 2010 and consequently introduced in the Senate. However the 42nd Parliament was prorogued before the Senate could vote and consequently the bill lapsed.
- 5.5 Thus, when it comes to claims handling, the situation remains that consumer protections reside with the General Insurance Code of Practice (the Code) which stipulates that claims handling will be conducted in 'a fair, transparent and timely manner'.⁵ Consumers have only this voluntary industry code to rely on, and as a previous chapter has determined, this Code is ineffective, is not required to be adhered to during disaster events, and is so little known that consumers are not aware how it could protect their rights or to whom to direct complaints.
- 5.6 Legal Aid NSW argued that:
- Existing regimes governing the reasonable time to resolve a claim, including unresolved claims, is insufficient and piecemeal. It relies heavily on the Industry Code of Practice in General Insurance that has been criticised in the past for failing to address the unfairness in delay on disputed claims. There is little if any public reporting and monitoring by industry, the regulator or FOS as to the time to resolve disputed claims.⁶
- 5.7 The Insurance Law Service (ILS) recommended that an Australian Standard be created for claims handling, and compliance with the standard monitored and enforced by ASIC.⁷
- 5.8 This chapter discusses the need for more stringent consumer protection in the ways that claims are processed and in the information required to be made available to claimants.

Claims handling process

- 5.9 It is apparent to the Committee that in many instances insurers did not meet the standards, in particular the timeframes, contained in the Code when responding to the large volumes of claims arising from natural disasters. Indeed, the greater the disaster, the greater the vacuum of consumer protections.

5 Insurance Council of Australia (ICA), 'General Insurance Code of Practice', p. 6 <<http://www.codeofpractice.com.au/>> viewed 8 December 2011.

6 Legal Aid NSW, *Submission 57*, p. 18.

7 Insurance Law Service (ILS), *Submission 54*, p. 8.

Box 5.0 Claims processing—‘another hurdle to jump’

The process of lodging and monitoring the progress of insurance claims exacerbated existing emotional stress brought on by the disaster event itself. The claims process was yet ‘another hurdle to jump’, resulting in mental exhaustion and ‘lots of depression.’ This theme was consistently supported by the inquiry’s survey responses, with some respondents reporting medical conditions due to claims related stress. There was even the feeling that insurers used ‘stalling tactics as business strategy without consideration of the emotional stress this is placing on individual people.’

The inertia of claims processing was often worse than the disaster event itself. A person recounted that ‘the process of dealing with the insurance company was more stressful than the actual natural disaster.’ Another said ‘the stress of following up with the assessor appointed by the insurance company and the insurance company itself was far worse than dealing with the clean-up’. Yet another recounted that ‘due to the lengthy time response, my husband and small family are hurting more mentally and emotionally than the actual financial loss.’

Better customer service and a more sensitive approach can aid both claimants and insurers to reach a speedy and satisfactory outcome. The emotional impact of natural disasters can diminish a customer’s ability to navigate the claims-handling ‘maze’ and customers are often not in a normal mindset. Several people commented that even a simple, genuine greeting of ‘How are you?’ made a huge impact, making customers feel like they were real people, not just numbers. In the aftermath of such loss, the little things can be important. People considered that insurance companies needed to better appreciate the emotional situation that claimants are in following disasters: ‘Insurance companies must be caring and considerate in these disasters and process claims quickly so people can get on with their lives and business’.

Indeed, after a natural disaster ‘people are stressed; they are very vulnerable. If the insurance company can work quickly to address the issues and give people some assurance that things can move forward, that is what helps the person through.’ Insurance customer representatives need skills in dealing with distressed and traumatised people, and may require some training in this area.

5.10 Legal Aid Queensland noted that they could not:

... point to any law or regulation or industry code which mandated an insurer response to a claim within a time limit or that required insurers to expedite a claim where the insured’s home was unliveable.⁸

5.11 Many consumers were subject to unreasonable delays in the assessment of their claims. The Committee heard that the widespread use of third parties by insurers added to the delay, as both insurers and consumers had to wait for their assessment. Even where claims had been resolved and

8 Legal Aid Queensland (LAQ), *Submission 44*, p. 3.

insurers had accepted liability, clients faced further delays with third parties contracted for the repairing or rebuilding process.

- 5.12 Moreover, many claimants had concerns about the accuracy or objectivity of third-party assessments but struggled to challenge or appeal against them.
- 5.13 Legal Aid NSW submitted that 'our casework experience and [our] survey results clearly illustrate a system of claims handling that is complex, time consuming and ultimately very frustrating for consumers'.⁹
- 5.14 The following sections outline many of the issues raised in regards to claims processing.

Delays in processing claims

- 5.15 The Code identifies a number of timeframes that members voluntarily agree to meet.¹⁰ The insurer is required to respond to claims within 10 days of lodgement by accepting, denying or requesting more information about the claim. Where this timeframe cannot be met, insurers are to negotiate reasonable alternative timeframes with the insured.
- 5.16 Should more information or investigation be required, clients are to be informed about the progress of the claim every 20 days. Once all information is obtained and investigations completed, insurers are obliged to notify the claimant of the final decision within 10 days.¹¹
- 5.17 In the event of a claim being denied, insurers will provide written advice to this effect, as well as information about the internal complaints process. If requested, insurers will also provide reports that have been used in assessing the claim, with the exception of any information subject to privacy laws or that may be prejudicial to the insurer in relation to a dispute.¹²
- 5.18 The ILS observed that:
- The current timeframes, however, can be extended indefinitely and are therefore rendered meaningless. The ILS submits that there must be a trigger point at which the consumer is armed with the information they need to enlist the assistance of an

9 Legal Aid NSW, *Submission 57*, pp. 23–24.

10 ICA, 'General Insurance Code of Practice', p. 6.

11 ICA 'General Insurance Code of Practice', p. 6.

12 ICA, 'General Insurance Code of Practice', p. 6.

independent 'referee' ... to determine whether any further delay is justifiable by the circumstances.¹³

5.19 Not only can the timeframes be extended indefinitely, the standards contained in the Code may not be adhered to by insurers during times of disaster and catastrophe.¹⁴ In the absence of the Code following a natural disaster, claimants appear bereft of protections and forced to accept the level of services and nature of timeframes that their particular insurance company opted to provide. The Committee received overwhelming evidence that insurers often failed abysmally to meet the timeframes in the aftermath of recent natural disasters, and neither were claimants kept informed of the progress of their claim.

5.20 The ILS noted that:

The vast majority of [surveyed] consumers did not receive an acknowledgment of their claim for some weeks after they made the initial claim. The claims were made over the phone. From a consumer perspective those claims then disappeared into a blackhole.¹⁵

5.21 According to a survey conducted by the Collaborative Insurance Law Service (CILS), most of the respondents who had received a written rejection of their claim following the Queensland floods were not advised of the denial until one to three months after lodgement.¹⁶ The Committee's online survey found that 60 per cent of respondents considered that the time taken to settle their claim was 'very slow'.¹⁷ By August 2011, only 65 per cent of Queensland floods insurance claims had been resolved by the insurance industry.¹⁸

5.22 Some local governments reported that residents had unresolved claims months after the initial event. Northern Grampians Shire Council in Victoria noted that 'there are a number of insurance claims still outstanding, being disputed or negotiated, a full six months after the last flood event'.¹⁹ Ipswich City Council in Queensland, whilst noting that the large volume of claims was a challenge to insurers, claimed that 'instances

13 ILS, *Submission 54.3*, p. 39.

14 ICA, 'General Insurance Code of Practice', p. 9.

15 ILS, *Submission 54*, p. 6.

16 Caxton Legal Centre, *Submission 53*, p. 26.

17 Committee survey.

18 R Barrett, 'Payout Boost for Queensland Flood Victims', 5 August 2011, *The Australian* <<http://www.theaustralian.com.au/in-depth/queensland-floods/payout-boost-for-queensland-flood-victims/story-fn7iwx3v-1226108596967>> viewed 11 January 2012.

19 Northern Grampians Shire Council, *Submission 37*, p. 2.

of processing of claims taking up to three months and even longer have had and continue to have a significant impact on the community'.²⁰

5.23 The Carisbrook Disaster Recovery Committee, also in Victoria, reported that 'some residents were given timeframes for decisions to be made on whether they would be covered or not. These timeframes were frequently exceeded or extended for some several times.'²¹

5.24 Legal Aid Queensland (LAQ) provided a case study of a client whose claim had not been processed six months after lodgement, and was only attended to once LAQ intervened.²²

5.25 Although delays in claims handling are often attributed to the additional burden of determining the origins of floodwater, delays are also present in other extreme weather events. Ms Jenny Lawton, a lawyer with Victoria Legal Aid, advised the Committee that 'the bulk of calls' to Bushfire Legal Help, set up in the wake of the Black Saturday fires in Victoria, related to delays in claims handling.²³ Victoria Legal Aid's Bushfire Insurance Unit 'assisted a number of clients experiencing undue delay in resolving their claims, some more than 12 months after the fires'.²⁴ Legal Aid Western Australia said that after the Perth Hills bushfires:

... people were more willing to accept an outcome that was not the best outcome, because they had just run out of steam and run out of emotion and they were finding it difficult to deal with negotiations with an insurance company.²⁵

5.26 During these events, there appears to be no protection for consumers who experience significant delays in the handling of their claims. Yet it is during these events that claimants are likely to have experienced catastrophic loss, in many instances to be homeless, and unable to fully resume their lives until a claim is settled.

5.27 The ICA has proposed changes to the Code that would specify a maximum time limit for determining claims; however, there is still a caveat that the Code provisions do not necessarily apply in times of identified catastrophes. Therefore, in this context, consumers could still face indefinite waiting periods.

20 Ipswich City Council, *Submission 34*, p. 4.

21 Carisbrook Disaster Recovery Centre, *Submission 49*, p. 2.

22 LAQ, *Submission 44*, p. 9.

23 *Committee Hansard*, Bridgewater, 26 October 2011, p. 13.

24 Victorian Legal Assistance Forum (VLAFF), *Submission 50*, p. 5.

25 Mr Justin Stevenson, Director, Civil Law, Legal Aid Western Australia, *Committee Hansard*, Kelmscott, 2 August 2011, p. 10.

- 5.28 Consumer groups suggested that timeframes 'may need to be set in regulations, a claims handling standard or an ASIC Regulatory Guide'.²⁶ Ms Bridget Burton, Coordinator, Caxton Legal Centre, acknowledged that it may not be reasonable for the usual minimum claims-handling standards to apply in the wake of disasters, but 'there have to be some rules that apply after a disaster event'.²⁷

Third-party assessments

- 5.29 Section 3.2 of the Code provides timeframes and measures for claims handling in the event that more information, assessment or investigation is required. In such instances, reports from third-party experts such as hydrologists, engineers or builders may be commissioned to examine the cause or extent of damage. These expert reports may then be used to determine if damage is covered by the insurer, or what the remedy may take if the claim is accepted. Again, the Code includes the caveat that insurers may be unable to adhere to the declared timeframes in times of catastrophes or natural disasters.
- 5.30 Under the Code, the insurer is to advise the claimant of what information is needed and provide an estimate of the time required to conduct the investigations. Should an assessor, loss assessor or investigator be appointed, clients are to be informed within five days of appointment.²⁸ Even following a disaster event, these requirements to inform claimants should not be considered unreasonable. However, the Code does not stipulate timeframes within which claims investigations should be completed.
- 5.31 The Committee encountered consumer frustration with the lengthy delays to claims handling when third parties became involved. Loss assessors are commonly utilised to determine the extent of damage and whether a property can be repaired or requires rebuilding. The expertise of hydrologists, in particular, was relied upon for claims arising out of the recent flood events, as many insurers needed to identify the origin of water damage before determining a claim.
- 5.32 In one-off cases, the delay would be minimal. However, the general insurance industry maintains that the high volume of claims in the wake

26 C Connolly, 'A consumer perspective on the NDIR Issues Paper', September 2011, p. 11 <http://www.ndir.gov.au/content/commissionedpapers/2011/consumer_perspective_sept_11.pdf> viewed 8 December 2011.

27 *Committee Hansard*, Graceville, 27 September 2011, p. 22.

28 ICA, 'General Insurance Code of Practice', p. 6.

of recent natural disasters resulted in an unmet demand for third parties. The Insurance Council of Australia (ICA) stated:

The combination of these disastrous events stretched the resources of insurers, hydrologists, loss assessors, builders and local and state governments ... Delays in processing claims are inevitable in such periods when extreme demand is placed upon supply infrastructure and skills and labour availability within Australia and internationally.²⁹

- 5.33 Due to the skills shortage, third parties such as assessors were brought in from other states and even from overseas to assess disaster claims.³⁰ Some international experts were unable to deliver their reports before their visas expired and they had to return home.³¹
- 5.34 The ICA advised the Committee that the average time to finalise claims in the wake of the recent extreme weather events was 28 days, compared to the usual average of 10 days.³² The NDIR report points out that this figure does not demonstrate the extreme end of the scale where some consumers had to wait many months.³³
- 5.35 The Committee heard anecdotal evidence of lengthy delays in getting third parties to affected properties. Buloke Shire Council's questionnaire revealed that 'delays due to the need for "third party" (hydrologists, geotechnical engineers and building consultants) information to become available' was one of the most-cited problems encountered by their residents.³⁴
- 5.36 More than 60 per cent of respondents to the Committee's online survey experienced delays with getting third party experts and consultants to assess their claim.³⁵ And a submitter ventured that 'third parties are responsible for significant delay as they take a long time to report'.³⁶

29 Mr Robert Whelan, Chief Executive Officer, ICA, *Committee Hansard*, Sydney, 14 October 2011, p. 38.

30 Mr Robert Scott, Managing Director, Wesfarmers Federation Insurance, *Committee Hansard*, Sydney, 14 October 2011, p. 41; Bruce K. Gillan, *Submission 64*, p. 3; Mr Michael Wilkins, Managing Director and Chief Executive Officer, Insurance Australia Group, *Committee Hansard*, Canberra, 13 October 2011, p. 4.

31 Mr Doug Olsen, Senior Vice-President, Innisfail District Chamber of Commerce, Industry and Tourism Inc., *Committee Hansard*, Innisfail, 29 September 2011, p. 4.

32 Mr Whelan, ICA, *Committee Hansard*, Sydney, 14 October 2011, p. 44.

33 The Treasury, 'Natural Disaster Insurance Review' September 2011, p. 24.

34 Buloke Shire Council, *Submission 45*, p. 11.

35 Committee survey.

36 Name withheld, *Submission 67*, p. 3.

Box 5.1 Third-party expert reports a poor excuse for delays

The consecutive severe weather events experienced in recent years across Australia resulted in a shortage of external experts for assessing damage and causation. Quite simply, there were not enough insurance assessors and expert hydrologists to report on claims and not enough builders and skilled tradespeople to make repairs or start rebuilding. The shortage was felt even more keenly in regional areas. This shortage exacerbated delays in claims processing. Lack of communication from insurers left people wondering if insurers were hiding behind expert reports as an excuse for seemingly unending delays.

From fires and floods to cyclones and storms, people reported that chasing up insurers and third party experts was uniformly frustrating and stressful. It was an ordeal even getting the tradespeople needed to do the multiple quotes. Residents would secure a tradesperson 'but after three weeks they have to chase them and start again.' One person was at their wits' end, describing the experience as 'Chinese Water Torture – a drip at a time!!! Eight months later still having to remind [the] assessor I exist.'

But even when there were tradespeople and experts on the ground, the frustrations and delays didn't end. On the Committee survey site a respondent quipped that there were 'too many [trades] people to count but no action'. One respondent told how, exasperatingly, 'I have had five people come to assess my property and still nothing has happened'. Many others had similar stories.

In the survey undertaken by the Committee, 71.9 per cent of the respondents did not feel that the external parties assisted in the timely settlement of their claim and 63.5 per cent stated that they experienced delays with getting third party experts to assess their claim. It all amounted to too few experts, too little coordination, even less communication, and too many delays.

5.37 Insurers may consider claims to be resolved once liability is accepted, but from the client's perspective, the saga continues with the recovery and rebuilding process. The Committee heard from individuals whose insurers had promptly accepted liability and undertaken to rebuild or repair their homes, but who found themselves months later still unable to return home due to delays in finalising building quotations or allocating builders.

5.38 Central Goldfields Shire Council submits that:

Much has been made of the high completion rate of initial claims by insurers however this has not necessarily translated to work on damaged properties or a satisfactory resolution of people's disputes in a timely manner.³⁷

37 Central Goldfields Shire Council, *Submission 27*, p. 1.

5.39 Brisbane City Councillor Nicole Johnston told the Committee that:

A lot of residents have anecdotally said to me that they ring up and are promised someone will come to do their quotes but after three weeks they have to chase them and start again.³⁸

5.40 The general insurance industry maintains that Australia is not able to meet the demand for tradespeople that occurs after natural disasters of such magnitude and scale as the recent extreme weather events. Suncorp Group admits that 'the main issue has been the availability of these services in the context of extensive damage over a wide geographical area and the shortage of skilled workers. This has unfortunately led to some delays.'³⁹

5.41 The National Insurance Brokers Association (NIBA) claims that:

... there are simply not enough resources in the building and related trades and in other material suppliers to allow insurers to provide what might be regarded as a normal response within normal time frames when you have so many claims happening and so much damage occurring all at the same time.⁴⁰

5.42 The ICA's proposed amendments to the Code include a maximum timeframe for external expert reports to be completed, but again, the exemption of the Code to situations of natural disasters renders the amendment ineffectual. Further, these proposed amendments would not address the delays caused by a shortage of tradespeople to repair or rebuild following catastrophes.

Independence and accuracy of third-party assessments

5.43 The Committee noted a common perception among communities that third parties employed by insurers may favour the insurers when issuing reports. Several local governments in Victoria noted this. Buloke Shire Council reported that:

The use of third parties to review and assess damage is not seen as working for the mutual benefit of the claimant and the insurer. Their role is seen as delivering a predictable outcome to the

38 Cr Nicole Johnston, Councillor for Tennyson, Brisbane, *Committee Hansard*, Graceville, 27 September 2011, p. 11.

39 Suncorp Group Limited, *Submission 41*, p. 15.

40 Mr Dallas Booth, Chief Executive Officer, National Insurance Brokers Association (NIBA), *Committee Hansard*, Sydney, 14 October 2011, p. 2.

insurer (in favour of the insurer) because their independence is compromised as an agent of the insurer.⁴¹

- 5.44 Pyrenees Shire Council stated that hydrology 'reports were in favour of the Insurance Companies, keeping in mind that these engineers are paid by the insurance company'⁴² and Loddon Shire Council claimed that 'we believe that the insurance companies used their legal advice and their hydrologists as a defensive strategy to minimise payouts'.⁴³
- 5.45 Northern Grampians Shire Council maintained that assessors are 'actually agents of the insurance company and it seems to be a very one-sided decision-making process'.⁴⁴ And in Central Goldfields Shire, 'the perception of the community is that the hydrologists employed by the insurance companies were not at arm's length from the insurance company'.⁴⁵
- 5.46 Queensland MP, Andrew Cripps, summed up thus:
- In many ways, the fate of the policy holders' claim is in the assessor's hands. Who are these assessors? What say does a policy holder have in the appointment of one to assess their claim? Can policy holders have confidence that they have the skills and experience to undertake an assessment of the damage to their property? Where and by who are they trained? Who regulates their profession? ... What rights do policy holders have to seek a review of the assessor's report, or have another one done to verify it?⁴⁶
- 5.47 The City of Armadale Council in Western Australia advocated for a number of fire-affected residents. In some cases where insurers and city building inspectors disagreed on the merits of repairing rather than rebuilding, the City commissioned an independent structural engineer who concluded that the structures needed to be demolished.⁴⁷

41 Buloke Shire Council, *Submission 45*, p. 19.

42 Pyrenees Shire Council, *Submission 39*, p. 2.

43 Mr John McLinden, Chief Executive Officer, Loddon Shire Council, *Committee Hansard*, Bridgewater, 26 October 2011, p. 3.

