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Standing Committee on Economics
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Supplementary Submission to the inquiry into insurers' responses to 2022 major floods

Thank you for the opportunity to appear before the House of Representatives Standing Committee on Economics inquiry into insurers' responses to 2022 major floods claims on 31 January 2024. This supplementary submission is from Financial Rights Legal Centre (**Financial Rights**), CHOICE and Consumer Action Law Centre. Our three organisations wish to provide further information to the committee with respect to two key issues:

- how the committee can ensure that the insurance sectors acts to improve their processes; and
- standardising insurance definitions.

How the committee can ensure that the insurance sectors acts to improve their processes

In our opening statement to this inquiry we asserted that insurers can, today, address the problems that our clients have faced with immediate, unilateral action. Insurers can, for example:

- better resource claims handling;
- communicate with consumers in a consistent, transparent and compassionate manner;
- clearly inform them how their claim will be assessed and how it is progressing;
- provide appropriate support to customers that are vulnerable;
- stop denying claims on spurious and vague assertions of "a lack of maintenance" or "wear and tear" without evidence or satisfactory explanation;
- improve temporary accommodation entitlements and communicate and implement these entitlements in more proactive and appropriate ways;
- invest in better oversight and management of their third party, consumer facing contractors to address the appalling behaviour we have seen;

- reflect risk mitigation work done to a property in the premium to incentivise it and ensure that the price signal works both ways – not just the one way as it does now;
- proactively warn their customers that they may be underinsured and work with them to ensure that their sum insured is appropriate;
- stop redacting scope of works that make decision-making difficult after an event;
- and other recommendations detailed in our main submission.¹

At our evidence, Committee member the Hon. Shayne Neumann MP asked whether there needs to be changes to the General Insurance Code of Practice and whether it needs to be not just self-regulated but imposed by legislation or it needs to be more mandatory.

Our view is that yes, there needs to be urgent changes made to the General Insurance Code of Practice and yes, there needs to be changes made to ensure that insurers meet their code commitments. We also think that the regulator ASIC can play a significant role to drive and improve practice.

To this end, this committee should make the following recommendations to ensure that insurers better serve their customers and meet community expectation in claims handling.

Firstly, this committee should recommend that ASIC produce a Regulatory Guidance document in relation to claims handling to clearly codify their expectations of insurers.

ASIC gained powers to oversee and monitor claims handling when claims handling and settling services were subject to licensing requirements from 1 January 2022. Since then, ASIC has taken following positive steps to lift standards.

- ASIC introduced an Infosheet² on claims handling and settling providing high level guidance to new licensees on how to meet licence obligations.
- ASIC delivered a letter to general insurers outlining their high level expectations of insurers' obligations to act efficiently, honestly and fairly in handling and settling claims in the context of severe weather events.³
- And ASIC undertook surveillance and produced a report into the claims handling of home insurance claims between January and March 2022.⁴

The next logical step is for ASIC to produce a regulatory guide that provides more specific detail as to how ASIC will enforce claims handling practices including:

¹ Financial Rights Legal Centre, CHOICE, Consumer Action Law Centre, and Westjustice, [Submission to the House of Representatives Standing Committee on Economics Inquiry into insurers' responses to 2022 major floods claims](#), November 2023

² ASIC, [INFO253 for Claims Handling and settling, May 2021](#)

³ ASIC, [ASIC's expectations of general insurers: Insurance claims and severe weather events](#), 7 November 2022

⁴ ASIC [Report 768 Navigating the storm: ASIC's review of home insurance claims \(REP 768\)](#), August 2023.

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act);
- explaining how ASIC interprets the law;
- describing the principles underlying ASIC's approach; and
- giving practical guidance (for example, describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

ASIC should also undertake enforcement action in relation to egregious claims handling practices.

Secondly, this committee should recommend specific improvements to the self-regulated General Insurance Code of Practice to specifically address the issues outlined above and in our submission.

