

# Muddied waters

**A problem with flood insurance identified in a report 11 years ago is still causing distress to flood victims at a time when help is needed the most. Story: Georgie Oakeshott**

A stinking, muddy trail of destruction wasn't the only thing left behind by the floods which devastated parts of Queensland in January this year.

A torrent of emotions also swept through the shell-shocked communities of the sunshine state where the total number of people impacted by last summer's wild weather was greater than any other natural disaster in Australia's history.

For many people trying to rebuild their lives, their grief and despair turned to anger and frustration the minute their insurance companies got involved.

Instead of extending financial assistance at a time of need, insurance companies were telling hundreds of flood victims they were not covered. Storm damage yes, but flood damage no.

This left hundreds of people scratching their heads and asking the obvious question: would there have been a flood without the storm?

Other Queenslanders were even more perplexed when told they had cover for flash flooding but not riverine flooding.

Months later, hundreds of bewildered flood victims are still locking horns with their insurance companies in a lengthy and complex process of dispute resolution, poring over hydrological reports to establish the exact cause of their piece of the flood.

An unknown number of others – potentially hundreds – never made it this far. Tired of the run-around and suffering 'claim fatigue', they simply gave up because it all seemed too hard.

In its defence, the insurance industry points to a summer of unprecedented natural disasters which stretched the resources of insurers dealing with tens of thousands of claims.

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The biggest hit came from the Queensland floods, which alone accounted for 56,000 claims with a cost of \$2.5 billion.

Adding in the impact of Cyclone Yasi in far north Queensland, flooding and severe storms in Victoria, and bushfires in Western Australia, by June this year the insurance industry had received more than 180,000 claims with an insurable cost of more than \$4 billion.

The Insurance Council of Australia says the Christchurch earthquake was also largely underwritten by Australian based interests, further stretching the industry's resources.

*DRAINED: First the flood, then the fight, just to get back to normal*



Given that flooding leads to a higher volume of claims which take longer to process due to their complexity, delays in processing claims following Queensland's flood event were inevitable. But the insurance council says 99 per cent of residential claims from the Queensland floods had been assessed by June, with only 200 yet to be determined.

The exact number of unhappy customers now involved in internal dispute resolution or external dispute resolution (known as IDR and EDR) is unclear. However it is anticipated around 700 cases will be brought forward for EDR as a result of the Queensland events. That's 700 very angry people.



“Deceitful” is how one woman described her insurance company which she says left her family in hell. “Evil” is another description used.

“We lost everything in this flood, all we own and our home,” says one Queenslander. “It has shattered our lives but in the beginning we thought we could get through because we were insured. The reality is that we were at the mercy of a greedy insurance company that deceived us and lied to us.”

Personal accounts like these are now being examined by a parliamentary committee which is investigating the operation of insurance companies during disaster events.

The inquiry by the House of Representatives Social Policy and Legal Affairs Committee is looking at the

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insurance industry’s handling of the full spectrum of disasters, although flood victims have sent in the majority of submissions, often with more questions than answers.

“How are insurance companies allowed to run businesses in flood prone areas with policies that exclude flooding? Is this not cheating the gullible?”

“How can they settle the claim for a vehicle which was (in the garage) inside the house and deny the claim for the house itself?”

“How can the insurance company differentiate between damage done by floods and damage done by storms for home and contents?”

Mayor of Ipswich Paul Pisasale has given the parliamentary committee



a scathing assessment of the actions of some companies which provided insurance to the 1,000 damaged homes in his region.

“Insurance companies actually created a more devastating effect on the community than the disaster itself,” he says.

Committee chair Graham Perrett (Moreton, Qld), whose own electorate saw water over the floorboards in more than 5,000 homes, insists the inquiry is not a witch hunt.

“We all know that we need a strong insurance industry, however we also want to know that we can respond appropriately to future disasters from the lessons we have learnt from recent disasters,” Mr Perrett says.

As well as looking at the dispute process, the inquiry is examining the communication of claims processing arrangements; the timeliness of claims processing; and the impact of third party consultants on timeframes for claims processing.

“The committee is concerned about the length of time it has taken for the insurance industry to process many claims, and about the claims handling process more generally. We are also concerned about the widespread mismatch between what people thought their insurance policies covered and the outcomes of their claims,” Mr Perrett says.

MISMATCH IS NOTHING NEW when it comes to understanding of insurance coverage. More than a decade

## “Insurance companies actually created a more devastating effect on the community than the disaster itself.”

ago insurance industry regulator, the Australian Securities and Investments Commission (ASIC), called the flood policy confusion a serious problem which needed addressing.

ASIC’s 2000 report *Consumer understanding of flood insurance* warned that insurance companies needed to improve the way they explained flood cover to ensure they clearly differentiated between flood damage and other storm damage.

The report noted that under section 35 of the Insurance Contracts Act insurers have an obligation to inform a consumer clearly about technical policy distinctions.

It also pointed out that under the ASIC Act, a corporation must not engage in conduct in relation to financial services that is misleading or deceptive, or is likely to mislead or deceive.