44 Mr Gregory Little, Municipal Recovery Manager, Northern Grampians Shire Council, *Committee Hansard*, Charlton, 26 October 2011, p. 6.

45 Mr Wayne Belcher, General Manager, Corporate and Community Services, Central Goldfields Shire Council, *Committee Hansard*, Bridgewater, 26 October 2011, p. 5.

46 Andrew Cripps MP, *Submission 60*, p. 5.

47 City of Armadale, *Submission 19*, p. 3.

- 5.48 An independent hydrologist, engaged by a legal firm to assess the cause of extensive flooding in Victoria in January 2010, criticised hydrology reports – used by insurers to deny claims – for ignoring factors other than riverine inundation, leading the legal firm to question the independence of insurer-commissioned reports.⁴⁸
- 5.49 There are also concerns about the accuracy of third-party reports. The fact that hydrologists rarely accessed properties affected by water damage until long after the water had receded contributed to fears of inaccuracy or incompleteness in the resulting reports, since the evidence from the time of the disaster had not remained. Where some properties had been subject to different types of flooding from a single weather event, there were concerns that third parties did not have an adequate understanding of local areas and therefore the sequence of inundation.
- 5.50 Carisbrook Disaster Recovery Committee advised that ‘visits by hydrologists were occurring months after the event when crucial debris had been cleaned up. Some did desktop decisions without actually visiting the area.’⁴⁹
- 5.51 Ms Alannah Jenkins, Flood Case Support Worker, Rochester and Elmore District Health Service, spoke of her work with flood-affected clients and told the Committee that ‘we have seen numerous times hydrology reports from months after the floods – four to five months’.⁵⁰ Caxton Legal Centre ‘had cases where it was six and seven months after the event before a hydrologist visited the person's property’.⁵¹
- 5.52 There are also instances where more information can come to light further down the track. RACQ Insurance overturned its original denial decisions for 247 claims in Queensland after receiving more accurate hydrological information that demonstrated that an insurable type of flooding had in fact occurred.⁵²
- 5.53 Consumer advocates point out that consumers are relatively powerless to challenge the assessment of third parties.⁵³ In one instance, a former state government soil health officer was able to provide reports on the behaviour and nature of flooding in his neighbourhood whereas an

48 A Thompson, ‘Flood Battlers left High and Dry’, *Herald Sun*, 11 January 2012, p. 10.

49 Carisbrook Disaster Recovery Centre, *Submission 49*, p. 2.

50 *Committee Hansard*, Rochester, 27 October 2011, p. 14.

51 Ms Bridget Burton, Coordinator, Consumer Law Service, Caxton Legal Centre, *Committee Hansard*, Graceville, 27 September 2011, p. 22.

52 R Barrett, ‘Payout Boost for Queensland Flood Victims’.

53 Choice et. al., *Submission 35*, p. 6.

insurer's reports were inconclusive.⁵⁴ However, this personal expertise is not available to most people and so the accuracy and independence of third-party expert reports is crucial.

- 5.54 Caxton Legal Centre points out that 'it is expensive [for individuals] to engage a hydrologist to write a report and, as such, they are experts primarily "belonging" to insurance companies'.⁵⁵ The NIBA also noted that its members have expressed concern at the lack of 'availability of independent experts to challenge the views of an insurer's hydrologist'.⁵⁶
- 5.55 Several groups have recommended that a panel of independent hydrologists be available for the free use of consumers who wish to double-check an insurer's assessment.⁵⁷
- 5.56 Admittedly, such a resource would face the same challenges in timeliness as insurer-employed hydrologists when there are high volumes of flood claims. However, with the forecast changes to the availability of flood insurance and a uniform definition of flood, the need for hydrology input will diminish, and the workload of an independent panel for consumer verification may be manageable.
- 5.57 Legal aid organisations are concerned that some insurers have tried to avoid delays by relying instead on 'generic Insurance Council of Australia reports, suburb by suburb snap-shot reports by hydrologists employed by the insurer, or on a guess made by a loss assessor' and only commissioning site-specific hydrology investigations if the decision is disputed.⁵⁸ This places a high onus on claimants to challenge decisions so that a proper assessment can be undertaken.
- 5.58 Cr Johnston corroborated this phenomenon among her residents who 'got a catchment-wide hydrology report which did not relate to their property, which forced many of them to go through the appeals process'.⁵⁹
- 5.59 Although generalised area reports may reduce delays in handling claims, consumers' right to an accurate assessment is compromised. Moreover, the onus is on consumers to dispute such a decision in order to receive a

54 A Thompson, 'Flood Battlers left High and Dry', p. 10.

55 Caxton Legal Centre, *Submission 53*, p. 35.

56 NIBA, *Submission 46*, p. 4.

57 NIBA, *Submission 46*, p. 4; Choice et. al., *Submission 35*, p. 6; Ms Jenny Lawton, Professional Support Lawyer, Victoria Legal Aid, *Committee Hansard*, Bridgewater, 26 October 2011, p. 14; Legal Aid NSW, *Submission 57*, p. 22.

58 Caxton Legal Centre, *Submission 53*, p. 34; Legal Aid NSW, *Submission 57*, p. 21.

59 Cr Johnston, Councillor for Tennyson, Brisbane, *Committee Hansard*, Graceville, 27 September 2011, p. 11.

fair and transparent claim assessment. This was demonstrated in Charlton, Victoria, where a number of insurance claims from January 2011 floods were rejected without site-specific data and are, 12 months later, being taken to the insurance industry's external dispute resolution scheme with a contrasting hydrology report commissioned by a legal firm.⁶⁰

- 5.60 The Committee also heard evidence of other assessments, such as scopes of work for repairs, being inaccurate. One submitter counted 27 items missing or incorrect on the insurance assessor's scope of works.⁶¹ Another witness had three scopes of work conducted, each omitting the same building structures.⁶² Residents in Carisbrook, Victoria, reported scopes of works missing entire rooms.⁶³
- 5.61 Given that in these situations claimants are recovering from the trauma of the disaster event, and may not be emotionally or financially capable of challenging third-party reports or taking on the might of an insurance company, it is essential that consumer protections regarding claims-processing arrangements are in place.

Lack of information

- 5.62 From the stories told to the Committee, it would seem that many people's experiences in lodging a claim against their policy in the wake of a natural disaster are of entering labyrinths of hoops and hurdles with no roadmap. Instead of useful explanations or instructions on the claims-handling process, claimants struggled to elicit phone, email or written contact or key information from their insurers.
- 5.63 According to the Code, insurers must keep the client informed about the progress of an investigated claim every 20 days, and respond to requests for information within 10 days.⁶⁴
- 5.64 Moreover, insurers are obliged to provide claimants with any information that has been used in making a decision about the claim.

60 G Barlow, 'Flood Insurance Disputes Continue', 4 January 2012, Weekly Times Now <http://www.weeklytimesnow.com.au/article/2012/01/04/425781_latest-news.html> viewed 11 January 2012.

61 Mrs Tammy Tarrant, *Submission 11*, p. 1.

62 Ms Erin Cook, Secretary, Bundamba Flood Victims Support Group, *Committee Hansard*, Ipswich, 27 September 2011, p. 28.

63 Carisbrook Disaster Recovery Committee, *Submission 49*, p. 1.

64 ICA, 'General Insurance Code of Practice', p. 6.

Difficulties with communication

5.65 To compound the frustration of delays in claims handling, there is widespread dissatisfaction with the level of communication from insurers about the progress of a claim. The Committee encountered a recurring theme that claimants did not know what was going on with a claim and this added a great deal of angst and stress to efforts to recover from the natural disaster. As the coordinator of Lockyer Valley Flood Relief said:

I can understand the overwhelming difficulty the insurance companies have had. I can understand that. I guess what I cannot understand is the lack of communication. Something is better than nothing. Something would always be better than nothing.⁶⁵

5.66 An insurance broker stated that delays associated with mass claims were inevitable due to the high demand on loss adjusters, but that 'the most common complaint in this regard is the lack of communication and slow responses from the loss adjuster after the initial contact'.⁶⁶

5.67 The CILS survey indicated that 77 per cent of respondents were never advised of the progress of their claim.⁶⁷ Ms Karen Cox, Coordinator, ILS, told the Committee that:

I have seen in a number of submissions, echoing over and over, the extraordinary circumstances that people were in and the difficulties they had in contacting insurers and getting information about their claims ... The commitment [in the Code] is to do little more than keep telling you what is happening.⁶⁸

5.68 Residents of Carisbrook, affected multiple times by flooding, expressed their frustrations to the Carisbrook Disaster Recovery Committee that insurers did not follow up on claims or contact them when promised.⁶⁹

5.69 Queensland Flood and Cyclone Legal Help facilitated community forums with affected communities, the Insurance Council of Australia and the Financial Ombudsman Service, where 'many people expressed anger and dissatisfaction with the progress of their insurance claims'.⁷⁰ As a result, several legal aid organisations established the Collaborative Insurance

65 Mr Derek Pingel, Coordinator, Lockyer Valley Flood Relief, *Committee Hansard*, 28 September 2011, p. 33.

66 Name withheld, *Submission 25*, p. 2.

67 ILS, *Submission 54.1*, p. 32.

68 Ms Karen Cox, Coordinator, Insurance Law Service, *Committee Hansard*, Graceville, 27 September 2011, p. 17.

69 Carisbrook Disaster Recovery Committee, *Submission 49*, p. 1.

70 LAQ, *Submission 44*, p. 3.

Law Service; one of its aims was to assist consumers who experience delays in getting a response from their insurer.⁷¹

- 5.70 In Victoria, the Bushfire Insurance Unit gave assistance to ‘clients who were not being adequately informed of the status of their claims’.⁷²

Box 5.2 ‘I was ignored, fobbed off and lied to’

While the individual stories of loss varied, stories about poor responsiveness from insurance companies were all too similar. Many people expressed their displeasure and reported that they did not receive correct or timely communication about the progress of their claim. One person encapsulated a widespread predicament saying: ‘I was ignored, fobbed off and lied to and spent many hours trying to get an answer about my claim’.

Even when insurance companies did give timeframes or deadlines for progress of claim, these were not adhered to. One survey respondent said, ‘they missed all deadlines that they themselves imposed. We had to chase them each time a deadline passed.’ Another recalled a similar experience, where ‘responses were not provided by agreed dates. Conflicting information was provided by staff.’

Others did not even get timeframes and complained about the ‘serious lack of communication. No correspondence was received for months.’ This was echoed by another person, who described the process as ‘too slow, extremely poor communication.’

Another complaint was that insurers were not proactive and instead, the onus was on consumers who were ‘constantly chasing up [the] insurance company and getting what seems like stalling tactics’. The frustration was widespread with one person recalling that ‘there was no correspondence at all from them. I’ve been in the dark all the time. [They] kept asking me to wait. It was always “next week.” I was getting different people all the time until I requested to talk to just one person. And he wasn’t helpful either.’ Some noted that insurance companies managed to get it right when sending you an invoice for premiums, but it was a different ball game when it came to settling a claim: ‘if we hadn’t kept ringing the insurance company our claim would still be waiting to be processed, [it] seemed to get lost in the system. Still waiting for the cheque that was sent to [the] wrong address, when our renewals have always been sent to the right address.’

- 5.71 The City of Armadale Council related a particular case that ‘had consistent and regular delays. [The claimants] felt like their insurance company just was not speaking to them.’⁷³ Buloke Shire Council said that many of the residents that had spoken with ‘had to follow up their claim with their

71 LAQ, *Submission 44*, p. 3.

72 VLAFF, *Submission 50*, p. 5.

73 Ms Yvonne Coyne, Executive Director, City of Armadale, *Committee Hansard*, Kelmscott, 2 August 2011, p. 5.

- insurer on numerous occasions and ... it has taken persistence on their part to get information on the progress of their claim or a decision'.⁷⁴
- 5.72 Northern Grampians Shire Council advised the Committee that one of their residents telephoned 'his insurer each week from the time the claim was lodged in January until August to remind them that he was waiting to hear the progress of his claim'.⁷⁵
- 5.73 The LAQ cited a case study of a client where 'the only written communication that had been received by Mrs M from [her insurer] was a survey asking for client satisfaction'.⁷⁶
- 5.74 In addition to substantial anecdotal evidence of insurers rarely contacting consumers, the Committee also heard that many consumers had great difficulties in contacting insurers to chase up information on the progress of their claim.
- 5.75 Caxton Legal Centre reported that consumers:
- ... were sitting on hold for a long time because they had to ring their insurance company; the insurance companies were not contacting people. The hold times were ridiculous. There was no call-back system.⁷⁷
- 5.76 Carisbrook Disaster Recovery Committee said that some of their residents 'felt compelled to contact FOS because they had had difficulty contacting or communicating with their insurance companies'.⁷⁸
- 5.77 Residents of Cr Johnston's Tennyson ward felt there was in fact 'responsibility on the policy holder to chase the insurance company for an outcome through repeated calls, letter and/or emails'.⁷⁹
- 5.78 Most insurers have 1300 numbers for customer service, which are charged at the cost of a local call from a landline, but are charged per minute when made by a mobile phone. However, in the wake of natural disasters, many people lose access to their landlines. The Australian Communications Consumer Action Network submitted that the cost of contacting insurers, and waiting on hold for long periods of time, via mobile phone can be prohibitive.⁸⁰

74 Buloke Shire Council, *Submission 45*, p. 16.

75 Northern Grampians Shire Council, *Submission 37*, p. 4.

76 LAQ, *Submission 44*, p. 6.

77 Ms Burton, Caxton Legal Centre, *Committee Hansard*, Graceville, 27 September 2011, p. 25.

78 Carisbrook Disaster Recovery Committee, *Submission 49*, p. 2.

79 Cr Johnston, Councillor for Tennyson, Brisbane, *Submission 58*, p. 2.

80 Australian Communications Consumer Action Network, *Submission 33*, p. 3.

5.79 Caxton Legal Centre noted that:

Most insurers do not have a phone number that is free from mobile phones or a same-day call back service. Hold times when calling insurers in January, February and March were excessive. The cost of phoning insurers was a source of great anger and frustration in community forums in the early weeks following the floods with some people estimating spends of hundreds of dollars waiting on hold for their insurer to give them an update on the progress of their claim.⁸¹

5.80 Moreover, dislocated residents relied on their mobile phones to communicate with families and friends and other essential services, and therefore wasting battery charge waiting to be connected to an insurer was an additional stress and major inconvenience.

Access to documents

5.81 Moreover, the Committee heard widespread anecdotal evidence of clients being unable to access third-party reports upon which insurers had made decisions.

5.82 The Code advises that:

You will have access to information about you that we have relied on in assessing your complaint and an opportunity to correct any mistakes or inaccuracies. In special circumstances or where a claim is being or has been investigated, we may decline to release information but we will not do so unreasonably. In these circumstances, we will give you reasons. We will provide our reasons in writing upon request.⁸²

‘Special circumstances’ include when the information may be ‘prejudicial’ to the insurer in the event of a dispute.⁸³ The Committee notes that the proposed amendments to the Code would remove potentially prejudicial information from the definition of ‘special circumstances’.

81 Caxton Legal Centre, *Submission 53*, p. 29.

82 ICA, ‘General Insurance Code of Practice’, p. 10.

83 ICA, ‘General Insurance Code of Practice’, p. 10.

5.83 FOS notes that currently the:

Code of Practice itself does not commit to a full exchange of all material and requires the consumer to request access to the documentation or information.⁸⁴

5.84 The Committee heard that on some occasions, reports upon which claims were determined were not made available to clients when requested. This lack of transparency was frustrating for those who wished to confirm that the reports (from assessors, hydrologists, or others) were correct. Certainly such secrecy would give rise to suspicions that insurers had something to hide, and this often subsequently contributed to community anxiety and the spread of misinformation.

5.85 Caxton Legal Centre noted that:

The responses to requests for documents have been mixed. While there has been a general willingness to provide PDS documents and hydrology reports this is not universal. Caxton lawyers have experienced more problems than could have been anticipated in obtaining documents.⁸⁵

5.86 The ILS had a client whose claim was rejected within one week:

Despite ILS writing to the insurer on a number of occasions requesting copies of the telephone recordings relied upon by the insurer, including copies of any hydrology or assessor's reports to support its decision to deny our client's claim, the insurer to date has not provided any real evidence to support its decision.⁸⁶

5.87 A consumer advocacy client was refused access by their insurer to a hydrology report cited in the claim denial until they took their case to FOS and legal aid.⁸⁷ Another client was initially charged hundreds of dollars to access a report before the client threatened to speak to his local member of parliament.⁸⁸

84 FOS, 'Submission to NDIR', pp.14-15, <http://www.ndir.gov.au/content/submissions/issues_paper_submissions/Financial_Ombudsman_Service_Limited.pdf> viewed 2 December 2011.

85 Caxton Legal Centre, *Submission 53*, p. 43.

86 ILS, *Submission 54*, p. 12.

87 Choice et. al., *Submission 35*, p. 3.

88 Choice et. al., *Submission 35*, p. 3.

- 5.88 David Stubbin advised that ‘during my claim process, I’ve been denied any opportunity to review and comment on the insurer’s claim notes and assessment report.’⁸⁹
- 5.89 Valerie Kinglsey noted that her insurer stonewalled her efforts to access their building quotations, advising her by email that she could view them only in return for accepting a cash settlement.⁹⁰
- 5.90 Ms Deborah Olsen, a Brisbane community recovery coordinator for Lifeline Uniting Care Community Queensland, dealt with frustrated clients who had different experiences between insurance companies:
- It seemed to be a mixed bag with the hydrologist’s report, depending on which insurance company they were with. We have spoken with people who were very distressed because they had to fight very hard to get a copy of the hydrologist’s report. Their neighbours would have a copy but they would not be able to access theirs and they could not understand why.⁹¹
- 5.91 The ILS submitted that a particular insurance company hired lawyers to deal with all claims. As a result, the lawyers obstructed the flow of information to clients by claiming ‘legal professional privilege’ over hydrology reports, which were accessed only after some months and appeals to FOS and ASIC.⁹²
- 5.92 FOS described this phenomenon as ‘a real problem, and it causes delays because the consumer cannot then look at the information and say, “Well, is that right or not. Do I agree with this” or, “They have got the wrong house.”’⁹³

Committee comment

- 5.93 While the Committee appreciates that large volumes of claims place pressure on insurers, long delays to finalise claims have a detrimental effect on consumers. Further, the failure of many insurers to adequately
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89 David Stubbin, *Submission 55*, p. 3.