Further, this committee should recommend that insurers commit to making the General Insurance Code of Practice a term of the contract with consumers as both the Australian Banking Association and the Customer Owned Banking Association do with their codes. This would provide contractual enforceability of the code of practice for consumers and incentivise insurers to lift standards to meet their code commitments.

The committee should also recommend that the Insurance Council of Australia seek and gain approval of their Code by ASIC under the enforceable code regime, with appropriate code provisions identified to be made enforceable under Section 1101A of the *Corporations Act*.

In the event that a new code does not address the issues above or the insurers decide against making the code a term of the contract, this committee should recommend that ASIC should not provide approval for that code.

Thirdly, this committee should recommend that in the event that insurers do not agree to either voluntarily implement new commitments addressing the issues above and outlined in our submission, or voluntarily seek and gain ASIC approval, then the Minister should use their powers under section 1101AE of the *Corporations Act* to introduce a mandatory code.

Finally we note that the ICA decided to conduct the review of the General Insurance Code of Practice in two phases "to align with any recommendations from the Federal Parliamentary Inquiry into insurers' responses to 2022 floods."⁵ The first phase will focus on general topics that are not directly related to the floods, such as support for vulnerable customers and the interaction between the Code and existing laws, and governance, with initial findings and recommendations to be delivered by 30 June 2024. The second phase will focus on flood related topics, such as the responses required when a catastrophe occurs, and will deliver findings by 30 June 2025.

⁵ ICA, [Media Release: Independent Review of the 2020 General Insurance Code of Practice](#), 14 November 2023

While this may seem to make sense, this extended timetable means a significant delay in bringing impacted insureds any new rights to address the issues identified in this inquiry. In practice a response to an independent review can take up to 2 years and a further year for subscribers to re-draft and implement.⁶ Using this as a rough guide, it is unlikely consumers will have a new code providing new rights addressing issues that they are experiencing today until at least 2027. This committee should keep this in mind when developing its recommendation to explore ways to fast track any new rights under a new Code.

Standardising insurance definitions

As we noted in our original submission, the Federal Government introduced a standard definition of flood in 2012. This followed flooding that occurred in many regions of Australia in late 2010 and early 2011. These flooding events made apparent that many policyholders did not have flood cover or only had cover which partially covered flood. There were also differences in terms causing confusion and perceptions of unequal treatment from policyholders misunderstanding what was and what was not covered in their policies.⁷

From our experience working with clients since 2012, the impact of the introduction of the standard definition for flood was that home and contents policy holders had a clearer understanding of whether they were covered for flood and what this meant. It did not mean more people were able to obtain flood cover – in fact many people began opting out of flood early after 2012 - but at the very least, people had increased clarity over what coverage they did and didn't hold.

The reason many were opting out of flood was clear - now that insurers could no longer hollow out cover via the definition, there were significant increases in premiums for flood affected areas. Flood cover simply became too expensive for many people, a trend which has increased in recent years.⁸

Previous disputes about whether water inundation met their policy's definition of flood or what percentage was attributable to different water sources, which could take upwards of two years, were less of a factor.

It is also of note that small business policyholders did not benefit from the standard definition – a nuance which was not always well-communicated nor understood by policyholders.

⁶ For example – the last 2017 GICOP review began in March 2017, with a report delivered in June 2018, a draft new code announced in October 2019 and full implementation delayed until July 2021 – over 4 years after the review process started. Another example is the 2021 Banking Code review which began in May 2021. This review had a report delivered in November 2021, a response to the report delivered by the ABA in December 2022, a redraft finalised for approval in November 2023 and approval still to be provided. It is expected that once it is provided implementation of the code will not be for another year – likely sometime in 2025 – 4 years after the review process started.

⁷ See Commonwealth of Australia, April 2011, *Reforming flood insurance: Clearing the Waters*, Senate Economics Reference Committee, 'Australia's general insurance industry: sapping consumers of the will to compare' 10 August 2017 and *Disclosure In General Insurance: Improving Consumer Understanding*, Discussion Paper, January 2019

⁸ Allianz's submission to this inquiry at [5.1] reports that 74% of consumers with the highest flood rating do not have flood cover, increasing to 90% in high exposure areas in northern NSW.

