

**GOVERNMENT'S RESPONSE
TO THE
HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON SOCIAL POLICY
AND LEGAL AFFAIRS**

**IN THE WAKE OF DISASTERS
VOLUME 1: THE OPERATION OF THE INSURANCE INDUSTRY DURING
DISASTER EVENTS**

GOVERNMENT RESPONSE TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON SOCIAL POLICY AND LEGAL AFFAIRS REPORT ON THE OPERATION OF THE INSURANCE INDUSTRY DURING DISASTER EVENTS

BACKGROUND

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 the extreme weather and disaster events around Australia occurring over the 2010-2011 summer. Specifically, the Committee was tasked with investigating insurers' arrangements for claims handling, the conduct of External Dispute Resolution processes, and the adequacy of the General Insurance Code of Practice.

The aftermath of these disasters led to questions about the capacity of the insurance industry to respond quickly and in good faith to the high volume of claims. With unprecedented numbers of insurance claims and high levels of consumer dissatisfaction, focus 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.

The Committee made 13 recommendations on a range of issues including additional regulation of the insurance industry and measures to strengthen the General Insurance Code of Practice.

GOVERNMENT'S RESPONSE TO THE COMMITTEE'S 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.

Government Response

Consultation on whether the Government should regulate to require all insurers to offer a product which covers damage from flood is currently underway as part of the Government's ongoing engagement with stakeholders on the Natural Disaster Insurance Review final report.

The Government understands that the reinsurance industry is currently reducing support for total replacement cover, including as a result of its experience in regard to the New Zealand earthquakes. Therefore, at this time, the Government does not intend to require all insurers to carry a product that provides full replacement in the event of total loss.

However, the Government notes that a number of insurers currently offer replacement cover products and encourages consumers to consider whether these products better meet their needs than 'sum insured' products.

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.*

Government Response

The Key Facts Sheet currently being developed by the Government will list the main derogations from Standard Cover as defined in the *Insurance Contracts Act 1984* (and associated regulations).

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.

Government Response

The Insurance Contracts Amendment Bill 2012 received Royal Assent on 15 April 2012. The newly-created Division 1A of the *Insurance Contracts Act 1984* will provide for 'flood' to be defined in the Regulations. On 14 June 2012, the *Insurance Contracts Amendment Regulation 2012 (No. 1,)* which contains the final wording of the standard definition of flood, was made.

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.

Government Response

The Government has released a consultation Regulation Impact Statement on Unfair Contract Terms in insurance and is currently considering submissions with a view to introducing legislation.

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.*

Government Response

The Government notes that the Insurance Council recently announced a number of changes to the General Insurance Code of Practice which address many of the amendments proposed by the Committee. The Government notes that the Insurance Council will commence the next independent review of the Code by June 2012 and that this review will consider the insurance related outcomes from relevant recent inquiries. Specifically, the Government:

- notes the Insurance Council's recent change to the Code which now ensures that the Code applies during times of disasters;
- notes the Insurance Council's recent change to the Code which now requires that insurers do not discourage consumers from making a claim even if the insurer is of the view that the claim is not likely to be accepted;
- requests that the upcoming independent review of the Code consider whether insurers should provide a full explanation of the claims handling process when policyholders lodge a claim, including information about internal and external dispute resolution;
- requests that the upcoming independent review of the Code consider what information should be provided to policyholders by their insurer when lodging a claim;
- notes the Insurance Council's recent change to the Code which now requires copies of external expert reports used in the determination of a claim to be provided to claimants within 10 days of request;
- also notes that:

- a timeframe of 20 business days exists in the Code for informing claimants about the progress of their claim;
- the Code states that if a loss assessor and/or loss adjuster and/or investigator is required, the insurer must notify the policyholder within 5 business days of appointing them;
- the Code states that service providers will not perform functions that do not match their expertise;
- the Code states that service providers will inform policyholders the services they have been asked to provide and the identity of the insurer for whom they are acting, are required to hold a current licence if required under legislation, and hold membership of a relevant professional body or sufficient expertise;
- the Code now requires external experts to provide their final report within 12 weeks;
- the Code now requires claims to be accepted or denied within 4 months unless exceptional circumstances apply, in which case the Code now requires claims to be accepted or denied within 12 months;
- the Code requires a response to routine requests for information within 10 days;
- the Code now requires written reasons to be provided for a decision to deny a claim; and
- the Code requires insurers to respond to complaints within 15 business days, or if further information, assessment or investigation is required, to agree a reasonable alternative timeframe. If there is no agreement, the Code requires that the complaint be treated as a dispute. The Code requires insurers to keep claimants informed about the progress of their dispute by providing updates at least once every 10 business days.

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.

Government Response

The Government notes that the Insurance Council has agreed that Annual Reports of the Code Compliance Committee will be publically released on the Insurance Council website.