90 Mrs Valerie Kingsley, *Committee Hansard*, Kelmscott, 2 August 2011, p. 15.

91 Ms Deborah Olsen, Community Recovery Coordinator, Somerset and Ipswich Regions, Lifeline Uniting Care Community Queensland, *Committee Hansard*, Ipswich, 27 September 2011, p. 9.

92 ILS, *Submission 54*, p. 10.

93 Mr John Price, Ombudsman General Insurance, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 12.

communicate with their clients during the claims-handling process is inexcusable.

- 5.94 This inquiry aimed to identify systemic issues in the operation of the insurance industry during disaster events, and to recommend changes necessary to ensure an industry-wide capacity to appropriately respond during disaster events.
- 5.95 Insurers gave evidence to the Committee that, in light of the overwhelming number of claims, they were unable to meet timeframes or communicate regularly with their clients. The Committee rejects those excuses and notes the positive innovations of some insurers after these disaster events. The Committee commends those insurers for their commitment to customer service and sound business planning, especially when their buildings and employees were also affected by disasters, although again there is scope for improvement in some areas. These innovations include:
- the establishment of mobile offices in central locations to facilitate claims lodgement;
 - claims case managers assigned to see clients through the claims-handling process;
 - Insurance Captains from the Insurance Council of Australia who attend relief centres and disaster meetings;
 - the use of mobile phone messaging systems when householders were homeless and were without landlines, internet connection or mailboxes;
 - providing copies of third-party reports to enable clients to understand claims decisions;
 - call-back options that worked; and
 - the flexibility to use consumer-organised tradespeople to expedite repair work.
- 5.96 These strategies were used by some, but not many, insurers. They demonstrate that the industry as a whole can and should be doing better. Currently, the self-regulatory Code places little onus on insurers to achieve benchmark performances in the claims-handling process, particularly during disaster events. The Committee intends for this situation to change.
- 5.97 As there is no compulsion on insurers to adhere to the Code's timeframes, or even the amended, mutually-agreed timeframes in times of disasters, consumers have little recourse when left in limbo with claims unresolved

for months and months. The Committee notes that the elderly are particularly vulnerable in these situations and heard anecdotal stories where claimants 'gave up' the insurance battle as the stress of pursuing it was too much to bear.

- 5.98 Currently, claims handling is excluded from ASIC's regulatory responsibilities for financial services providers. The Insurance Contracts Amendment Bill 2010 was drafted to amend this inclusion, making a breach of the duty of utmost good faith equal to a breach of the Insurance Contracts Act. However, Parliament was prorogued before the bill could be passed.
- 5.99 The Committee considers that ASIC should be empowered to regulate efficient, honest and fair dealings in relation to claims handling so that it can investigate companies who do not act in utmost good faith in relation to their clients, including when they do not adhere to the Code, when there are unreasonable delays, or when claims assessments and investigations are conducted in an unfair manner.
- 5.100 At the very least, the Committee considers it essential that there be protection for consumers in the claims-handling process in the aftermath of disaster events. An alternative to ASIC powers over claims handling would be the mandatory application of a revised and more stringent General Insurance Code of Practice that cannot be waived during disaster events and includes claims-handling and communication obligations appropriate to these events. This would also extend to consumer access to third-party reports.
- 5.101 The Committee makes recommendations in Chapter 7 to reform the regulatory environment of the insurance industry and to mandate consumer protections in insurance claims-handling processes.
- 5.102 The Committee also supports the Australian Communications Consumer Action Network's *Fair Calls for All* campaign for affordable calls to 1300 phone numbers from mobile telephones and strongly urges the ICA to lobby the telecommunications industry for action in this area.

Dispute resolution processes

- 6.1 An effective scheme of review for decisions or actions by the industry that are disputed by the clients should always be a key feature of a self-regulating system. Dispute resolution processes serve to reinforce the validity and credibility of a self-regulated industry, and provide consumers with an accessible and affordable means of recourse that does not involve expensive, time-consuming litigation via the court system.
- 6.2 This chapter discusses the internal dispute resolution (IDR) and external dispute resolution (EDR) procedures of the general insurance industry. Australian Securities and Investments Commission (ASIC) regulations stipulate that insurers, as Australian Financial Services Licensees, must have IDR processes for complaints as defined in the Australian Standard AS ISO 10002-2006 for Complaints Handling and must also be a member of an accredited EDR system.
- 6.3 Complaints or disputes arising out of an insurance claim – whether it be about denial or adequacy of settlement or conduct of employees – are initially dealt with through the insurer’s IDR process.
- 6.4 Disputes that are unable to be resolved internally can then be referred to EDR for decisions that are binding on the insurer. The Financial Ombudsman Service (FOS) is the ASIC-accredited EDR service for financial service providers, including general insurers. The vast majority of general insurers subscribe to FOS.

Internal dispute resolution

- 6.5 General insurers are required, as a provision of their financial services licence under the Corporations Act, to have an IDR process available to their clients that meets the standards set out by ASIC.
- 6.6 These standards are specified in ASIC Regulatory Guide 165 (RG 165). The General Insurance Code of Practice (the Code) also addresses IDR practices.
- 6.7 The Code divides the IDR process into two tiers – complaints and disputes.¹ Complaints are to be responded to within 15 days where possible, with the response to include information about escalating the complaint to a dispute if the complainant is unhappy with the decision. In the dispute stage, particular employees are assigned to the complainant and a response must be made within 15 days where possible.
- 6.8 IDR is available to all consumers who have a general insurance complaint, but the Committee heard evidence only in the context of natural disasters. Statistics kept by insurers are unclear as to how many internal disputes are related to claims arising from disaster events.²
- 6.9 The Committee encountered concerns about general insurance IDR relating to consumer awareness, timeliness, and general effectiveness in addressing and resolving complaints.

Consumer awareness of IDR

- 6.10 According to the Code, insurers undertake to advise clients of their complaints handling procedures, their IDR procedures, and the free EDR process.³

1 Insurance Council of Australia (ICA), 'General Insurance Code of Practice', pp. 10-11 <<http://www.codeofpractice.com.au/>> viewed 8 December 2011.

2 For example, Australian Securities and Investments Commission notes in a review of internal dispute resolution procedures that insurers demonstrate 'little consistency ... in the collection of an ability to report on information about complaints.' Australian Securities and Investments Commission, 'Review of general insurance claims handling and internal dispute resolution procedures' Report 245, August 2011, p. 33. Also, statistics collected by Financial Ombudsman Service on internal dispute resolution show that of 22 581 disputes for personal and commercial insurance claims, 16 330 related to 'insurance claims', 29 to 'catastrophes and disasters' and 22 to 'other relating to Code'. Financial Ombudsman Service, 'The General Insurance Code of Practice: Overview of the Year 2009/2010', p. 69 <<http://www.fos.org.au/public/download.jsp?id=14819>> viewed 9 January 2012.

3 ICA, 'General Insurance Code of Practice', pp. 10-11.

- 6.11 However, the Code specifies that consumers must be informed of the IDR process only in the event of a claim denial, not at the time of lodging a claim, or even if a claim settlement is disputed. This means that consumers who are unhappy with their treatment, the quantum of an accepted payment, or the claims-handling process in general may be unaware of their right to register a dispute.
- 6.12 The Insurance Council of Australia (ICA) told the Committee that:
- There are many avenues for a customer to pursue a complaint. It is incumbent on the industry to maintain information and awareness of that process so that the consumer can take full advantage of the existing processes – which are at no cost to them.⁴
- 6.13 However, it is clear that not all insurers make this information readily available to their clients. The Committee observed varying degrees of consumer knowledge of their right to dispute claims assessments.
- 6.14 A number of consumers told the Committee that when their insurance claims were rejected, they were not advised in writing of their right to request an internal review. During its travels, the Committee found that many consumers were only made aware of IDR processes after talking to neighbours or legal aid organisations.
- 6.15 Campaspe Shire Council found that their residents ‘were often not aware and were not made aware of the internal dispute resolution process that their insurers may have had’.⁵
- 6.16 Normally a claim does not escalate to a dispute until the claim is processed and the result fails to satisfy the claimant. However, some claims were taking so long (more than 6 months) to be processed that clients did not know where to turn.
- 6.17 The Chairman of the Cassowary Coast Banana Growers Association waited five months for his claim to be processed, but during that time there was ‘no discussion’ of internal dispute resolution options.⁶
- 6.18 The adequacy of any IDR process is necessarily reliant on consumer awareness of its existence.

4 Mr Robert Whelan, Chief Executive Officer, ICA, *Committee Hansard*, Sydney, 14 October 2011, p. 45.

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

6 Mr Mark Nucifora, Chairman, Cassowary Coast Banana Growers Association, *Committee Hansard*, Innisfail, 29 September 2011, p. 13.

Timeliness

- 6.19 RG 165 stipulates that insurers must provide a final response to complainants within 45 days.⁷ Final responses to disputes are to be made in writing, with information on external dispute resolution if the complainant is unhappy with the decision. This timeframe covers the entire process, regardless of the timeframes set by the Code for each tier of IDR.

Box 6.0 Perth Hills fires

The Perth Hills fires in February 2011 destroyed 71 homes and damaged a further 39 homes. In Kelmscott, the Committee listened to stories from residents affected by the bushfires.

The general sentiment was one of anger and frustration with the insurance claims handling process. Residents reported that the insurance claims process had added to the ordeal of the disaster event with one person commenting, 'it is just much too complicated.' Distressed residents reported poor service from insurance companies with some recalling insurance representatives not taking claims seriously and responding in a rude or harsh manner. In the aftermath of a trauma, residents found this type of treatment from insurance companies particularly hard to comprehend and to deal with. One resident cited a lack of professionalism from the insurance company and 'stand offs' at every stage of the claim. Unfortunately, delays with insurance assessors and then with approved builders were overwhelmingly common and this in turn delayed the recovery process for residents.

The City of Armadale recounted some of these difficulties: 'Delays in updates and assessments, some residents are still awaiting decisions and actions six months after the event... Indecision and lack of progress by some insurers has had significant emotional and psychological effects on some residents'.

The vulnerable were particularly affected and there were stories of elderly people who had difficulty communicating with their insurance company, and had no-one that could advocate for them. In many instances, those with the least resources seemed to wait the longest for a resolution.

Compounding the loss after the fires, many residents had to seek alternative accommodation and experienced considerable financial difficulty. One resident recalled the disruptive and demeaning experience of homelessness due to fire. He was forced to live in various motels with his children for several months while pursuing his insurance claim. He had to support his children through the physical loss, and then through the emotional upheaval and uncertainty while waiting for his insurance claim settlement. Frustrated and dismayed with the insurer's lack of action, he commented that 'this goes on and on'.

7 Australian Securities and Investments Commission (ASIC), 'Regulatory Guide 165: Licensing: Internal and external dispute resolution', April 2011, p. 24.

- 6.20 Although the Code provides for 15-day timeframes for responding to complaints and again for disputes, the Code contains the qualification, in both tiers, that 'in cases where further information, assessment or investigation is required we will agree reasonable alternative time frames'.⁸
- 6.21 From the anecdotal evidence received, it is clear that many insurers did not contact complainants to negotiate 'reasonable alternative time frames' and that many consumers experienced lengthy delays in the IDR process.
- 6.22 The Carisbrook Flood Recovery Committee advised that the 'timeframes set out in policy documents appeared not to be adhered to.'⁹ The Central Goldfields Shire Council said in July 2011 that there were still 'residents and businesses processing through IDR. This is unacceptable.'¹⁰
- 6.23 The Caxton Legal Centre advised that, following the January 2011 Queensland floods, 90 per cent of their clients' IDR cases were unresolved as of September 2011 and that:
- Very few IDR responses are returned within the 45 days. Some IDR submissions have been with the insurer for more than 12 weeks. There seems to be particularly long delays associated with body corporate insurers with delays routinely exceeding three months in those matters.¹¹
- 6.24 No information was received from FOS about any identified issues arising from monitoring compliance with Code standards for IDR relating to disaster claims.
- 6.25 Often people who are experiencing such delays in IDR do not know where to turn for recourse. The Caxton Legal Centre commended FOS for 'establishing a registration process for disputes that could be undertaken before or during IDR. Normally disputes are not registered with FOS until after IDR is completed which slows the process slightly at that point.'¹²

Effectiveness

- 6.26 According to RG 165, the objective of IDR is to resolve disputes 'genuinely, promptly, fairly and consistently', and the benefits of effective

8 ICA, 'General Insurance Code of Practice', pp. 10, 11.

9 Carisbrook Flood Recovery Committee, *Submission 49*, p. 2.

10 Central Goldfields Shire Council, *Submission 27*, p. 2.

11 Caxton Legal Centre, *Submission 53*, p. 41.

12 Caxton Legal Centre, *Submission 53*, p. 50.

IDR procedures include ‘the ability to identify and address recurring or systemic problems’.¹³

- 6.27 The Committee found that legal aid organisations are critical of the insurance industry’s IDR procedures. In fact, Caxton Legal Centre stated that:

... most reputable banking institutions are generally much better than insurers at understanding the benefits to all parties in good IDR processes and, correspondingly, at engaging in conciliatory practices at that early stage ... There seems, to the Caxton lawyers, to be an industry wide general aversion to IDR and direct negotiation in the insurance sector. Although initially difficult to see why this would be the case given the time and cost associated with FOS and court, Caxton notes that in a banking dispute, the argument is normally about payment flowing from the customer to the bank, leaving banks at a loss if disputes are protracted. The opposite is true of disputes between insurers and their customers.¹⁴

- 6.28 Legal aid organisations assisted numerous consumers through an IDR procedure, and are able to comment on widespread – rather than individual – IDR practices among insurers in their IDR processes that are not genuine or prompt. Legal aid organisations were dissatisfied about time delays and the ineffectiveness of IDR procedures. For example, Caxton Legal Centre noted that some insurers are ‘treating the IDR stage as a “tick box” process’.¹⁵

- 6.29 The receipt of pro forma responses is a cause for concern about the genuineness of IDR procedures. The ILS submitted that ‘we can write very detailed dispute letters only to have a pro forma letter as a reply’ with no mention of the specific and genuine concerns raised in the dispute letters.¹⁶ Ms Karen Cox, Coordinator, ILS, told the Committee that:

We have engaged in good faith in trying to resolve these issues and in making lengthy submissions to insurance companies’ internal dispute resolution processes. Usually all we get in response is a couple of lines, little more than pro forma. We are

13 ASIC ‘Regulatory Guide 165’, April 2011, p. 21.

14 Caxton Legal Centre, *Submission 53*, p. 48.

15 Caxton Legal Centre, *Submission 53*, p. 39.

16 Insurance Law Service (ILS), *Submission 54*, p. 12.

now considering that that was probably, in all but a few exceptional cases, a waste of time.¹⁷

6.30 Caxton Legal Centre even received pro forma letters with incorrect names:

The responses received from the insurer were very similar and in some instances one client's name had been used on both responses. This indicates that the insurer had undertaken a 'copy and paste' approach to their responses.¹⁸

6.31 Legal aid organisations also criticise the insurance industry's preference for multi-tiered IDR procedures. In addition to the two tiers of complaints and disputes, in practice many insurers' first-point-of-contact staff try to resolve a complaint themselves within 24 hours before referring the complainant to either tier. These complaints tend to go unrecorded, with responses made verbally rather than in writing.¹⁹ It is unclear, in these instances, how consumers would be aware of their right to formal dispute resolution should they disagree with the verbal advice at point of contact.

6.32 Legal aid organisations claim that these multi-tiered IDR processes, unlike direct IDR procedures common in the banking sector, slow down the process and frustrate complainants. Legal Aid NSW notes that:

... a very significant number of consumers experience extensive delays in resolving claims. They are funnelled into a maze of systems and reviews, which become overwhelming and ultimately defeating. Many consumer advocates refer to this multi-tiered IDR as the *IDR black hole*. Legal Aid NSW and other similar organisations have for many years been assisting consumers to navigate their way through it.²⁰

6.33 The ILS submitted that there was not a meaningful attempt to resolve disputes as it is in the insurer's interest if complainants withdraw from the process out of fatigue:

There is so little engagement in IDR that it would be fair to say that consumers could reasonably skip IDR and go straight to EDR on the basis that IDR is just a delaying tactic. That said, the

17 Ms Karen Cox, Coordinator, ILS, *Committee Hansard*, Graceville, 27 September 2011, p. 17.

18 Caxton Legal Centre, *Submission 53*, p. 39.

19 ASIC, 'Review of general insurance claims handling and internal dispute resolution procedures' Report 245, August 2011, p. 34.

20 Legal Aid NSW, *Submission 57*, p. 7.

outcome that is best for consumers is to have the insurer genuinely engaged in IDR.²¹

- 6.34 In a 2011 report, ASIC noted similar criticism by consumer advocates of the multi-tier system for having ‘the effect of frustrating and ultimately deterring some complainants’.²²
- 6.35 The ILS recommended that ASIC amend its IDR regulatory guides to discourage multi-tiered systems and conduct audits of insurers’ compliance.²³

Committee comment

- 6.36 The Committee has grave concerns about the genuineness of general insurers’ IDR procedures, and questions whether they achieve the objectives set out in RG 165. Given the failure to notify consumers of their IDR rights and the indefinite delays, current IDR practices can hardly be called effective. Moreover, the lack of consistent reporting practices means that objective appraisals cannot be conducted, and insurers cannot monitor significant or recurring problems.
- 6.37 This is highly unacceptable. It is apparent that the current self-regulatory approach has failed to protect consumers by appropriately regulating or monitoring IDR procedures.
- 6.38 The Committee recommends that RG 165 be amended to ensure that insurers advise clients about their IDR procedures up-front at time of claim lodgement and to disallow multi-tiered IDR processes. These recommendations are detailed in Chapter 7.

External dispute resolution

- 6.39 Financial service providers are required by ASIC to be a member of an EDR system accredited by ASIC. For general insurers this EDR system is FOS, which is an amalgamation of various financial service oversight bodies, including the former Insurance Ombudsman Service.

21 ILS, *Submission 54*, p. 12.

22 ASIC, ‘Review of general insurance claims handling and internal dispute resolution procedures’ Report 245, August 2011, p. 34.