To this day, we do see a small number of consumers who are unaware their policy does not provide flood cover. These are generally a legacy group of consumers sold policies via their mortgage provider before restrictions on the sale of insurance by third parties were introduced. However, in recent years, we have seen a “muddying of the waters” with many insurers offering cover for flood *bundled* with cover for other forms of water inundation, which has undermined consumer benefits of standardising the definition of flood.

The bundling of flood definitions

Our original submission raised the problem of bundling the flood definition with other concepts such as rainwater run-off, landslide subsidence and storm surge.

IAG's submission to this inquiry confirms, that their products offer varying cover for flood as well as 'rainwater run-off' and 'storm surge'. An insured can opt out of water coverage entirely, but not one or two of the categories.⁹ QBE submitted that flood and storm water coverage is a standard inclusion,¹⁰ while Allianz allows policy holders to opt out of flood cover.¹¹

When Financial Rights examined the definition of flood and other storm and water-related concepts in 2022 for the *Standardising General Insurance Definitions Report*¹² we found that insurers handle the concept of flood in one of five ways:

- flood is combined into the one policy with storm and other concepts. Insurers in this category are: AIG, ANZ, Australia Post, Australian Seniors, CGU, Coles, Defence, HBF, Kogan, QBE, Real, Woolworths
- flood is treated distinctly. Insurers in this category are: AAMI, AHM, APIA, Budget Direct, Comminsure, Domain, GIO, Huddle, ING, Qantas, RAA, RAC, Suncorp, and Virgin.
- flood is treated distinctly but is tied in with landslide and/or subsidence as a result of the flood. The insurers who do this are RACV, SGIC and Youi.
- flood is treated distinctly, but is tied in with both landslide and/or subsidence as a result of the flood and some other event like water run-off. The insurers who do this are:
 - Allianz, who tie flood to landslide/subsidence and “floodwater, combined with run-off and rainwater”
 - NRMA, who tie flood to landslide/subsidence and “rainwater run-off”
 - RACQ, who tie flood to landslide/subsidence and “water runoff”

⁹ See 1.13, pages 16-17, Submission 16, IAG, Submission to Inquiry into insurers' responses to 2022 major floods claims. The Committee may also find it helpful to refer to the confidential Appendix 3, which we have not seen.

¹⁰ See page 24, QBE, Submission to Inquiry into insurers' responses to 2022 major floods claims.

¹¹ See 2.2, Allianz, Submission to Inquiry into insurers' responses to 2022 major floods claims.

¹² Note that PDSs were downloaded in March 2021, Diana M. Grace, Ph.D. and Michael J. Platow, Ph.D., *Standardising General Insurance Definitions*, March 2022

- flood is treated distinctly in that insureds can opt out but it is tied to storm surge and tsunami: St George and Westpac.

The variety of applications of the standard definition of flood above point to both the overwhelming complexities facing consumers seeking to obtain coverage to mitigate against risk, and an industry hollowing out cover as it struggles to balance access to coverage with ongoing financial viability in the face of increasing disasters.

To be clear, we support people in high risk areas having access to some cover rather than none.

We understand too from conversations with IAG about the NRMA product that overall it gave more consumers access to insurance outside of flood risk than previously. We do not have any independent evidence of this but we have no evidence to the contrary either.

What we do not consider fair or transparent is that people cannot at present effectively compare cover and pricing for water-related natural hazard events across different insurers and brands, especially when the complexity of other terms and conditions for a standard home and contents policy are factored in. This is clear not just from the differences outlined above, but from IAG's own complex explanation of its coverage outlined in its submission to this inquiry.¹³

IAG assert that they went to great lengths to ensure that their customers understood that they were opting out of both types of water cover. We spoke to some customers who had not understood this. While some customers *may* have understood this, it is not clear that they understood that they may have been able to access more comprehensive cover from another insurer – for example one of the products detailed above.

