



Submission to the
Natural Disaster Insurance Review
by the
Insurance Law Service
(a project of the Consumer Credit Legal Centre
(NSW) Inc)

The Consumer Credit Legal Centre is a community legal centre that also runs the Insurance Law Service (“ILS”). The ILS is funded by the Legal Aid Commission of NSW and the Federal Government through the Community Legal Services Program.

The Insurance Law Service (“**ILS**”) has been providing advice and assistance to Australian consumers in relation to insurance since July 2007. In that time our solicitors have provided advice in the course of over 6,000 calls, and opened more than 300 casework files. Advice is provided free of charge on a 1300 number available throughout Australia. While based in NSW, ILS is a national service and more than 52% of calls taken in the past 12 months were from interstate, including 29% from Qld and 15% from Victoria. Since the flood events of early 2011 we have received almost 500 calls from Qld and over 200 from Victoria, in addition to callers from flood affected Northern NSW.

We have a dedicated website (www.insurancelaw.org.au) which contains specific information about flood/storm and bushfire related claims, general information about claiming on your car or home insurance (in Arabic, Chinese and Vietnamese in addition to English), and a range of other resources such as sample letters for use by consumers in raising a dispute with their insurance company. The ILS also provides training for other community sector agencies on insurance issues, particularly trainee financial counsellors.

Thank you for the opportunity to prepare a submission to the Natural Disaster Insurance Review. We note that this submission is late and we apologise for that and hope you can take our comments into account.

A consumer Perspective on the NDIR Issues Paper

ILS endorses the paper titled “A consumer perspective on the NDIR Issues Paper” (August 2011) prepared by Chris Connolly. (the “Paper”)

We wish to make the following additional comments which appear below.

Overall

ILS strongly supports the objectives of this review which is to make adequate insurance for all Australians available and affordable.

The adequacy of insurance in a wide range of natural disasters will be a worsening issue in Australia over the coming decades. Climate change appears to have a direct effect on the frequency of natural disasters. For this reason there will be mounting pressure on insurance companies to manage this risk which arguably will inevitably lead to poorer coverage for consumers. This in turn will lead to further pressure on the Australian Government to cover those consumers not covered (or adequately covered) by insurance.

ILS does not consider these issues have been given enough weight by the Review. Even if this is not a matter covered by the Terms of Reference it is still our specific recommendation that the Committee recommend that the Government should give further consideration to his issue.

Options for flood insurance for homes

ILS strongly supports the automatic flood cover option. The advantages of this model are listed in the Paper are supported. ILS would also add that there is an extra advantage in that the risk will be spread which should ultimately lead to competition in price (similar to the competition in 3rd party compulsory insurance for vehicles available in some States of Australia).

In particular, the status quo option is not viable. As at the date of writing this submission there has been no significant move to cover flood in Australia. It has been 8 months since the Queensland floods and we would contend that if there was going to be a strong industry response to the lack of flood cover it would have happened by now.

ILS specifically recommends that the committee do some basic research into the coverage of flood according to market share. This should give an indication of actual coverage for flood. ILS was unable to do this analysis as we did not have the market share information.

It is acknowledged that some insurers are considering flood coverage but there is no guarantee that this consideration will lead to guaranteed coverage for consumers.

ILS contends that while opt-out may be a viable option there is a high risk that the consumers most in need of cover will be the ones who opt-out. ILS would contend that at this point of time flood mapping is not clear enough for any consumer to make an educated decision on their flood risk.

Funding models

ILS supports the recommendations in the Paper.

ILS strongly supports automatic flood cover for contents insurance.

ILS is aware that many people affected by the Queensland floods are living in squalor and sharing their homes with vermin (a health risk) while they fight with insurance companies about their contents claim.

The insurance companies are insisting on receipts to prove the purchase of bikes etc where in most cases those receipts were lost in the flood. Worse, the insurance companies are going berserk about throwing out rotting household goods even after an assessor has visited the home.