23 ILS, *Submission 54*, p. 7.

- 6.40 The EDR system provides consumers with the opportunity for an independent assessment of a dispute that has not been resolved to satisfaction through internal dispute resolution mechanisms. Accessing FOS is free to consumers, as it is paid for by the financial service provider with whom the complainant is in dispute.
- 6.41 It is important to note that FOS adjudicates disputes related to all financial service providers, not just insurers.
- 6.42 In 2010–11, out of a total of 30 283 financial service disputes, FOS adjudicated 5 627 general insurance disputes, of which 650 were related to extreme weather events.²⁴ The recent extreme weather events contributed to a 32 per cent increase in disputes about home building insurance and a 41 per cent increase in contents insurance disputes from the previous year.²⁵ Statistics are not yet available on disaster-related general insurance disputes registered by FOS since 1 July 2011.
- 6.43 The Committee examined consumer awareness of FOS, barriers to participation, the impact of legal aid, and the effectiveness of FOS.

Duty of insurers

- 6.44 According to RG 165, the final response that insurers are required to submit to complainants who enter IDR, must be in writing and must include information about the client's right to EDR and contact details for FOS.
- 6.45 A review of general insurance IDR procedures conducted by ASIC in August 2011 found that, contrary to RG 165, insurers may not always provide final responses, along with information on accessing free EDR through FOS, in writing.²⁶
- 6.46 FOS advised the Committee that in one instance, a consumer received a letter denying the claim without providing information on EDR.²⁷ Anecdotally, many more people who spoke to the Committee did not remember receiving any communication about FOS.

24 Financial Ombudsman Service (FOS), '2010-2011 Annual Review', pp. 20, 36, 51 <http://www.fos.org.au/centric/home_page/publications/annual_review.jsp> viewed 8 December 2011.

25 FOS, '2010-2011 Annual Review', p. 36.

26 ASIC, 'Review of general insurance claims handling and internal dispute resolution procedures' Report 245, August 2011, p. 38.

27 FOS, *Submission 47*, p. 5.

- 6.47 Moreover, the multi-tiered IDR system utilised by many insurers contributes to confusion about what constitutes a 'final response'. As mentioned above, complaints dealt with immediately through first point-of-contact staff are not usually responded to in writing, let alone recorded. Furthermore, complaints at the first tier are also often not responded to in writing; in cases where they are, they mention only the next tier of IDR but not EDR.²⁸ Insurers evidently do not consider a first-tier decision to be a 'final response'. However, in reality, the decision made at the first tier of IDR is the final response for many consumers, if they decide not to pursue the issue. This confusion is not beneficial to policy-holders.
- 6.48 During the course of the inquiry, the Committee encountered similar findings to ASIC, with many witnesses telling the Committee that they were not advised by their insurer of the availability of external dispute resolution. Most had heard about external dispute resolution through a community visit from FOS or via legal advice. The CILS survey found that more than 65 per cent of respondents were not given information about EDR.²⁹
- 6.49 Several financial counsellors identified a lack of knowledge about FOS; one financial counsellor reported that a client 'did not know about FOS until I spoke to him and his insurer at no stage told him about Internal Dispute Resolution or External Dispute Resolution'.³⁰
- 6.50 The FOS advised the Committee that in at least one instance, a consumer received a letter denying a disaster-related claim without providing information on EDR.³¹ The Committee suspects that there were many more instances of this.
- 6.51 The Natural Disaster Insurance Review (NDIR) report also concluded that 'consumer rights to EDR are often not disclosed' by insurers in the IDR process.³²
- 6.52 It is important that consumers are informed about their rights to access EDR and that information about FOS clearly explains the independent and free nature of the service. A community legal centre relayed the story of an elderly client whose claim had been denied, who declined to approach
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28 ASIC, 'Review of general insurance claims handling and internal dispute resolution procedures' Report 245, August 2011, p. 36.

29 ILS, *Submission 54.1*, p. 49.

30 Choice, the Consumer Action Law Centre, Financial Counselling Australia and the Footscray Community Legal Centre (Choice et. al.), *Submission 35*, p. 3.

31 FOS, *Submission 47*, p. 5.

32 The Treasury, 'Natural Disaster Insurance Review: Inquiry into flood insurance and related matters' September 2011, p. 11.

FOS as mentioned in the final response letter because 'he and his wife could not afford a lawyer or the cost of legal proceedings'.³³

Barriers to participation in EDR

- 6.53 Lack of consumer awareness of the right to free, independent EDR services is a key barrier to consumer participation in EDR and obviously to the effectiveness of an EDR system. Low awareness of the EDR must then cast doubt on FOS statistics of disputes as any measure of the general insurance industry's performance and consumer satisfaction.
- 6.54 Where insurers neglect their obligation to inform consumers of their right to EDR, consumers need to be able to access this knowledge through other means. Thus, the onus of informing consumers about FOS has fallen to FOS, consumer and legal advocates and local governments.
- 6.55 Unfortunately, general awareness of FOS as an EDR scheme for insurance disputes is low. A recent FOS survey showed that only about a quarter of respondents knew that if they have a dispute with their insurance company, they should take it to FOS.³⁴ Mr Price, Ombudsman General Insurance, admitted to the Committee that 'people are ignorant about the existence of [FOS]'.³⁵ This is especially the case in rural areas, where some people 'feel isolated and do not know how to proceed in disputes'.³⁶
- 6.56 In 2010-11, FOS staff participated in events to raise awareness of the organisation, with the geographical spread of the events roughly in line with the distribution of the Australian population.³⁷ However, the general public comprised only one per cent of the audience members represented at these events, although consumer advocates constituted eight per cent of the audience members. FOS also engaged in media promotion, produced flood-specific fact sheets, and established a dedicated natural disasters hotline which received between 103 and 181 calls per month from January to June 2011.³⁸

33 Choice et. al., *Submission 35*, p. 4.

34 Mr John Price, Ombudsman General Insurance, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 6.

35 Mr Price, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 6.

36 FOS, *Submission 47*, p. 20.

37 FOS, '2010-2011 Annual Review', p. 59.

38 FOS, '2010-2011 Annual Review', p. 65.

- 6.57 Additionally, FOS partnered with legal aid organisations to improve community awareness. The ILS told the Committee that these activities were well received³⁹ and Legal Aid Queensland said:
- The eight or nine seminars we did with [FOS] had upwards of 1 200 people attend. The extra 25 community forums we did following that had another probably 1 200 or 1 500 people in attendance.⁴⁰
- 6.58 Local governments, such as the North Grampians Shire Council, Buloke Shire Council and Somerset Shire Council, invited FOS to their localities.⁴¹ During the course of the inquiry it was revealed that other areas had little knowledge of FOS, so FOS then conducted public meetings in those areas.
- 6.59 The restrictive Terms of Reference that FOS operates under are another barrier to participation. That is, FOS can only accept cases that fall within its Terms of Reference, which preclude certain types of products, such as livestock.⁴² FOS only accepts general insurance disputes for retail general insurance policies, residential strata title insurance products, and small business insurance products.⁴³
- 6.60 This means that those who have farm insurance disputes with their insurer are unable to access FOS for EDR. Similarly, FOS does not adjudicate on business-interruption insurance.⁴⁴
- 6.61 In addition, there is a monetary barrier. FOS can only adjudicate cases involving values up to \$500 000, with a compensation limit of \$280 000.⁴⁵ Mr Price acknowledged that this is 'an issue in particular for home and content type insurance. \$280 000 is barely sufficient to cover the rebuilding of a home these days.'⁴⁶

39 Ms Cox, ILS, *Committee Hansard*, Graceville, 27 September 2011, p. 17.

40 Mr Paul Holmes, Senior Lawyer (Consumer Advocate), Consumer Protection Unit, Legal Aid Queensland, *Committee Hansard*, Graceville, 27 September 2011, p. 21.

41 Northern Grampians Shire Council, *Submission 37*, p. 4; Buloke Shire Council, *Submission 45*, p. 11; Cr Graeme Lehman, Mayor, Somerset Regional Council, *Committee Hansard*, Ipswich, 27 September 2011, p. 17.

42 Mr Price, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 11.

43 FOS, 'Terms of Reference', p. 8 <<http://www.fos.org.au/public/download.jsp?id=17224>> viewed 6 January 2012.

44 Mr Noel Roberts, Owner, Ace Computer World, *Committee Hansard*, Ipswich, 27 September 2010, p. 22.

45 Mr Price, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 10.

46 Mr Price, FOS, *Committee Hansard*, Canberra, 15 September 2011, p. 11.

Box 6.1 Victoria floods—inequity and frustration for rural residents

Bridgewater, Charlton and Rochester in regional Victoria were severely affected by the floods that ravaged more than 100 towns and inundated 30 per cent of the state in late 2010 and early 2011. As part of the inquiry, the Committee travelled to these areas and listened to the stories of residents.

The extent of the Victorian floods and scope of property devastation were similar to the Queensland floods, but Victoria received much less media attention. This added to the trauma experienced by residents. Some Loddon Shire residents 'feel that they have been neglected due to their rural location or distance from major centres, and that larger towns and more vocal groups were given a higher priority'. Central Goldfields Shire residents queried whether the 'lack of publicity affected the willingness of insurance companies to come to the party'. Some residents met with further disadvantage due to their rural locations: vouchers provided by insurers for replacing house contents could only be used at designated retailers out of town, some more than 70km away.

These hard-hit communities also lacked the legal aid assistance and government compassionate funds that had been galvanised in Queensland. Even compared to the Victorian bushfires, 'the floods just have not attracted that level of community sympathy'. Instead, distressed families faced 'insinuation that ... somehow we were to blame for choosing where we live' even though all houses had council approval.

Residents' stories of frustration with their insurance companies echoed that of other victims of natural disasters. Although there were positive experiences, even those 'who have had success with some sort of payout have still had quite negative experience because they were initially confronted with a wall'.

Impact of legal aid

6.62 As discussed above, there can be many difficulties for consumers in achieving a satisfactory result with IDR processes, and legal aid organisations have been important in guiding and supporting consumers, at no cost, through the process. Legal aid organisations are able to advise and assist consumers in their dealings with FOS.

6.63 The Victorian Legal Assistance Forum (VLAF) stated that:

Our experience clearly confirms that the availability of free legal services enhances people's access to EDR, and helps individuals realise the benefits they are entitled to under their insurance policies.⁴⁷

47 Victorian Legal Aid Forum (VLAF), *Submission 50*, p. 5.

- 6.64 Caxton Legal Centre submits that legal aid is important to consumers in ‘facilitating timely access to FOS decision makers, including the Ombudsman, in relation to a range of matters for the purposes of interim decisions and guidance’.⁴⁸
- 6.65 The Queensland Government praised community legal centres for their contribution to assisting victims of the floods and cyclones with insurance issues.⁴⁹
- 6.66 However, there are concerns that access to legal aid is limited. The Committee’s online survey found that almost three-quarters of respondents were unaware that free legal advice was available for insurance claims advice.⁵⁰
- 6.67 The National Pro Bono Resource Centre commented that:
- Recent Australian experience of disasters has shown that people do not necessarily identify insurance issues as legal issues and will not seek legal assistance for an insurance problem unless they are effectively referred from another service.⁵¹
- 6.68 Even so, following the Victorian and Queensland floods, legal aid organisations were overwhelmed by the volume of clients seeking assistance with their insurance claims and in particular with dispute processes relating to insurance claims.
- 6.69 Legal practitioners who offer legal advice and representation for a fee often are unaware of the free services of FOS that clients can be referred to. Moreover, FOS noted that ‘there is ignorance within the legal fraternity about how beneficial something like FOS can be’,⁵² perhaps because FOS does not usually award legal costs.⁵³
- 6.70 Such a possibility leads NIBA to caution that ‘those promoting legal solutions may not be advising their clients of the availability of a free, independent dispute resolution process that is binding on the insurer’.⁵⁴
- 6.71 FOS notes that few consumers have legal representation before FOS, and that ‘while consumers are not disadvantaged if not represented, legal representation will often assist in the identification of the issues in

48 Caxton Legal Centre, *Submission 53*, p. 37.

49 Queensland Government, *Submission 13*, p. 6.

50 Committee survey.

51 National Pro Bono Resource Centre, *Submission 15.1*, p. 15.

52 Mr Price, FOS, *Committee Hansard*, Canberra, 15 September 2011, pp. 6–7.

53 FOS, *Submission 47*, p. 20.

54 National Insurance Brokers Association, *Submission 36*, p. 7.

dispute.⁵⁵ However, Mr Price advised the Committee that legal representation can add to delays, saying that 'there are matters where I have completed site visits on that I just want to resolve, but I am waiting for Legal Aid to put in their further information.'⁵⁶

- 6.72 Legal aid organisations have expressed concern that consumers need legal assistance to cope well with the EDR system at FOS. Mr Paul Holmes, senior consumer advocate lawyer, Legal Aid Queensland, told the Committee that their clients know that they can pursue EDR without legal representation to avoid delays, but only two clients opted for this course of action. Mr Holmes said that this:

... suggests that insurance is far too complicated for the ordinary consumer to feel comfortable in dealing with it. That is particularly reinforced with me when we had a lawyer ring up the other day seeking our assistance with their own claim.⁵⁷

- 6.73 Caxton Legal Centre informed the Committee that it does not have the resources to provide legal assistance to clients beyond the IDR process, and noted that:

There have been many clients who have required extensive reassurance and support to decide to continue their matter [to FOS] unrepresented. Caxton lawyers are very concerned about how a lot of these clients will fare as self-represented complainants in FOS.⁵⁸

- 6.74 Consumer advocates raised concerns in their submission about the effectiveness of FOS in cases where consumers lack legal representation:

Insurance is an extremely complex area of law and insurance cases are challenging even for solicitors. It is unlikely that an unsupported consumer will be able to bring all relevant facts and law to the attention of the decision-maker in an insurance dispute.⁵⁹

- 6.75 In addition to limited access to free legal assistance, the resources of legal aid organisations and community legal centres are over-stretched for the workload that follows wide-scale natural disasters.

55 FOS, *Submission 47*, p. 21.

56 Mr Price, *FOS Committee Hansard*, Canberra, 15 September 2011, pp. 7-8.

57 Mr Holmes, Legal Aid Queensland, *Committee Hansard*, Graceville, 27 September 2010, p. 18.

58 Caxton Legal Centre, *Submission 53*, p. 55.

59 Choice et. al., *Submission 35*, p. 6.

- 6.76 The ILS, the only free specialist legal service in Australia, has recurrent funding of \$70 000 per year from the Australian Government until 2013, and one-off funding of \$130 000 from Legal Aid NSW for the 2011–12 financial year.⁶⁰
- 6.77 In the wake of the Victorian bushfires in 2009, a number of legal aid organisations and community legal centres established the temporary Bushfire Legal Help project which, apart from \$220 000 from the Australian Government, was ‘largely unfunded and was resourced by its members by the reallocation of existing resources and goodwill’.⁶¹
- 6.78 The Australian Government also provided one-off funding of \$200 000 to Legal Aid Queensland after the Queensland floods and cyclones of 2010, and the Insurance Council of Australia contributed a further \$250 000. These funds ‘enabled LAQ and Caxton Legal Centre to devote the time of their lawyers to helping people affected by floods and cyclones’.⁶²
- 6.79 In Western Australian, no government or industry funding was provided for insurance difficulties following the bushfires of February 2011, but WA Legal Aid coordinated insurance specialist volunteers to provide pro bono insurance advice.⁶³
- 6.80 Similarly, legal aid organisations in Victoria did not receive additional funding from governments or the insurance industry after the 2010 and 2011 flood events.
- 6.81 This lack of funding for specialist insurance legal assistance meant that the legal aid network was unable to adequately meet the demands of consumers following recent natural disasters around the country.
- 6.82 The VLAF submits that this places consumers at a disadvantage:
- The limited funding for civil legal aid by governments over the past 15 years causes injustice when those who cannot afford robust legal representation are seeking to assert their rights against well resourced insurers.⁶⁴

60 ILS, *Submission 54*, p. 15.

61 VLAF, *Submission 50*, p. 8.

62 Queensland Government, *Submission 13*, p. 5.

63 Mr Justin Stevenson, Director, Civil Law, Legal Aid Western Australia, *Committee Hansard*, Kelmscott, 2 August 2011, p. 9.

64 VLAF, *Submission 50*, p. 7.

- 6.83 FOS stated that ‘experience with the Queensland flooding confirms the need to ensure that community and legal services are adequately funded and resourced’.⁶⁵
- 6.84 One of the recommendations of the NDIR report was that ‘Commonwealth and State governments provide funding for legal advice and assistance with insurance disputes following natural disasters’.⁶⁶
- 6.85 However, legal aid organisations stress that it is not just additional funding that is required in times of catastrophes, but an on-going investment in free specialist insurance legal services for consumers. Ms Jenny Lawton, Professional Support Lawyer, Victoria Legal Aid, told the Committee that ‘if we do not have funding to build that capacity and if we cannot maintain that capacity, then even throwing funds in after a disaster is not enough’.⁶⁷
- 6.86 NSW Legal Aid recommended more funding for the ILS as well as funding for specialist insurance legal services to be established in each state and territory.⁶⁸ Choice concurred with this recommendation.⁶⁹

Effectiveness of dispute resolution

- 6.87 In January 2012, FOS indicated that 50 per cent of insurance disputes relating to the January 2011 Queensland floods had not been resolved.⁷⁰ Disputes are still being registered with FOS as new information becomes available or internal disputes escalated. It is thus too early to comment with any reliability on the effectiveness of external dispute resolution. Moreover, the Committee only heard evidence about general insurance disputes, not all the disputes that FOS deals with.
- 6.88 The barriers to participation mentioned above, do lessen the effectiveness of FOS insofar that its reach and remit are reduced.
- 6.89 A joint submission from consumer advocacy groups recommended that FOS consider establishing a consumer advisor position – along the lines of existing industry advisors – for assisting applicants with managing their

65 FOS, *Submission 47*, p. 22.

66 The Treasury, ‘Natural Disaster Insurance Review’ September 2011, p. 17.

67 Ms Bridget Lawton, Coordinator, Consumer Law Service, Caxton Legal Centre, *Committee Hansard*, Bridgewater, 26 October 2011, p. 12.