The Government requests that the independent review of the General Insurance Code of Practice consider the issue of improving compliance with the Code. Consideration should include an assessment of the pros

and cons of naming insurance companies that have breached the Code, and the types of breach; and reporting the annual number of Internal Dispute Resolution and External Dispute Resolution cases for each insurance company.

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.*

Government Response

The Government is considering introducing into Parliament legislation containing the lapsed 2010 Bill's claims handling and settlement measures.

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.

Government Response

While the General Insurance Code of Practice is a voluntary code, over 95 per cent of all general insurers are signatories. Of those insurers who are not signatories to the Code, many are involved in 'wholesale' business and do not have any direct contact with retail customers.

Given this, the Government does not support legislating to make adherence to the Code 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.*

Government Response

The Government requests that the upcoming independent review of the Code consider what, how and when information relating to claims handling and dispute resolution should be provided to policyholders.

Currently insurers must provide clear and comprehensive information about Internal Dispute Resolution and External Dispute Resolution to clients at the purchase/renewal of the product and within communications advising of the determination of a claim. The current requirements seek to ensure information is provided at the outset (when acquiring the insurance) and when it is most relevant, that is, when a dispute is possible or likely.

The Government considers that requiring insurers to provide this information at the time of claim lodgement may potentially confuse consumers as to the purpose of the insurer's response. Informing consumers about the right to complain to the Financial Ombudsman Service at the time of claim lodgement may also encourage consumers to prematurely take matters to the Financial Ombudsman Service without letting the insurer's claims handling process and Internal Dispute Resolution run their proper course. This would create undue resourcing pressures on the Financial Ombudsman Service as it is likely that consumers would contact the Financial Ombudsman Service for more information and lodge complaints at too early a stage in the process. If formal complaints are made, the member (insurer) is also charged a complaint fee, which can increase compliance costs for members and ultimately, premiums for policy holders.

The Government notes that the recent amendments to the General Insurance Code of Practice include a new requirement to inform policyholders that they can ask the insurer for copies of reports and other information relied upon when a claim is denied. If the insurer denies access to this information, the insurer is also required to advise the consumer of their right to request a review of the insurer's decision to deny access. Denied access to expert reports could form the basis of a dispute that would be subject to an Australian Financial Services Licensee's Internal Dispute Resolution and External Dispute Resolution requirements. The Government considers that requiring insurers to provide information about the right to seek an independent external expert report at the time of claim lodgement may potentially confuse the consumer as to the purpose of the insurer's response and may involve the Financial Ombudsman Service at too early a stage in the process.

The *Australian Securities and Investments Commission Act 2001* includes prohibitions against misleading or deceptive conduct, unconscionable conduct, and false or misleading representations. However, these prohibitions would not generally prevent an insurer providing factual or otherwise not misleading statements about the merits of a dispute. The recommendation to prohibit general insurers from commenting to policyholders on the merits of a dispute could potentially prevent an insurer conveying its Internal Dispute Resolution reasoning and decision on a dispute to the consumer.

The Government does not support prohibiting multi-tiered Internal Dispute Resolution but considers that insurers should make it clear to consumers as to whether they are involved in Internal Dispute Resolution or External Dispute Resolution processes. Regulatory Guide 165 requires insurers to give a written response within 45 days irrespective of whether the Internal Dispute Resolution process is single or multi-tiered. This ensures that multi-tiered Internal Dispute Resolution processes are not unnecessarily long and/or complex.

The Government notes that the recent amendments to the General Insurance Code of Practice include a new standard under clause 3.4 which requires an insurer to make a determination within 4 months. After 4 months, if there is no determination the insurer must advise the consumer of their ability to lodge a dispute with the Internal Dispute Resolution or External Dispute Resolution processes.

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.

Government Response

The Government will work together with States and Territories to ensure that appropriate legal assistance services are available following natural disasters.

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.

Government Response

The Government will work together with States and Territories to ensure that appropriate legal assistance services are available following natural disasters.

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.

Government Response

The Australian Government is currently investigating ways to reduce the cost of calling 1300 numbers from mobile phones as part of the Australian Communications and Media Authority's consultation on the structure of Australia's telephone numbering plan. The Australian Communications and Media Authority has released a consultation paper, 'Numbering: Calls to freephone and local rate numbers - the way forward' and is currently considering the submissions received and the range of options which are possible.

The Government will also request that the insurance industry consider what it can do to reduce the cost of calling 1300 numbers from mobile phones for those impacted by natural disasters; for example providing reimbursement for the cost of the call as part of the claims process and improving call back services.

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.

Government Response

The Minister for Financial Services and Superannuation has established a joint industry-Government action group, the Insurance Reform Advisory Group. It is tasked with addressing evidence of rising insurance costs/market failure issues in specific areas.