ILS recommends that automatic flood cover must cover contents insurance and specific provisions are enacted to provide a streamlined process for the payments of contents claims for consumers affected by a natural disaster. In particular:

- 1) Assessors should visit on an expedited basis
- 2) If the assessor cannot visit for over 14 days consumers are entitled to take photos of affected contents and throw them out if they pose a health risk.
- 3) The insurance company must estimate the costs of the contents claimed and not insist on receipts that have been destroyed by the natural disaster

Flood cover for strata title property and other residences

ILS has been told by a number of consumers that is impossible to get flood cover when living in a unit. It is also our understanding that the vast majority of strata title units in Australia are not covered for flood.

ILS notes that many of the State Governments in Australia have pursued high density housing near the CBD (close to public transport). It is essential that the high density housing is covered for flood. The flood water could undermine the base structure of units leading to the potential risk of subsidence.

Under-insurance of homes

The Canberra bushfires and the consequent ASIC report “Getting home insurance right – A report on home building under-insurance” (Report 54) September 2005 examined the issue of under-insurance. The report made a number of findings including:

- The consumer has great difficulty in estimating rebuild costs
- Consumers may not regularly increase the sum insured

- Policies are difficult to compare

The best solution is to make replacement cover a mandatory requirement for home building insurance in Australia.

Non-insurance

ILS strongly supports the recommendation in the Paper.

Consumer awareness of risk

ILS supports the recommendation made in the Paper and add the following recommendations:

1. That key cover and exclusions are given to the consumer over the phone or on the internet when purchasing insurance. Currently consumers are asked endless questions but given no information about their policy apart from the price. Referring people to a PDS that is difficult to understand is useless disclosure.
2. That flood mapping by Councils or other Government is delivered as a simple risk message to consumers. A traffic light system would be ideal here.

Processing of claims

The processing of claims following the QLD floods has been very poor in the experience of ILS. Some key problems have been:

1. Delay
2. Excessive requests for information
3. Endless tiers of IDR
4. Failing to read the dispute raised
5. Failure to get specific hydrology reports when needed (although this may benefit the consumer they are unaware of those rights)
6. Wearing down consumers with a combination of the above so they simply abandon the claim
7. Endless fights about the meaning of the flood exclusion (which shows how ambiguously it was drafted)

Case study

A couple represented by ILS was recently contacted directly by the insurer and offered a “one-off, accept immediately or lose, good will offer” less than the value of their claim. The insurer knew that we represented the clients as there had been prior correspondence between us and the insurer in relation to the claim. Despite this, they contacted the clients directly. Further, when the clients asked for time to discuss the offer with us they were told they had to accept on the spot or the offer would be withdrawn. We are not aware of how common this practice is.

Case study

In one particular case, the ILS wrote to a major insurance company who had rejected our client's claim in writing within one week from the date the claim was lodged. The insurer did not arrange any site specific investigations to determine the cause of the loss to the insured property but denied the claim on the basis of the information provided by our client over the telephone when she called the insurer to lodge her claim. Our client was verbally advised by the insurer that her claim would be denied for flood because her property was located only one street away from the Brisbane River, which the insurer confirmed through Google maps.

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.

Even when the claim was reviewed by IDR, the review only made reference to a hydrology report for the property, summarised its findings and argued legal principles. The report itself was never provided.

Over eight months has passed since the claim was lodged. The reality is that the insurer has provided no evidence that it conducted any site specific investigations, nor has it provided the actual evidence it relied upon to reject our client's claim.

The IDR decision also did not address the insurer's reasons for not providing the information ILS had requested for the purpose of advising our client. In this example, the IDR process did not facilitate the exchange of information, and the process lacked any meaningful attempt at dispute resolution.

ILS supports the recommendations made in the Paper and adds the following:

- Significant enhancements to the General Insurance Code of Practice on claims handling. The Code must be compulsory for this to work if not the legislation must be enhanced
- Complaints handling standard (Australian standard) for insurance
- Free independent hydrology reports (and other related natural disaster reports) for consumers funded by industry in the Financial Ombudsman Service
- Access to timely advice by increasing funding for the Insurance Law Service and other Community Legal Centres and State Legal Aid offices with specialist insurance expertise.

If you have any questions please do not hesitate to contact Kat Lane on 02 82041350.