68 Legal Aid NSW, *Submission 57*, p. 32.

69 Choice et. al., *Submission 35*, p. 9.

70 T Thompson, ‘Insurers jack up Rates as Victims struggle on’, *Courier Mail*, 9 January 2012, p. 5.

disputes, and that FOS report more comprehensively and transparently on its investigations of systemic issues.⁷¹

Committee comment

- 6.90 Overall, the Committee heard some positive feedback about FOS from consumers, insurers and consumer advocates. However, the Committee is highly concerned that many people who would benefit from taking their claim to FOS decided not to pursue that option due to ‘complaint fatigue’.
- 6.91 The Committee is completely appalled that some consumers may not have pursued EDR because they were not informed of it by their insurer. While FOS may provide satisfactory EDR processes, the EDR system cannot realistically be viewed as effective given the barriers to participation. Again, this is an unacceptable failing of industry self-regulation and, to a certain degree, FOS for not sufficiently promoting its services. Consequently, as with IDR, the Committee concludes that RG 165 should be amended to ensure that information about claimants’ rights to EDR is required to be provided at the time of claim lodgement.
- 6.92 In addition, knowledge about FOS is low and this contributes to poor representation and protection for consumers. There is a need for FOS to be more widely-known, responsive and visible. Accordingly, the Committee recommends in the strongest terms that FOS implement the following:
- a name change to ‘Insurance and Financial Ombudsman Service’, which could assist in raising the profile of the service and also make the role more apparent to consumers;
 - commit to developing a disaster-response plan that provides an ongoing physical presence in affected areas for three months following a disaster event; and
 - remove the monetary limit on disputes that may be considered by FOS.
- 6.93 Further, the Committee considers that expanded availability of, and access to, free legal assistance and consumer advice would be of great assistance to claimants, particularly following disaster events where claims may be complex. Legal assistance should be freely available to all those affected by a disaster event, regardless of financial circumstances.
- 6.94 In the concluding chapter, the Committee provides its recommendations for enhancing the effectiveness of the external dispute resolution system through a more systematic and comprehensive regulatory approach.
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71 Choice et. al., *Submission 35*, pp. 7, 8.

Recommendations

- 7.1 This inquiry was conducted in response to reports of large numbers of disaster victims encountering extreme difficulties with their insurance claims. Having nowhere else to turn, these residents began contacting their elected representatives – local, state and federal – to plead for assistance or intervention.
- 7.2 During the course of the inquiry, the Committee met and heard from many people who could not obtain information about the progress of their insurance claim or who were struggling to understand or dispute their insurers' decisions.
- 7.3 The Committee recognises that the Australian insurance industry faced multiple major events in the space of a few years and that this had an impact on the resources able to be employed in processing claims. It may certainly have been a worst-case scenario that hopefully will not be repeated for decades or even centuries. Nonetheless, these events exposed the weaknesses in the self-regulation of claims-handling in the general insurance industry.
- 7.4 In the aftermath of the succession of wide-ranging, sometimes simultaneous, natural disasters across the country, it became apparent that consumer rights are not sufficiently protected in many aspects of the insurance contracts that are entered into for peace of mind and out of personal responsibility.
- 7.5 The Committee appreciates that the number of people with negative experiences may not be in the majority of claimants. Nonetheless, it is precisely that segment of the population that has demonstrated the necessity for consumer rights that can protect all Australians. As Cr Paul

Pisasale, Mayor, City of Ipswich, said, 'the insurance companies have been like a protected species, and it has taken a flood to flush them out'.¹

7.6 Moreover, the industry is aware that climate change patterns indicate increases in the number and severity of extreme weather events such as cyclones and hailstorms. Compounding these risks, larger numbers of Australians are living in or moving to higher-risk areas,² such as the coastline or in outer suburban bush settings. Unfortunately, this means that scenarios such as the recent spate of natural disasters may be repeated at any time.

7.7 The Committee is resolute that consumer protections must be increased for insurance policyholders, particularly due to the low levels of consumer insurance literacy. Currently, consumer rights are protected in a piecemeal fashion. In the past, the general insurance industry has successfully argued for some exemptions to relevant legislation. However, given the flaws exposed in the General Insurance Code of Practice as it currently stands amidst a self-regulatory approach, these exemptions should be overturned and more stringent, mandatory obligations implemented.

7.8 The Committee presents here a suite of recommendations to provide much-needed consumer protections and to require the general insurance industry to put in place measures for responding appropriately during disaster events.

7.9 These recommendations will ensure comprehensive protections for consumers:

- when entering into insurance contracts;
- during claims-handling processes; and
- when pursuing insurance disputes.

Insurance contracts

7.10 Consumers need to be able to make informed decisions when they purchase insurance policies. Although price is often the main consideration, consumers need to be aware of other very important

1 Cr Paul Pisasale, Mayor, City Ipswich Council, *Committee Hansard*, Ipswich, 27 September 2011, p. 7.

2 M Smith, 'Climate Change a Risk but Impact's Unclear', *Australian Financial Review*, 16 January 2012, p. 56.

factors. Given the complexity of insurance contracts, consideration must be given to how best inform consumers of their policy coverage, and the consequences that can subsequently flow from a need to lodge a claim against the policy. Awareness of levels of risk and types of insurance policies may lead to decisions based on more than just the cost of the premium.

Standard cover

- 7.11 Consumer awareness of their policy coverage could be greatly improved if it could be compared against the reference of Standard Cover as detailed in the Insurance Contracts Regulations. Standard Cover includes flood insurance among its perils coverage, and provides for total replacement, rather than up to a nominated sum, in the event of loss. The Committee considers that Standard Cover should be a benchmark for the ideal policy against which consumers can consider their needs and their capacity to accept deviations from the Standard Cover. This would enable more informed decision-making for consumers when entering into an insurance contract.
- 7.12 Greater awareness of Standard Cover can be achieved either through making it mandatory for insurers to provide policies that meet Standard Cover, and through more easily understood and readily available disclaimers of derogation from Standard Cover than those that are currently given. This would mean clear up-front information without the capacity for a disclaimer to be lost within a lengthy Product Disclosure Statement.
- 7.13 Consumers should be able to choose a policy that does not conform to Standard Cover, but in such instances they should be made aware that in doing so they are opting out of certain standard conditions, such as cover for flood or actions of the sea, or total replacement cover. State and local government measures to quantify and reduce the risks of natural disaster damage will assist consumers in making decisions about general insurance policies.

Recommendation 1

7.14 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

7.15 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.

Standard definition of flood

7.16 The fine print about types of water inundation and definitions of flood led to confusion, trauma and lengthy delays for many insurance claimants. Further, many only discovered their policy terms when they lodged their claim. The Committee fully supports the enactment of the *Insurance Contracts Amendment Bill 2011* that will provide for a standard definition of 'flood' to be defined in the *Insurance Contracts Regulations*.

7.17 The bill will also require insurers to provide clients with a Key Facts Sheet that summarises the main elements and exclusions of the relevant policy. The Key Facts Sheet would be an ideal vehicle for explaining Standard Cover and communicating any derogation from Standard Cover, as per

the above Recommendation. The Committee recommends the expedited passage of the bill.

Recommendation 3

- 7.18 **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.**

Unfair contracts terms

- 7.19 The Committee does not consider that the exemption of general insurers from unfair contract terms obligations is warranted. Further, the industry as a whole has not demonstrated a capacity to protect consumers under the current exemption. It is the view of the Committee that the application of unfair contract terms laws would not be unduly onerous to general insurers who already have sound business practices. However, their application would provide a much-needed layer of protection to consumers by ensuring that they have access to legal remedies against unfair terms or exclusions.
- 7.20 The Natural Disaster Insurance Review report concluded that:
- ... unfair contract terms legislation will provide consumer protection over and above that provided by the duty of utmost good faith under section 13 of the [Insurance Contracts] Act and the general fairness test under the [Financial Ombudsman Service] Terms of Reference.³
- 7.21 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 *Australian Securities and Investments Act 2001* (Cth) be removed.

3 The Treasury, 'Natural Disaster Insurance Review: Inquiry into flood insurance and related matters' September 2011, p. 107.

Recommendation 4

- 7.22 **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.**

Claims-handling process

- 7.23 Consumer protection is particularly weak in the area of insurance claims handling. As demonstrated in the aftermath of recent disaster events, with some exceptions, the performance of insurers has been unacceptable with regard to delays in determining claims and to communication practices with clients.
- 7.24 At present, oversight of consumer rights in the handling of insurance claims is contained in the General Insurance Code of Practice (the Code). Given the operation of the general insurance industry during recent disaster events, the Committee has little faith in the Code as it currently stands as an effective self-regulatory tool.
- 7.25 The Committee considers it essential that the Code be amended considerably. The Code must have clear outcomes and definite timeframes for the claims-handling process.
- 7.26 The Insurance Council of Australia has proposed amendments to the Code that provide a maximum of four months to make a decision on a claim 'unless there are exceptional circumstances in relation to your claim'.⁴ 'Exceptional circumstances' include claims related to a catastrophe or disaster that has been declared as such by the Insurance Council Board. It is envisaged that such a declaration would be made in the event that insurers were 'under severe strain' to determine claims.
- 7.27 The Committee considers it essential that there is an identified end-point for determining claims, regardless of the situation or declaration of a disaster. The Committee considered carefully the issue of an alternative set of standards and timeframes to apply during exceptional circumstances such as declared disasters.

4 Proposed changes to the General Insurance Code of Practice, 28 November 2011.

- 7.28 The Committee considers that many industries and services are required to develop contingency plans to ensure that there is the capacity to respond as required during unforeseen and exceptional circumstances. Furthermore, during these situations, the needs of policyholders are even more acute as losses are often catastrophic.
- 7.29 Consequently, the Committee concludes that it is the responsibility of the insurance industry to collectively ensure it has the capacity to operate, meeting agreed timeframes and obligations to regularly communicate regarding the progress of a claim, regardless of the circumstances. The business of the insurance industry is the unforeseen, and they must be adequately prepared to meet service standards at the times that their services are most urgently required.

Recommendation 5

- 7.30 **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;**
 - ⇒ **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.**

7.31 At present, the Financial Ombudsman Service (FOS) compiles comparative tables regarding the outcomes of the external dispute resolution process that FOS engages in with insurers. Information published on the FOS website details for each company the chance of a dispute coming to FOS, the average length in resolution, and the outcomes of the resolution process.⁵

7.32 Under Australian Securities and Investments Commission (ASIC) Regulatory Guideline 139, FOS also monitors the Code and reports to ASIC on its findings. These reports, while informative about the industry as a whole, are generalist and lessen the enforcement power of the Code and the capacity to sanction insurers who breach the Code.

5 Financial Ombudsman Service, 'Comparative Tables 2010–2011' <http://fos.org.au/centric/home_page/publications/comparative_tables/comparative_tables_20102011.jsp> viewed 14 February 2012.

- 7.33 The Committee deems it appropriate that FOS is required to provide to ASIC more detailed reports on breaches and systemic issues of the Code by identifying the insurers concerned. In addition, following disaster events, reports specific to the disaster area should be provided to ASIC regarding the operation of insurance companies.

Recommendation 6

- 7.34 **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.

- 7.35 The Insurance Contracts Act imposes the duty of utmost good faith on insurers in their dealings with policyholders. However, consumers would have to take legal action against an insurer to prove a breach of this duty.
- 7.36 Under the *Corporations Act 2001* (Cth) (Corporations Act), ASIC is responsible for ensuring that financial service providers, including insurers, fulfil the requirements of holding an Australian Financial Service licence, such as providing services efficiently, honestly and fairly. However, claims handling and settlement are exempt from the definition of a financial service, meaning that the above obligations, and ASIC regulation, do not apply to claims handling.

7.37 The Insurance Contracts Amendment Bill 2010 sought to reverse this exemption to regulation. The bill proposed that breaches of the duty of utmost good faith in claims handling would constitute a breach of the Insurance Contracts Act. ASIC would then be empowered to deal with such breaches through the use of remedies that apply to Australian Financial Service licensees. The bill lapsed when the 2010 general election was called.

Recommendation 7

7.38 **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*.**

7.39 In the event that legislation is not introduced to empower ASIC to deal with breaches of utmost good faith on behalf of consumers, as per Recommendation 7, the Committee recommends compulsory standards for general insurance claims-handling practices.

7.40 Some legal aid organisations have called for the implementation of an Australian Standard on claims handling. However, given that there is an existing Code of Practice endorsed by the general insurance industry, the

Committee does not consider that there is a need to recreate standards for minimum claims-handling requirements. Moreover, the development of an Australian Standard on claims-handling procedures would be a lengthy process and one that the Australian Government would not be able to provide input into.

- 7.41 The Code, once amended as per Recommendation 5, can be introduced into legislation as mandatory for all general insurers who hold an Australian Financial Service licence under the Corporations Act or who are authorised by the Australian Prudential Regulation Authority under the *Insurance Act 1973*.

Recommendation 8

- 7.42 **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.**

Managing disputes

- 7.43 It is critical that the general insurance industry has effective internal dispute resolution (IDR) and external dispute resolution (EDR) systems to ensure the integrity of the industry. The Committee was dismayed with the lax operation of insurers' IDR processes. There was evidence of a systemic problem of lack of engagement by insurers in IDR. Some of the multi-tiered processes seemed to be needlessly complex and frustrating. In addition insurers did not appear to take seriously their obligation to inform clients of their rights to IDR and EDR with FOS. Further, consumer awareness of IDR and EDR was exceedingly low.
- 7.44 In the Committee's opinion, IDR processes are effective when they are managed in a genuine, efficient and transparent manner and complainants have access to key information. As this is not occurring in the current regime, the Committee considers that ASIC Regulatory Guideline 165 on IDR and EDR standards should be more prescriptive in setting out obligations on general insurers.

Recommendation 9

7.45 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.

7.46 As insurance is a complex subject area, many consumers may benefit from legal assistance in navigating IDR or EDR processes. The Committee understands that legal aid and pro bono legal assistance resources are stretched and that insurance law is a specialist area. With additional funding, specialist insurance law services can combine the resources of lawyers, financial counsellors, social workers and consumer advocates.

7.47 Particularly during disaster events when claimants are stressed, losses are extensive, and claims are numerous, there is a need to be able to mobilise specialist legal resources and ensure greater ongoing consumer advice through FOS.

7.48 It is recommended that consumers have access to a consumer advisor at FOS who can provide advice on registering, managing and progressing general insurance disputes with FOS. The Committee considers it appropriate that such a position be co-funded by the general insurance industry and the Insurance Law Service. Such a position could also coordinate better dissemination of information about the role of FOS, particularly in the wake of disaster events.

Recommendation 10

7.49 **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

7.50 **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.**

7.51 Another issue of concern to the Committee, although slightly outside the terms of reference, is the cost of contacting insurers. In the wake of natural disasters that damage or destroy homes, many people do not have access to landlines and must rely on mobile telephones. Calls to 1300 numbers are untimed and charged at a local cost from landlines, but not for mobile telephones. Given that consumer can be on hold for long periods of time, the cost of the call can become prohibitive.

Recommendation 12

7.52 **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.**

Topics for further investigation

- 7.53 The Committee heard evidence about several issues that were outside the scope of the terms of reference. However, the evidence and the nature of the issues are compelling enough that the Committee considers they warrant investigation.
- 7.54 These issues include:
- the sizeable increases in insurance premiums in the wake of multiple natural disasters that have diminished the insurance industry's profits; and
 - the emotional impact of recovering from the life-changing physical and financial effects of disaster events.
- 7.55 Further detail on these issues is provided in the following sections. A third significant issue raised with the Committee was the inability to secure multi-peril crop insurance or insurance for livestock and certain farming assets and infrastructure. The Committee considers that the Department of Agriculture, Fisheries and Forestry should hold discussions with primary producers to investigate this further and report to the Minister for Agriculture, Fisheries and Forestry.

Premium increases

- 7.56 By the end of 2011, renewal notices for insurance policies were beginning to arrive in policyholders' mailboxes. Many people were shocked to find that their premiums had increased out of all proportion to previous yearly increases. The Committee heard of increases in premiums ranging from 30 per cent to 1 000 per cent.
- 7.57 The cost of premiums for home and contents insurance has increased across the nation as a result of the recent natural disasters. Queensland has especially been affected with an average premium rise of 12 per cent and a median increase of 14 per cent.⁶ However, 31 per cent of Queensland policies have increased by more than 20 per cent. Price increases up to 41 per cent have been observed in one flood-affected regional area and increases of up to 36 per cent were reported in a flooded Brisbane locality.⁷

6 Canstar Cannex, 'Home and Contents Star Ratings', Report No. 4, October 2011, p. 2 <http://www.canstar.com.au/images/star_ratings_reports/home-and-contents-insurance-oct-2011.pdf> viewed 8 December 2011.

7 Canstar Cannex, 'Home and Contents Star Ratings', Report No. 4, October 2011, p. 2.

- 7.58 In recent weeks, Committee members in different states have also been approached by large numbers of constituents reporting exorbitant premium increases, especially for strata title unit-holders.
- 7.59 The insurance industry attributes price increases to the subsequent rising cost of reinsurance:
- ... it is well publicised that the appetite of reinsurers, who have also played a major part in these losses, has changed and their perception of the risk in Australia has changed, so they are changing their price models quite significantly and passing those costs on to us as insurers.⁸
- 7.60 The Actuaries Institute of Australia said that another reason could be that previously insurers had not correctly understood, and therefore priced, the risk in particular areas and were now adjusting the premiums to accurate levels.⁹
- 7.61 However, excessive premium increases have not been limited to areas affected by floods, cyclones or bushfires. Residents in Victoria and Canberra living in low- or no-risk areas for flood have reported large jumps in their insurance premiums from the previous year.¹⁰
- 7.62 The increases are due to the inclusion of flood coverage in policies that previously did not cover flood, but some policyholders at very low risk of flooding are unable to opt out of flood for a lower premium because 'some insurers are not providing the opt-out option recommended by the government'.¹¹
- 7.63 Moreover, some residents have not been able to access insurance, particularly flood insurance, at all. Victims of natural disasters whose claims had been settled, still under assessment, or in dispute, were told that their policies would not be renewed.

8 Mr John Ripepi, Chief Executive Officer, Wesfarmers Federation Insurance, *Committee Hansard*, Sydney, 14 October 2011, p. 11.

9 Mr Peter McCarthy, Chairman, General Insurance Practice Committee, and Mr Daniel Smith, Director, Actuaries Institute of Australia, *Committee Hansard*, Canberra, 3 November, p. 6.

10 G Downie, 'Residents hit by Big Rise in Flood Premiums', *Canberra Times*, 9 January 2012, p. 2; D Gough and G Wilkins, 'Home Insurance Premiums to Skyrocket', *Sunday Age*, 15 January 2012, p. 3; Geelong Advertiser, 'Pensioner cops 600pc Hike in Insurance Bill' <http://www.geelongadvertiser.com.au/article/2012/01/11/301451_news.html> viewed 11 January 2012.

11 G Bullock, 'Disasters: The first rule is take cover', *Weekend Australian*, 21 January 2012, p. 29.

- 7.64 Owners of strata title residences or units in northern Queensland, particularly above the 26th parallel, were finding that they could not secure cover from any insurer or that premiums had reached exorbitant levels.
- 7.65 Accordingly, on 24 November 2011, the then Assistant Treasurer and Minister for Financial Services and Superannuation, Hon. Bill Shorten MP, asked the Committee to inquire into and report on the costs of, and potential market failure in, residential strata title insurance. The Committee will publish the report in March 2012 as Volume Two of its investigations into insurance issues in the wake of natural disasters.
- 7.66 However, the issue of a market failure in insurance applies equally to non-strata residential properties, rural properties and businesses. Mrs Rosemary Menken, Queensland MP for Burdekin, told the Committee that:
- Quotes that I have been getting from people are that rural insurances have increased enormously and many insurance companies have pulled away from that [market].¹²
- 7.67 The Committee is concerned that the soaring costs of insurance will dissuade many Australians from insuring their properties or businesses, leaving large numbers of residents in dire situations should they fall victim to a natural disaster. The Committee considers that the issue of dramatic rises in insurance premiums is urgent and action should be expedited. The Committee has identified this issue, but fear that conducting a further inquiry may delay outcomes and result in more residents being left uninsured. Accordingly, the Committee recommends that the Minister for Financial Services and Superannuation immediately establish a joint industry-Government taskforce to address the rising costs and potential market failure of insurance premiums across Australia.