Finally, we note that CHOICE identified similar issues in the definition of fire in 2020. Policies offered across the industry differed significantly, did not meet community expectations of cover for a fire and contained exclusions that were likely unfair.¹⁴ While industry committed to changing their definitions of 'fire' to be fairer in home and contents policies,¹⁵ significant variation in the definitions remains.

Legislated standard definitions and standard cover is required

Ultimately a legislatively imposed, updated standard cover regime with a full set of standard definitions is required to make purchasing insurance to mitigate against risks simpler.

The need for standardising terms is well established. The 2017 Senate Inquiry into the General Insurance Industry recommended that the government implement standard definitions in general insurance, so policyholders could better understand what is and isn't covered.¹⁶ Again in November 2020, a report from the ACCC also recommended standard terms in insurance

¹³ See 1.13, pages 16-17, Submission 16, IAG, Submission to Inquiry into insurers' responses to 2022 major floods claims.

¹⁴ [Fire cover in home and contents insurance policies | CHOICE](#)

¹⁵ [Australians win fair fire definitions: CHOICE](#)

¹⁶ Recommendation 6, Senate Economics Reference Committee, '[Australia's general insurance industry: sapping consumers of the will to compare](#)' 10 August 2017,

policies.¹⁷ This government also announced in 2022 a yet-to-be-initiated review of “standard definitions for certain natural hazards in insurance contracts and ... standard cover ... to improve consumer understanding of insurance products.”¹⁸

Introducing standard definitions and standard cover must include standard definitions for *all* inclusions and exclusions, without any bundling of natural hazard concepts, so that when people compare quotes they can compare apples with apples and ensure all the same boxes are ticked. This standardisation must also be extended to all those terms that are subjectively assessed by insurers when processing claims including, but not limited to “maintenance”, “wear and tear”, “pre-existing damage” and “defects”.¹⁹

If a consumer agrees to exclusions to reduce their premiums, they need to understand exactly what they are giving up, and whether they could access affordable cover for that risk from another insurer.

Such standardisation would not only assist consumers to make informed choices about their insurance cover, it would allow government to more easily monitor any reduction in available cover over time, hold insurers to account where appropriate, and take steps to address the widening gap where possible. We understand that the ICA may be working on standardisation of some limited set of definitions but we do not believe they can or will go far enough because of both self-interest and competition law.

If standard cover is legislated with a minimum standard below which they cannot fall below, and people can opt out of additional defined aspects of cover (such as flood), this will have significant benefits including:

- insurance would be more easily explained to the public;
- people can more easily check they are comparing apples with apples;
- the government can require insurers to report how many people are opting out of each type of cover, and
- any further exclusions would need to be agreed through a regulatory process.

The detail of exclusions could also be included in the regulations to allow changes over time following a transparent process including public consultation with all stakeholders including consumer representatives.

¹⁷ Recommendation 17.1, ACCC [Northern Australia Insurance Inquiry, Final Report](#), November 202

¹⁸ The Hon Stephen Jones MP and Senator the Hon, Murray Watt, [Landmark funding to help reduce insurance costs](#), 26 October 2022

¹⁹ We also refer to Recommendation 19 of our submission dated November 2023 and note that base standard cover is necessary to ensure people can easily compare policies, ensure they get cover suitable to their needs and understand the cover they have purchased

Further reading

Finally, we recommend the inquiry take into account the findings of Diana M. Grace, Ph.D. and Michael J. Platow, Ph.D, in their report [Standardising General Insurance Definitions](#), March 2022. This research outlines the differences in terms for a number of natural hazard risks, the complexities and challenges this raises for consumers in obtaining coverage and presents further solutions that this inquiry should consider.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Drew MacRae, Senior Policy and Advocacy Officer, Financial Rights on .

Kind Regards,

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