

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.