

Introduction

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

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

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

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

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

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

- 1.4 The National Insurance Brokers Association of Australia recounted that:

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

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

Purpose of inquiry

- 1.6 Individual members of this Committee were alerted to insurance issues by their constituents who reported unacceptable delays in claims processing, not being able to contact their insurers or not being updated on the progress of claims. Frustrated and stone-walled, people began to turn to their local, state and federal government representatives.
- 1.7 Consumer advocates were already well aware of these issues. In January 2011, a coalition of consumer advocacy and legal aid organisations had put together a number of recommendations for insurance industry reform, including the implementation of a six-month timeframe for determining insurance claims and a requirement for insurers to inform consumers calling about a claim about their rights to make a claim,

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

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

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

Box 1.0 Disaster events devastate victims

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

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

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

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

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

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

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

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

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

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

Scope of inquiry

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

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

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

- ⇒ Timeframes – the time taken to process claims by the insurance industry and whether these timeframes were reasonable (by event and region).
 - ⇒ External parties – the engagement of third party experts and external consultants by the industry, including hydrologists and law firms, and the impact of these external parties on claims processing.
 - ⇒ Internal Dispute Resolution (IDR) – whether industry IDR processes were effective and undertaken in a timely manner.
 - ⇒ Code of Practice – the effectiveness of the insurance industry’s Code of Practice.
- The conduct of external dispute resolution processes for claims arising from the 2010–2011 extreme weather events, including:
 - ⇒ The effectiveness of dispute resolution within the Financial Ombudsman Service
 - ⇒ Barriers to participation in external dispute resolution for consumers
 - ⇒ The impact of free legal advice on people’s access to external dispute resolution (including assistance provided by Legal Aid services and community legal centres)
 - Any other matters impacting on insurance claims processing arising from the 2010–11 extreme weather events.
- 1.13 The focus of the inquiry is on general insurance, such as home contents and business insurance, as opposed to other types of insurance such as life insurance. Moreover, the inquiry examined claims arising from natural disasters, not single episode incidents or car accidents.
- 1.14 The inquiry did not investigate the definition of flood which, while a significant issue, is allocated to another review (discussed below). However, the Committee was interested in the definition of flood insofar as it related to its effect on claims processing.
- 1.15 The inquiry also did not examine the mitigation of extreme weather risks, as this is the responsibility of state and local governments.
- 1.16 There were other matters that arose throughout the inquiry, which the Committee felt compelled to investigate, such as consumer knowledge of policy coverage and underinsurance.

Relevant reviews and inquiries

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

Australian Securities and Investments Commission Reports

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

Queensland Floods Commission of Inquiry

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

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

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

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

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

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

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

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

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

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

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

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

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- ⇒ time limits on internal dispute resolution complaints commence immediately after a policy holder notifies the insurer of a complaint, whether verbally or in writing; and
 - ⇒ a general fairness test be applied to claims and complaints handling; and
 - that appointments to the General Insurance Code Compliance Committee be conducted in the same fashion as Financial Ombudsman Service Panels, with the Code Compliance Committee to take on record-keeping, investigative, compliance and reporting roles.
- 1.29 The Australian Government responded on 14 November 2011, resolving to:
- introduce a standard definition of ‘flood’ with all policies offering flood insurance required to contain this definition;
 - implement a requirement for insurers to provide customers with a one-page Key Facts Sheet for all home and contents policies;
 - remove the provision that the Insurance Code of Conduct does not apply during natural disasters;
 - provide for time limits for the completion of experts reports;
 - consult with industry to impose a time limit on claim resolution and strengthen internal dispute resolution processes;
 - commit substantial funds to a flood risk information portal; and
 - consult on a proposal for mandatory flood cover for home building and home contents policies.¹⁵
- 1.30 The Australian Government introduced legislation on 23 November 2011 to mandate the standard definition of flood and implement a Key Facts Statement. The Insurance Contracts Amendment Bill 2011 is currently before Parliament.
- 1.31 The House of Representatives Standing Committee on Economics inquired into the Insurance Contracts Amendment Bill 2011, and tabled their advisory report on 16 February 2012.¹⁶ The report recommended that the bill be passed, although Mr Steven Ciobo MP, Ms Kelly
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15 The Hon. Bill Shorten MP, Assistant Treasurer and Minister for Financial Services and Superannuation, and the Hon. Robert McClelland MP, Attorney General, ‘Fixing Flood Insurance’, *Media Release 52*, 14 November 2011.

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

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

Conduct of the inquiry

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

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

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

Structure of the report

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

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

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