Recommendation 13

- 7.68 **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.**

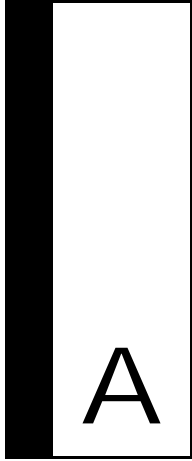
12 Mrs Rosemary Menkens MP, Member for Burdekin, Queensland, *Committee Hansard*, Innisfail, 29 September 2011, p. 31.

Emotional impact

- 7.69 It was clear to the Committee that the recent catastrophes had taken a large toll on people and entire communities. This is understandable in light of the trauma that comes from significant or total destruction of one's home and contents or business. In addition to the financial ramifications, affected residents had to deal with disruptions to work, school, social networks, accommodation, health and transport.
- 7.70 In some cases, the resilience of disaster victims was sorely tested by the additional burden of slogging through an insurance process that could be a rigmarole of information-gathering, a black hole of information, a brick wall against reason, or an endless wait. The Committee believes that insurance companies should include employee training for managing people who have experienced trauma or a Mental Health First Aid course.
- 7.71 It is anticipated that the recommendations made here regarding the operation of the insurance industry will mark a new chapter in insurance standards and service.
- 7.72 Regardless of the role that unreasonably difficult or extended insurance claims-handling had on people's emotional and mental well-being, the Committee is concerned about the ongoing resources available to disaster victims after the initial goodwill, volunteer clean-ups and distribution of charitable goods have receded.
- 7.73 The Committee calls on the Australian Government and all state and territory governments to maintain their commitment to funding services that assist communities with the practical aspects of rebuilding lives with ongoing financial and emotional counselling. Unfortunately depression and suicide are all too common tragedies that follow in the wake of disasters. When the fires are extinguished, the water receded, and the media retreated, the community still needs time and assistance to heal.

Finally, the Committee thanks those who have participated in this inquiry. Although the Committee regrets that it was unable to assist with individual cases, we acknowledge your involvement while still on your road to recovery. Your contribution will help ensure a smoother path for others who face the insurance claims process in the wake of a disaster event.

Graham Perrett MP
Chair



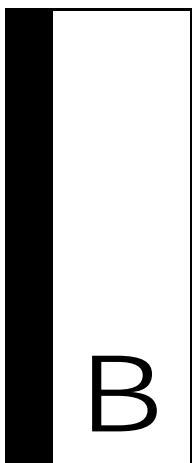
Appendix A—List of Submissions

- 1 Brian Semmler OAM
- 2 Viswanath Vemulapad
- 3 Confidential
- 4 Dave McLennan
- 5 R.G. Marshall
- 6 Emma Anderson
- 7 Keith Carnell
- 8 Graham Janz
- 9 Confidential
- 10 Wayne Keller
- 11 Tammy Tarrant
- 12 Strata Community Australia Ltd
- 13 Queensland Government
- 13a Queensland Government—Supplementary [Confidential]
- 13b Queensland Government—Supplementary
- 14 Australian Securities and Investments Commission
- 15 National Pro Bono Resource Centre
- 16 Insurance Council of Australia

- 17 James Foldszin
- 18 The Institute of Actuaries Australia
- 19 City of Armadale
- 20 Vince Stanton
- 21 Richard Walkey
- 22 Gary Loblely
- 23 Department of Premier and Cabinet, Western Australia
- 24 Heritage Council of Western Australia
- 25 Name withheld
- 26 Rathburnie Estate Nature Refuge
- 27 Central Goldfields Shire Council
- 28 Central Goldfields Shire Council Flood Recovery Executive Committee
- 29 Brisbane City Council
- 29a Brisbane City Council – Supplementary
- 30 Richard Talbot
- 31 Jane Reynolds
- 32 J.K. Gledhill
- 33 Australian Communications Consumer Action Network
- 34 Ipswich City Council
- 35 Choice, the Consumer Action Law Centre, Financial Counselling Australia and the Footscray Community Legal Centre.
- 36 BT Financial Group
- 36a BT Financial Group - Supplementary
- 37 The Northern Grampians Shire Council
- 38 Insurance Australia Group
- 39 Pyrenees Shire
- 40 RACQ Insurance Limited

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- 41 Suncorp Group Limited
 - 42 Wayne Wendt Queensland MP
 - 43 Loddon Shire Council
 - 44 Legal Aid Queensland
 - 45 Buloke Shire Council
 - 46 National Insurance Brokers Association
 - 47 Financial Ombudsman Service
 - 48 Keith Mann
 - 49 Carisbrook Disaster Recovery Centre
 - 50 Victorian Legal Assistance Forum
 - 51 Kevin F. Wood
 - 52 Gary Sharp
 - 53 Caxton Legal Centre Inc.
 - 54 Insurance Law Service
 - 55 David Stubbin
 - 56 Meg and Wilhem Lehmann
 - 57 Legal Aid New South Wales
 - 58 Cr Nicole Johnston, Tennyson Ward, Brisbane City Council
 - 59 Rosemary Menkens, Queensland MP
 - 60 Andrew Cripps, Queensland MP
 - 61 John Hughes
 - 62 Ace Computer World
 - 63 Bevan Bobbermein
 - 64 Bruce K. Gillan
 - 65 Scott Buchholz, Federal MP
 - 66 South West Chamber of Commerce
 - 67 Name withheld

- 68 Scott French
- 69 Kurrimine Beach Holiday Park
- 70 David Woods
- 71 Tent Hill/Mt. Sylvia/Junction View Areas Flood Relief
- 72 Michael Dineen
- 73 Tanya Carroll
- 74 Western Downs Regional Council
- 75 Darling Downs Cotton Growers Inc.
- 76 Ipswich Flood Survivors Support Group
- 77 Cassowary Coast Banana Growers Association
- 78 Strathewen Community Renewal Association
- 79 Graham and Beth Curnow



Appendix B—List of witnesses appearing at public hearings and community forums

Tuesday, 2 August 2011 - Toodyay, WA

Individuals

Ms Sally Bolger

Mr Laurie Biggs

Mr Joe Candeloro

Mr Mark d 'Alton

Mr Francis Panizza

Mr Charlie Wroth

Shire of York

Mr Pat Hooper, President

York Racing Inc

Mr Patrick Flynn, Chairman

Tuesday, 2 August 2011 - Kelmscott, WA

Individuals

Mr Bill Crerar

Mrs Valerie Kingsley

Mr Paul Marshall

Ms Charlene O'Brien

Mr Vince Stanton

Mrs Denise Ward

City of Armadale

Mr Ken Brown, Project Manager

Ms Yvonne Coyne, Executive Director

Community Legal Centres Association (Western Australia) Inc

Mr Myles Kunzli, Executive Director

Legal Aid Western Australia

Mr Justin Stevenson, Director, Civil Law

Wednesday, 3 August 2011 - Carnarvon, WA

Individuals

Ms Melissa Brady

Mr Stan Kostanich

Mrs Caroline May

Mr Bruce May

Ms Julee Nelson

Carnarvon Chamber of Commerce and Industry

Mr Paul Kelly

Department of Agriculture and Food

Mr Mark Lewis, Manager, Policy & Industry Development

Thursday, 15 September 2011 - Canberra

Financial Ombudsman Service

Mr John Price, Ombudsman General Insurance

Thursday, 22 September 2011 - Canberra

Australian Securities and Investments Commission

Ms Emma Curtis, Acting Senior Manager, Deposit Takers Credit and Insurers

Mr Greg Kirk, Senior Executive Leader, Deposit Takers Credit and Insurers

Tuesday, 27 September 2011 - Graceville, QLD

Individuals

Mr Joe Braga

Mr John Braga

Mr Gary Lobleby

Mr David Stubbin

Ms Jill Violet

Benarrawa Community Development Association Inc

Ms Kerrie Woodrow, Coordinator/Community Development Worker

Ms Helen Abbott, Coordinator/Community Development Worker

Brisbane City Council

Cr Nicole Amanda Johnston, Councillor for Tennyson

Cr Julian Simmonds, Chairman for Public and Active Transport Committee, Councillor for Walter Taylor Ward

Brisbane Southwest Chamber of Commerce

Ms Alice Langford, President

Caxton Legal Centre

Ms Bridget Ann Burton, Coordinator, Consumer Law Service

Insurance Law Service

Ms Karen Cox, Coordinator

Legal Aid New South Wales

Ms David Coorey, Senior Solicitor

Legal Aid Queensland

Mr Paul Richard John Holmes, Senior Lawyer, Consumer Protection Unit

Tuesday, 27 September 2011 - Ipswich, QLD

Individuals

Ms Sue Brown

Mr Ian Bush

Ms Sue Thornes

Ace Computer World

Ms Janet Roberts, Owner

Mr Noel Graham Roberts, Owner

Biztopia

Mr Michael David Munt, Owner and Managing Director

Bundamba Flood Victims Support Group

Ms Erin Cook, Secretary

Ms Dianne Dimitrov, President

Mr Quang Huynh, Member

Ipswich City Council

Cr Paul Pisasale, Mayor

Ipswich Flood Survivors Support Group

Ms Vicki Ash

Lifeline Uniting Care Community Queensland

Ms Deborah Betty Olsen, Community Recovery Coordinator, Somerset and Ipswich Regions

Somerset Regional Council

Mr Robert Bain, Chief Executive Officer

Cr Graeme Lehmann, Mayor

Tuesday, 27 September 2011 – Fernvale, QLD

Individuals

Ms Vicki Ash
Ms Elizabeth Briggs
Mr Phil Browman
Ms Barbara Buitter
Mr Jim Buitter
Ms Tracey Coop
Mr Gerald Jenkins
Ms Shirley Jenkins
Mr Jon Keller
Mr Wayne Keller
Mr Graham Lehmann
Ms Lynette Lynch
Ms Julie Messenger
Mr Geoff Methers
Ms Shayla Methers
Mr Shane Newnham
Ms Di Press
Mr Ben Ruthernberg
Ms Joan Sharpe
Mr Dennis Ward
Mr Kev Williams
Ms Fay Williams

Wednesday, 28 September 2011 – Toowoomba, QLD

Federal Member for Wright

Mr Scott Buchholz MP

Darling Downs Cotton Growers Association

Mr Stuart Armitage, President

Lockyer Valley Flood Relief

Mr Derek Pingel, Coordinator

Toowoomba Chamber of Commerce and Industry Inc

Mr Greg Johnson, Chief Executive Officer

Mr Geoff McDonald, President

Toowoomba Regional Council.

Cr Bill Cahill, Councillor

Cr Peter Maxwell Taylor, Mayor

Western Downs Regional Council

Cr Raymond Bruce Jamieson, Councillor

Thursday, 29 September 2011 - Innisfail, QLD

Individuals

Ms Tanya Carroll

Mr George Despot

Mr Leslie Dickinson

Mr Michael Dineen

Mr Bruce Gillan

Mr Lindsay Hallam

Ms Sarah Jones

Mr Mick Lamont

Mr Bruno Maifredi

Mr Peter McLean

Ms Leslie Southon

Cassowary Coast Banana Growers Association

Mr Mark Nucifora, Chairman

Community Support Centre Innisfail Inc

Ms Julie French, Manager

Innisfail District Chamber of Commerce, Industry and Tourism Inc.

Mr Doug Olsen, Senior Vice-President

Queensland Member for Burdekin

Mrs Rosemary Norma Menkens MP

Queensland Member for Hinchinbrook

Mr Andrew Cripps MP

Tully and District Chamber of Commerce

Mr John Hughes, President

Thursday, 13 October 2011 – Canberra, ACT

Insurance Australia Group

Mr Alexander Harrison, Chief Operating Officer, Direct Insurance

Mr James Merchant, National Manager Claims

Mr Michael Wilkins, Managing Director and Chief Executive Officer

Friday, 14 October 2011 – Sydney, NSW

BT Financial Group

Mr Jim Glossat, Head, General Insurance

Allianz Australia Insurance Ltd

Mr Nicholas Scofield, General Manager, Corporate Affairs

Mr Garry Townsend, Chief Operating Officer

BT Financial Group

Ms Kylie Smith, Head of Corporate Affairs

Mr Mark Smith, General Manager, Bank Distribution and Insurance

Elders Insurance

Mr Timothy Plant, Managing Director

Insurance Council of Australia

Mr Karl Sullivan, General Manager, Policy Risk and Disaster Planning

Mr Robert Whelan, Chief Executive Officer

National Insurance Brokers Association of Australia

Mr Dallas Booth, Chief Executive Officer

QBE Insurance Australia

Mr Colin Fagen, Chief Executive Officer, Australian Operations

Mr Adrian Ferris, Manager, National Claims Property

Mr Shaun Standfield, General Manager, Australian Intermediaries

RACQ Insurance Ltd

Mr Graham Dale, General Manager, Personal Insurance Claims

Mr Bradley Heath, Chief Executive Officer

Mr Christopher Walsh, General Manager, Sales and Product

Suncorp Group

Mr Jamie Dobbs, Executive Manager, Commercial Insurance Claims Event Response

Ms Natasha Fenech, Executive General Manager, Customer Product and Pricing Personal Insurance

Mr James Higgins, Executive Manager, Queensland Event Recovery

Geoff Keogh, Head, Home Claims, Personal Insurance Claims

Mr Mark Richards, Executive Manager, Internal Dispute Resolution
General Insurance,

Mr Mike Thomas, Manager, Government Relations

Wesfarmers Federation Insurance

Ms Marie McKay, Head of Claims, National Operations

Mr John Nagle, Chief Executive, Lumley

Mr John Ripepi, Chief Executive Officer

Mr Robert Scott, Managing Director

Wednesday, 26 October 2011 – Bridgewater, VIC

Central Goldfields Shire Council

Mr Wayne Belcher, General Manager, Corporate and Community Services

Ms Emma Hutton, Flood Recovery Officer

Loddon Shire Council

Mr Brian Hinneberg, Flood Recovery Officer

Mr John McLinden, Chief Executive Officer

Victorian Farmers Federation

Mr Max Blackmore, Member

Victoria Legal Aid

Ms Jenny Lawton, Professional Support Lawyer

Victorian Legal Assistance Forum

Mr Simon Roberts, Project Officer

Wednesday, 26 October 2011 – Charlton, VIC

Individuals

Mr Russell Amery

Mr Steven Harper

Dr Brian Willoughby Walklate

Buloke Shire

Ms Naomi Grant, Recovery Manager

Cr David Pollard, Deputy Mayor

Charlton Chamber of Commerce and Industry

Mr Alan Getley, Treasurer

East Wimmera Health Service

Mr Peter Noble, Flood Recovery Manager

Ms Casey Wright, Flood Recovery Manager

Federal Member for Mallee

Mr John Forrest MP

Northern Grampians Shire Council

Mr Peter Bigmore, Rural Flood Recovery Officer

Mr Gregory Little, Municipal Recovery Manager

Thursday, 27 October 2011 - Rochester, VIC

Individuals

Mr John Cox

Mr Jim Lawford

Rochester and Elmore District Health Service

Mrs Allannah Jenkins, Flood Case Support Worker

Rochester Chamber of Commerce and Industry

Mr Leigh Wilson, President

Shire of Campaspe

Mr Keith Oberin, Municipal Emergency Response Manager

St Lukes Anglicare

Mr Ross Smith, Financial Counsellor

Thursday, 27 October 2011 - Strathewen, VIC

Individuals

Mr Peter McLennan

Ms Jane Reynolds

Leslie Apted and Sons Pty Ltd

Ms Bronwyn South, Finance Manager

Federal Member for McEwen

Mr Rob Mitchell MP

Strathewen Community Renewal Association

Mr Malcolm Hackett, Chairperson

Thursday, 3 November 2011 - Canberra

Institute of Actuaries Australia

Mr Peter McCarthy, Chairman, General Insurance Practice Committee

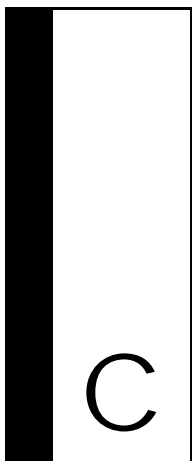
Mr Daniel Smith, Director

Thursday, 24 November 2011 - Canberra

Australian Prudential Regulation Authority

Mr Ian Laughlin, Member

Ms Helen Rowell, General Manager, Policy Development



Appendix C—List of Exhibits

- 1 Community Legal Centres Association (Western Australia) Inc
Emergency Preparedness and Disaster Planning of the Legal Profession in Australia

- 2 SunCorp
“Staying Connected” - PI Claims Conference 2011 Agenda

- 3 Ipswich City Council
Email from Llewellyn Motors



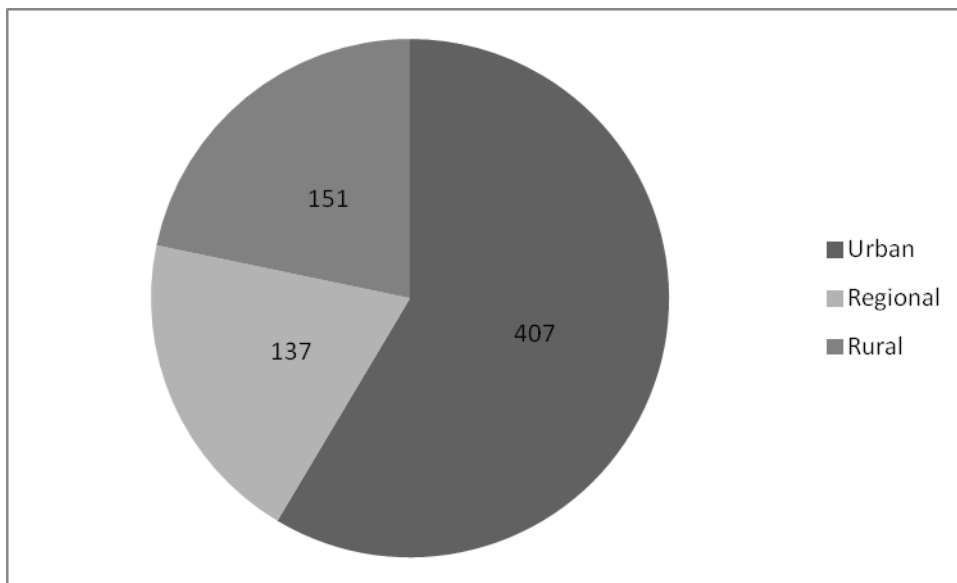
Appendix D—Survey results

The Committee launched an online anonymous survey on the inquiry website at http://www.aph.gov.au/house/committee/spla/insurance/online_survey/index.htm in June 2011 to gauge community concerns about the operation of the insurance industry during disaster events. The survey provided an opportunity for members of the community to tell the Committee about their experiences of dealing with insurance companies in relation to disaster-related insurance claims in an anonymous manner. This was important as some people, especially after experiencing difficulties with insurers, were fearful that publicly criticising the handling of their claim might jeopardise their claim or dispute. The survey was closed in early January 2012.

The survey did not collect any data on gender, age or residence. Almost 700 respondents entered the survey, but all questions were optional so not all participants answered every question. The results below identify the number of respondents for each question. The Committee views the survey results as descriptive rather than statistically vigorous, and recognises that the findings do not represent a full and reliable picture of Australians' experiences with insurance companies. There was scope for respondents to make comments if they wished to do so, and a selection of these have been included in italics along with the results.

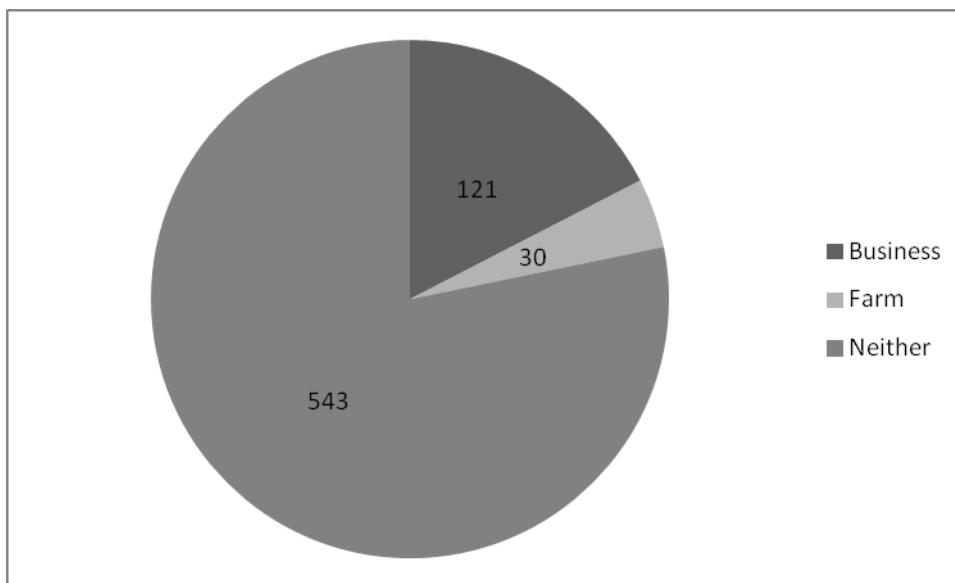
Question 1*Do you live in an urban, regional or rural area?*

Urban	407	
Regional	137	
Rural	151	Total: 695



Question 2*Are you operating a business or a farm?*

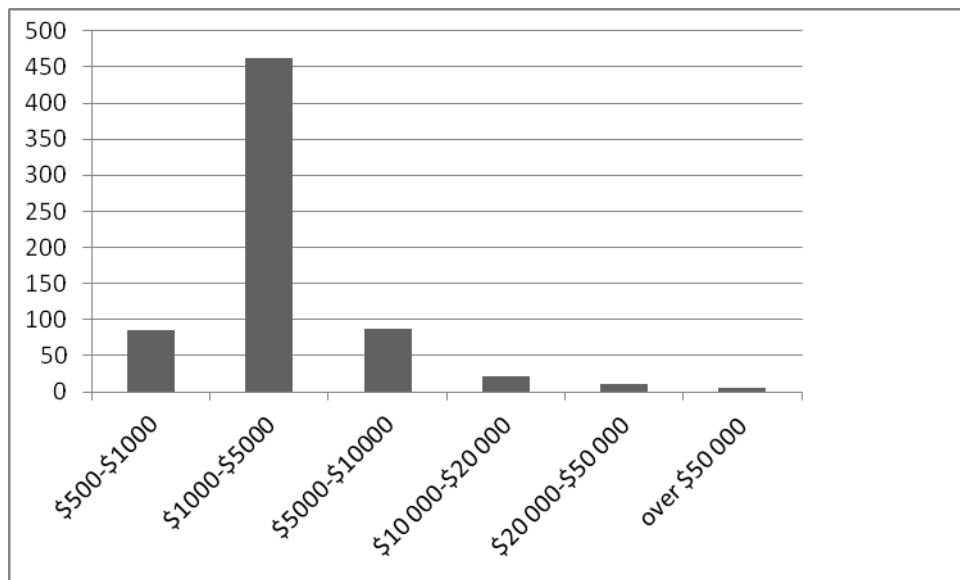
Yes – Business	121	
Yes – Farm	30	
No	543	Total: 694



Question 3

Roughly how much do you spend on insurance premiums each year?

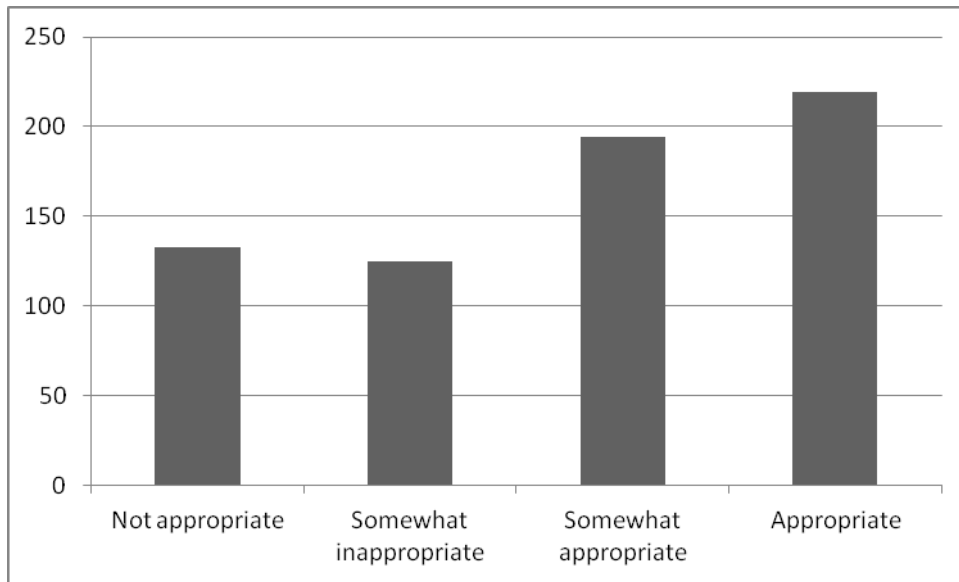
\$500-\$1000	85	
\$1000-\$5000	462	
\$5000-\$10000	88	
\$10 000-\$20 000	21	
\$20 000-\$50 000	10	
over \$50 000	5	Total: 671



Question 4

Do you consider that you have appropriate insurance policies available to you?

Not appropriate	133	
Somewhat inappropriate	125	
Somewhat appropriate	194	
Appropriate	219	Total: 671



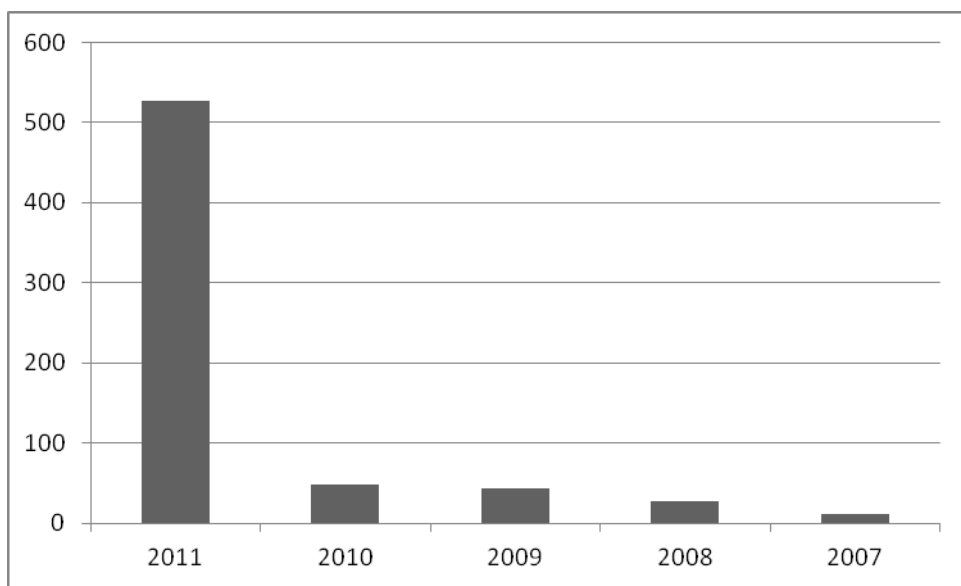
I thought we were reasonably well insured. What I discovered is that we really had no idea of the costs of a total loss. I thought our home building insurance had an inflated safety margin but really it fell far short.

Queensland and Brisbane in particular is built on a flood plain. How can Insurers remove 'flood insurance' from cover where it is more than likely that in time an event will occur.

Question 5

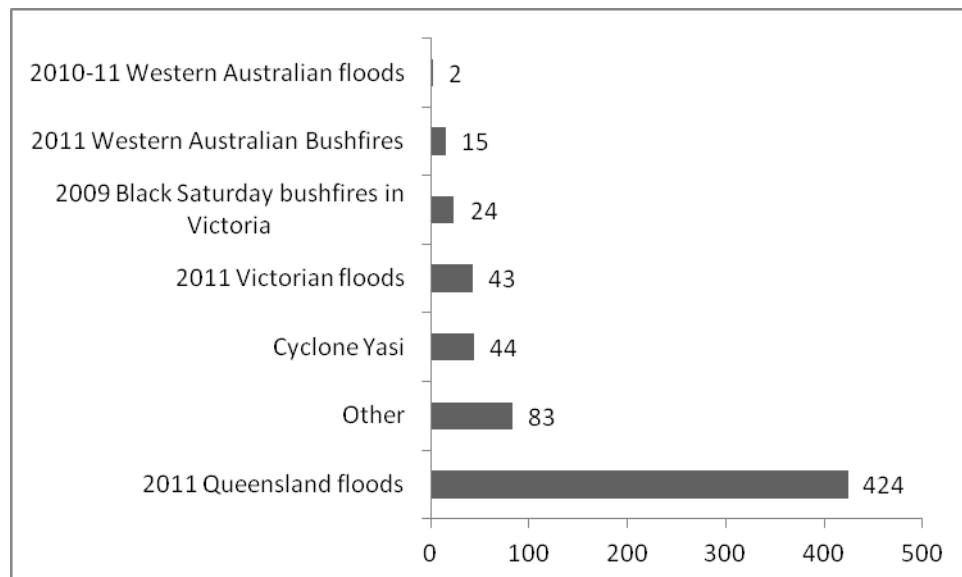
What year did you make your most significant claim against your insurance policies?

2011	527	
2010	48	
2009	43	
2008	28	
2007	11	Total: 657



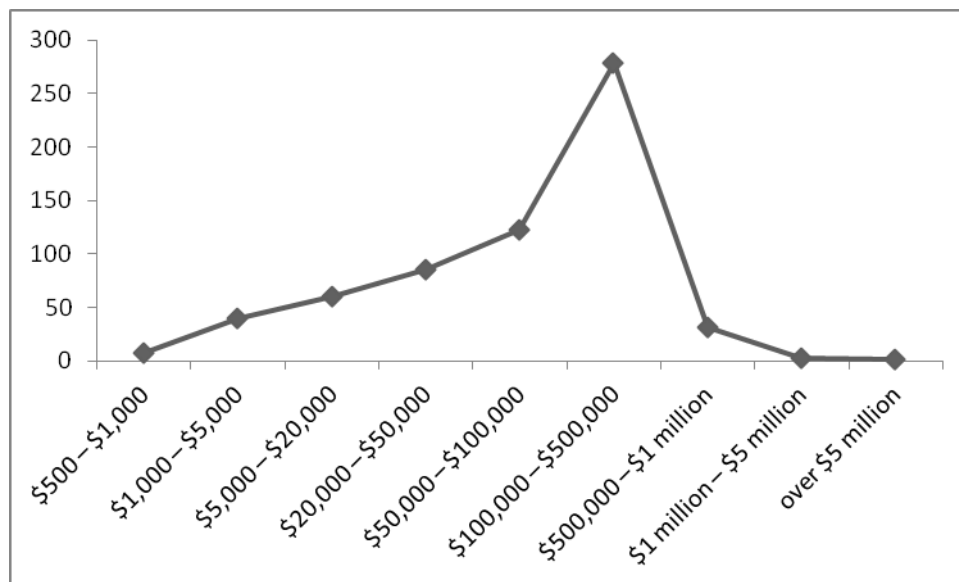
Question 6*What event was the claim related to?*

2011 Queensland floods	424	
2011 Western Australian Bushfires	15	
Cyclone Yasi	44	
2011 Victorian floods	43	
2009 Black Saturday bushfires in Victoria	24	
Other	83	Total: 635



Question 7*What was the financial scale of your claim?*

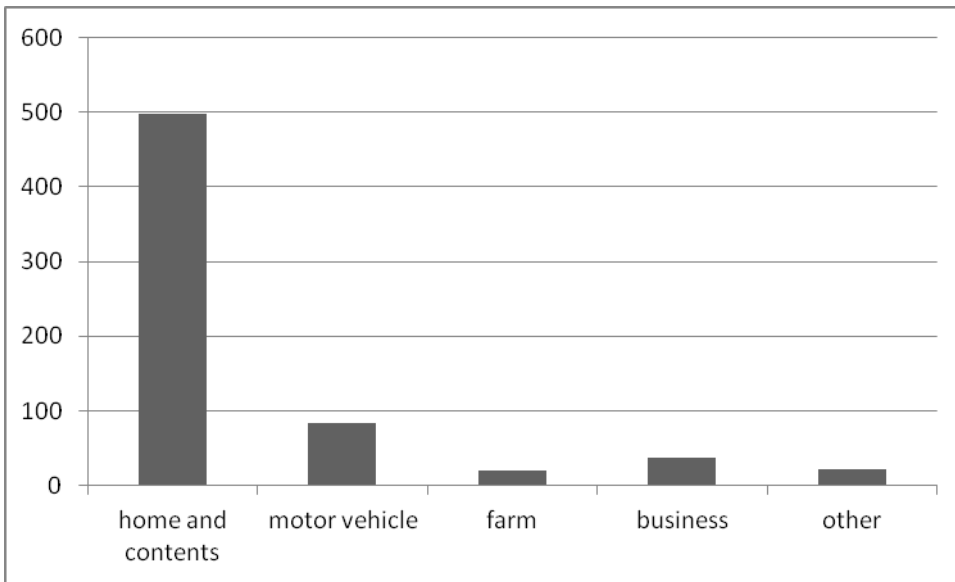
\$500 – \$1,000	7	
\$1,000 – \$5,000	40	
\$5,000 – \$20,000	60	
\$20,000 – \$50,000	85	
\$50,000 – \$100,000	122	
\$100,000 – \$500,000	278	
\$500,000 – \$1 million	31	
\$1 million – \$5 million	2	
over \$5 million	1	Total: 626



Question 8

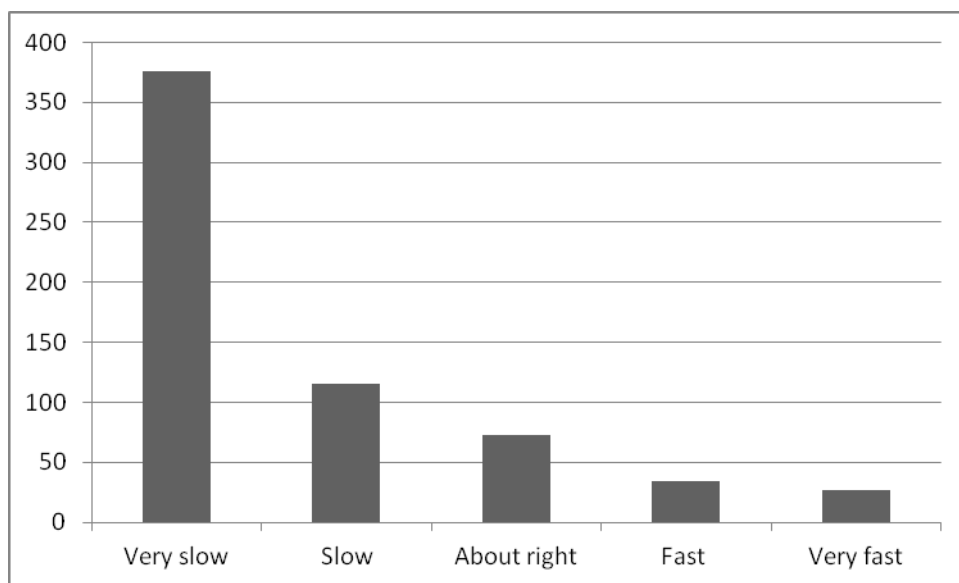
Which type of insurance was the claim related to?

home and contents	497	
motor vehicle	83	
farm	20	
business	38	
other	22	Total: 660



Question 9*How quickly was the claim settled?*

Very slow	376	
Slow	115	
About right	73	
Fast	34	
Very fast	27	Total: 625



Claim accepted immediately (lodged by phone), \$5000 advanced on contents insurance (available in bank account next day), case manager assigned.

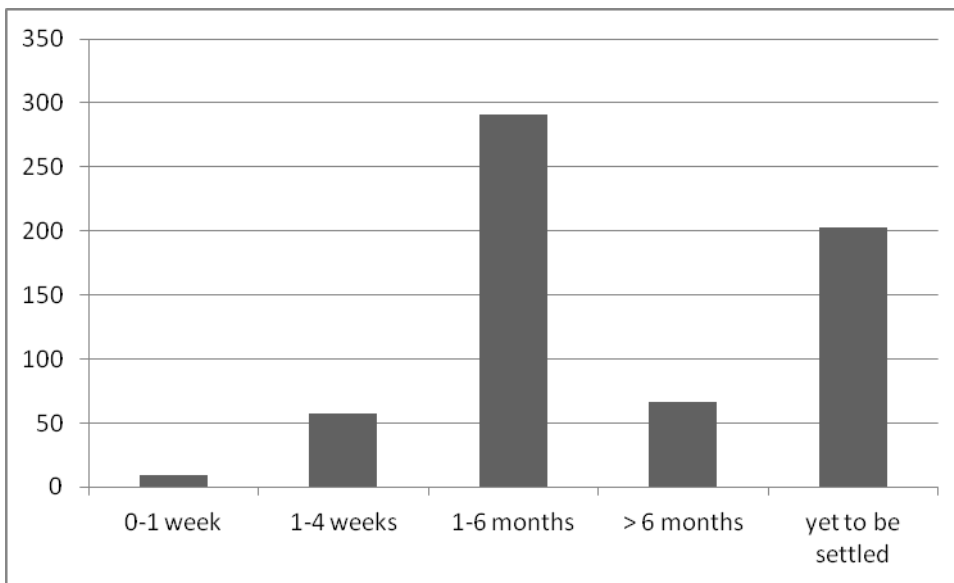
The Insurance system needs to be far more streamlined and user friendly to enable a quick response to a crisis situation.

Very good considering the pressure insurers are under. Expected it to take a lot longer.

Question 10

How long did it take for the insurance company to settle the claim?

0-1 week	9	
1-4 weeks	57	
1-6 months	291	
> 6 months	66	
yet to be settled	203	Total: 626



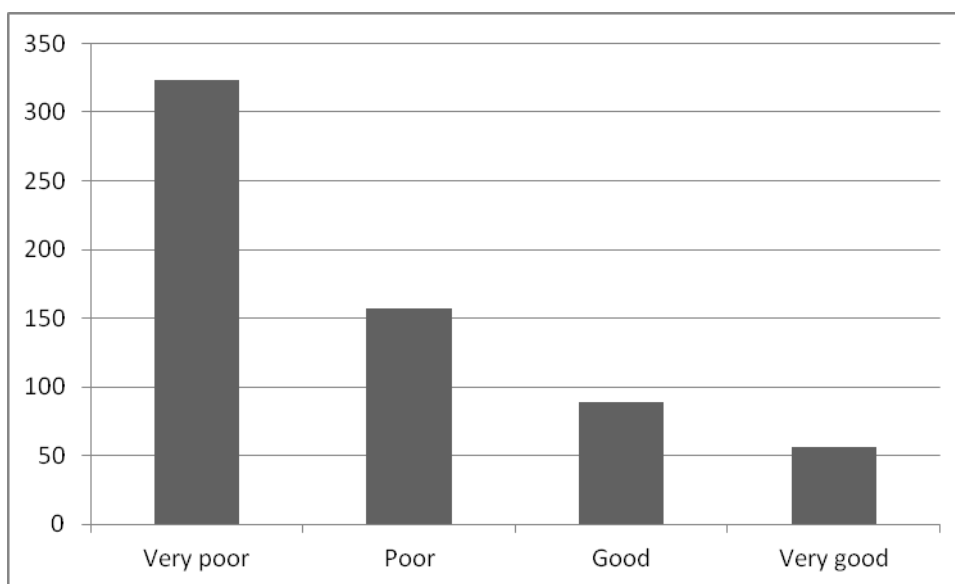
The insurance company has not communicated with either the broker nor the client (us) as to when the Business Interruption claim will even be looked at and there is no clause in the policy that gives them a deadline. The whole reason for BI insurance is to help your business week by week during a period of non-operation – seven months later is really unacceptable to find out whether your claim has been successful or denied.

Each time we speak with our ‘case manager’ we are told we will hear from them within the next couple of days. This does not happen. We have to continually contact them to prompt further action. Six months after the events and we are still waiting for something to happen!

Question 11

What was the level of service provided to you by your insurance company during this claims process?

Very poor	323	
Poor	157	
Good	89	
Very good	56	Total: 625



Perhaps some companies should not be selling insurance when they cannot provide the service to us in a manner for what we are paying.

Insurance company delayed payout as much as possible. I had to fight them. I feel sorry for people that can't dispute and question like the elderly who would passively just trust these large organisations.

Any thought that I might have had that the insurer (or probably the insurance industry) would have acted 'in good faith' however is long since out the window.

Overall, it has been a very distressing experience. I felt as if I was no longer their 'customer' but a problem to be dealt with.

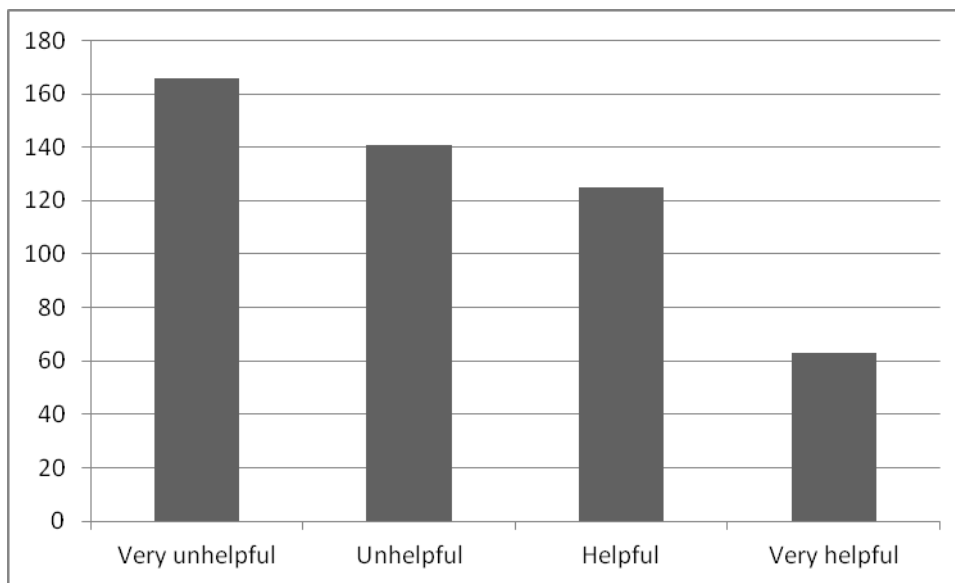
I have only had one phone call from my insurance co. in 10 months.

We have had no correspondence from the actual insurance company including how long before our claim is considered.

Have to nag for any info. Only given info when I phone. No written contact whatsoever. Advised will get in writing when settled.

Question 12*How helpful were the insurance claim assessors?*

Very unhelpful	166	
Unhelpful	141	
Helpful	125	
Very helpful	63	Total: 495



The company chose the cheapest (because incomplete) assessment. The builders they employed were extremely substandard and most of the work had to be redone.

It is not right that some people because they have an unsympathetic assessor are entitled to less than another client.

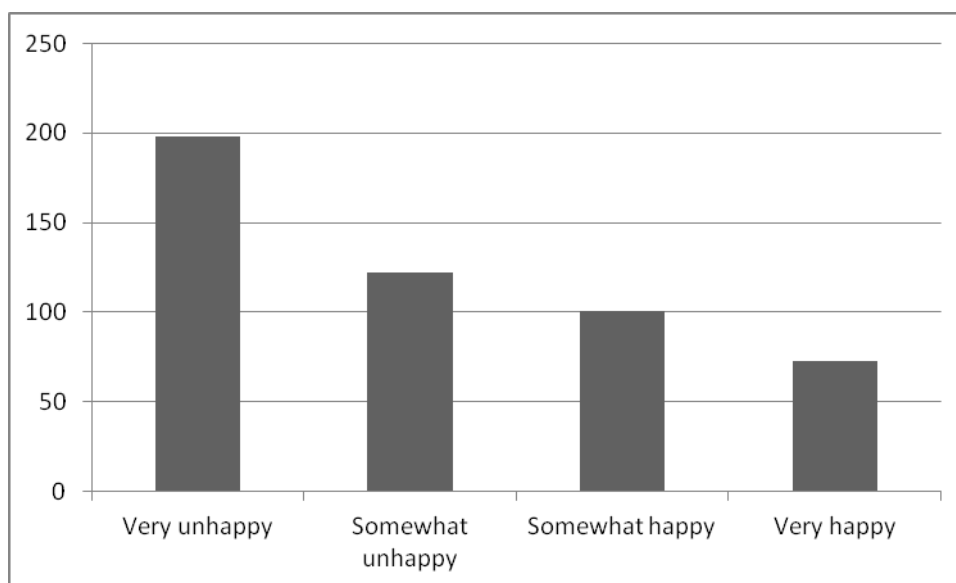
We were assigned two assessors by mistake and they both provided different information regarding the claim.

The service from the actual insurance company was good, but they outsourced the claims assessment to another company, whose service was particularly poor.

Question 13

Were you happy with the way the claim assessor/s communicated with you?

Very unhappy	198	
Somewhat unhappy	122	
Somewhat happy	101	
Very happy	73	Total: 494



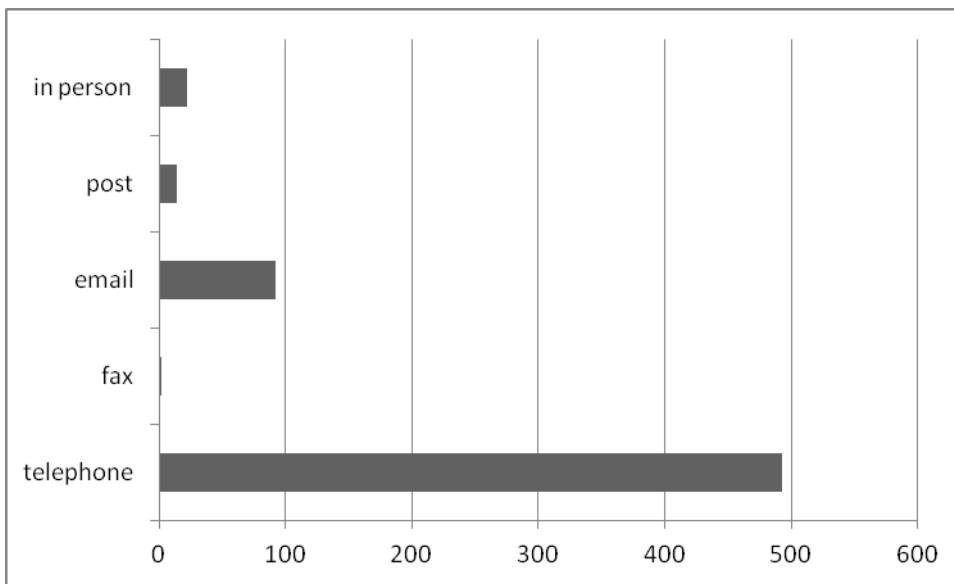
Was an American man who had been sent out to Australia. He was at our home for no more than 10 minutes to decline our claim and made the comment as he walked out the door 'you Aussies will bounce back'.

All staff involved in such processes (whether insurance company employees or subcontractors) need an appropriate level of skills in working with people who have been through a very traumatic experience. They only added to my grief in such unnecessary ways.

Question 14

What was your primary method of communicating with your insurer?

telephone	493	
fax	2	
email	92	
post	14	
in person	22	Total: 623



Long initial process over the phone to obtain initial claim number (four hours).

They insist that all claims are done via a phone. You are on hold for hours and I mean hours. Plus a lot of people had no access to a phone, internet etc.

I had to ring them on a mobile = expensive, long waits, often couldn't get through.

I tried via email but I was told three different email addresses by their staff, it was a bloody shambles.

They never contacted us. It was always us chasing them even up until the end with a decline.

Staff helpful and communicated regularly plus followed up after work completed to ensure I was happy with the quality.

Question 15

If a third-party expert or consultant was involved in your claim, did they help resolve the claim in a timely manner?

Yes	93	
No	233	Total: 326

Our assessor was ineffective and unconcerned by our claim and in the end appeared to be a large part in the delays.

Still waiting for an accurate and complete scope of works, including Engineer's Report.

Insurance company appoints assessing company, dealing with company in an entirely different State. Six months on since disaster date - still waiting for engineers report (approx. 10 weeks has lapsed since engineer arrived).

Dodgy repairers (cowboys) were sent to repair our home. We have had ongoing roof problems and still waiting for our pergola to be fixed (again for the 5th time).

27 weeks and still awaiting a structural engineers report, no scope of works.

Question 16

Did you encounter any difficulties or delays in getting the third-party experts to assess your claim?

Yes	205	
No	119	Total: 324

Dealing with their builder who seems to operate independently of the insurance company is another matter entirely, and an issue that should be looked in to.

The insurance company took more than twenty (20!) visits to our home, each requiring one of us to take a day off work, over a period of almost a year.

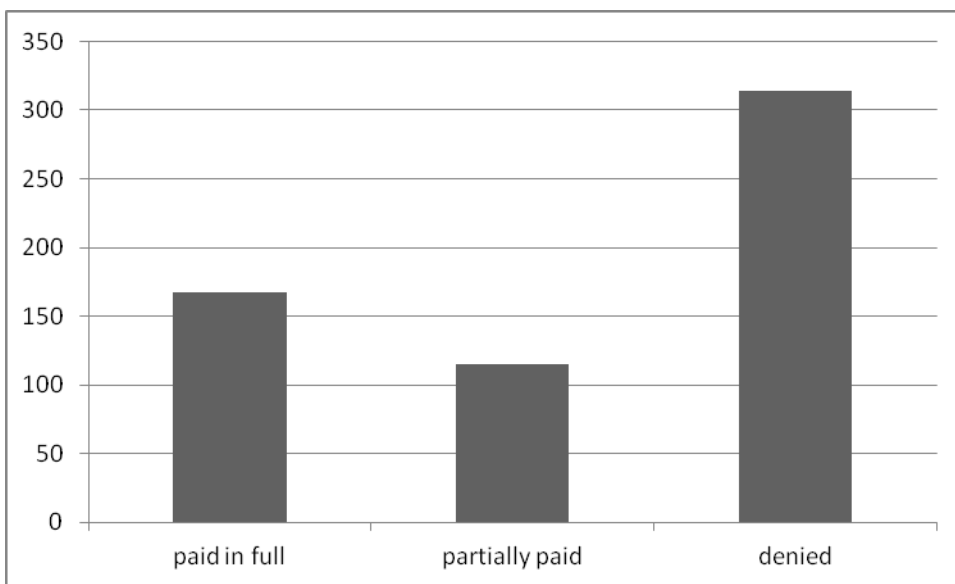
Sent unaccompanied builders to assess, one was inexperienced, the other was intimidating, denigrated our home builder, minimised repairs, raised his voice, made inappropriate comments re neighbouring homes lost in the fire.

Flown in from Malaya and not familiar with local building products.

He came from Newcastle and did not know the lay of the land.

Terms like 'Wayne Tank' and 'legal professional privilege' were used to stall and deny my claim. The Wayne Tank was the most concerning as it's a court precedent yet not detailed at all in any PDS.

Question 17		
<i>What was the outcome of your claim?</i>		
Paid in full	167	
Partially paid	115	
Denied	314	Total: 596



We opted for a payout as we are unsure how to rebuild. The information and process around this has not been made clear and we now discover the bank can prevent this course of action. Very frustrating.

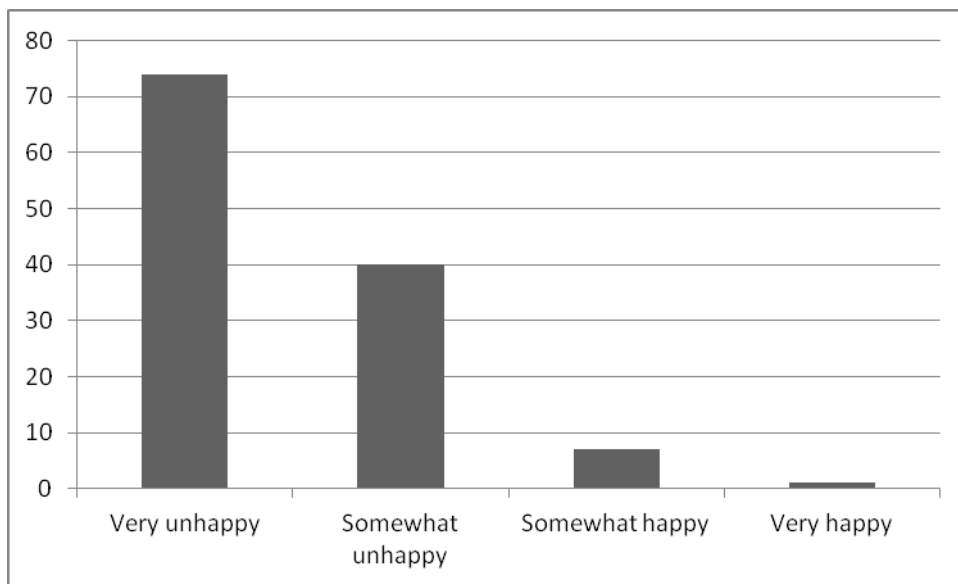
There is no place for those with issues to go that can actually get a result from the insurance companies they are a law unto themselves and will take whatever time they want – they will assess what they want and you are left with no choice but to accept the rubbish they offer or wait for years to fight them (advice from legal aid).

We work, have two children at school and have undertaken all the repairs ourselves. We just didn't have the time to pursue the insurance as well. It's been a tough time.

Question 18

If you entered into internal dispute resolution, were you happy with the way the company communicated with you?

Very unhappy	74	
Somewhat unhappy	40	
Somewhat happy	7	
Very happy	1	Total: 122



Very condescending. Told us that we were 'welcome to object to the decision but the matter will take a long time'.

Still not sure if [dispute resolution] is actually underway!!!!!!!!!!

When it went to internal review, they were rude and abrupt, I did not abuse threaten or insult anyone, and deserved to be treated better by the insurance people.

The insurance company's internal processes have been sloppy.

Question 19

If you entered into internal dispute resolution, was it undertaken in a timely way?

Yes	37	
No	74	Total: 111

Insurance company replied that it would take a month to respond on the dispute resolution. It took two months after I sent a reminder.

Quite surprised as it took them less than five days to uphold their previous decision – which I believe was not enough time to have done a full proper secondary assessment.

Question 20

Were you aware that there are free legal services available to provide you with advice about your claim?

Yes	449	
No	173	Total: 622

Have just found Legal Aid – very helpful and wish I'd known sooner.

Question 21

Do you feel that you fully understood what you were entitled to claim when you signed your insurance policy?

Yes	242	
No	361	Total: 603

Question 22

Were you given accurate and useful information by your insurance company about your right to make a claim?

Yes	239	
No	366	Total: 605

Question 23

Were you given accurate and useful information by your insurance company about the claims process?

Yes	220	
No	383	Total: 603

I rang AAMI, received a claim #, was told someone would be in contact in a few days, after three weeks rang and was told they knew nothing of claim. A further three weeks no call back after being again promised 'in a few days ... had to ring again.

Explanation of process not clear: how to claim and your options.

It took four months for my insurer to contact me after I lodged a claim. Ringing to enquire as to the progress of my claim has taken over 30 mins on hold!

No correspondence was received for months. Not even to acknowledge that our claim was accepted.

Totally ignored any requests for information.

Question 24

Were you given accurate and useful information by your insurance company about your right to external dispute resolution?

Yes	202	
No	339	Total: 541

Question 25

Did you, or do you intend to, change insurance companies as a result of your claims experience?

Yes	429	
No	172	Total: 601