Furthermore under the industry’s own General Insurance Code of Practice, a key objective is to facilitate

COPING AS BEST THEY CAN:  
*Resourceful Queenslanders put to the test*

the education of consumers about their rights and obligations under insurance contracts. In fact the code specifically requires insurers to express policy documentation in plain language and to design and present policy documentation with the aim of assisting comprehension by consumers.

ASIC’s report called for the introduction of a standard definition of flood, because different wording in different policies by different companies was – and still is – confusing.

Eleven years after ASIC released its findings, Queenslanders are telling the committee, “the definitions of flood are so confusing they seem designed to outwit you” and “nowhere does it say if you’re flooded you’re bugged”.

But despite the ongoing confusion, ASIC senior executive Greg Kirk says things have improved since 2000.

“I know they [insurance companies] have made attempts to make, in particular, the issues around flood cover clearer in their policies. Looking back at the situation in 2000, things have certainly improved. That is not to say that all understand (a) whether their policy covers flood and, if it does or does not, (b) what in fact flood means,” Mr Kirk says.

“In terms of getting information to consumers, that is a very difficult task. The distinction between floodwater

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### DESPAIR: *More questions than answers over flood damage*

and stormwater is a difficult one even for hydrologists, and there has been variation in where that line is drawn by different insurers and the different interpretations and clauses used in their policies."

He says the insurance industry made an attempt to introduce a standard definition of 'inland flood' in 2008 but that was knocked back by the Australian Competition and Consumer Commission on the grounds it could increase consumer confusion rather than alleviate it.

The Insurance Council of Australia has pledged to try again, announcing in July this year that the industry will adopt a common definition of flood. It is also aiming to increase the number of policies which include flood cover from 54 per cent currently to 84 per cent by January 2013.

Insurers are also working with the federal government's Natural Disasters Insurance Review, which is also looking at the need for standard definitions and industry reforms.

Not surprisingly there is widespread support for the adoption of a standard definition of flood, including from the Queensland government, which describes it as the most prominent lesson from the summer of disasters.

"Across Queensland, many thousands of people who in good faith believed that their comprehensive insurance included flood cover were shocked to find that their policies accommodated flash but not riverine flooding, a concept which had not previously been subject of public discussion or general community knowledge," Queensland MP Rachel Nolan says.

"The Queensland government supports the Australian government's efforts now to strengthen regulation. In particular we advocate the adoption of a standard, clearer definition of flood."

ACCORDING TO ONE FLOOD victim on the NSW north coast, the difference between a successful and

unsuccessful claim during this year's events came down to this very question of definition.

"We had surface water from a hill behind us, from drainage lines in the hills south of our property and also a creek to the east," the parliamentary committee was told.

"We had video evidence and physical evidence from the debris. It could easily have gone the other way for us, based on definitions and the individual assessor's opinion. An elderly couple 2km downstream of us were knocked back and it took them 12 months of appealing before they were successful. Same event, same insurer, slightly different circumstances and policy, and ultimately definition of flood."

Personal experiences such as these have consumer law advocates also calling for clarity, demanding it is time to call a flood a flood and give Australians a fair go on their insurance.

In a 12-point plan released in February, consumer and legal organisations called for the development of a fair and easily understood standard definition of flood to be used in all Australian household insurance policies.

"We know what needs to be fixed if Australians are going to get a fair go from their insurers," says the Insurance Law Service's principal solicitor Katherine Lane. "The recent floods have highlighted once again the disastrous impact of not having a fair standard flood definition in all insurance policies."

Following the Queensland floods, the Insurance Law Service joined forces with Legal Aid Queensland, Legal Aid NSW and Caxton Legal Service to work on an estimated 700 cases. They say the fact that so many people thought they were covered but were not was a major failure in insurance coverage.

They are also concerned about 'discouragement', where consumers simply give up on claims because they



are led to believe they are futile. While the number of abandoned claims is unknown, the law service has anecdotal evidence of people being advised by their insurer they cannot make a claim because they are not covered for that disaster event.

"Many consumers are told their claim is not covered and believe (at that time) that a claim has been made and rejected and that is the end of the process," the Insurance Law Service submission says.

"In fact, no claim has been made or recorded and staff of the insurance company have improperly (without evidence or detailed information) misled the consumer about their rights to claim and go to external dispute resolution (EDR)."

Industry regulator ASIC is concerned about these reports and has made recommendations to stamp out the practice, unless it is a very clear cut case. ASIC's Greg Kirk says it is actually better for a consumer to be told up front if their claim is outside their policy.

For many Queenslanders who were not immediately discouraged and decided to persevere, the claims process has been long and frustrating.

Common complaints include difficulty getting concrete answers from insurers as well as difficulty making contact by phone. One person described how they were told to call between 2 and 3 o'clock in the morning to avoid phone congestion and were still not able to get through. For many, it felt as though their claims disappeared into a black hole.

"The stress of waiting and not knowing when we would have a home has nearly destroyed my family. The emotional cost of this is just as significant as the financial cost," says one Queenslanders.

"People's lives are on the line and it's the emotional stress of waiting six and seven months for an answer, as much as the financial stress, which is devastating," says another.

The parliamentary committee is investigating the claims handling process and in particular the industry requirements as set out in the General



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**CLEANING UP:** *The definition of flood remains messy and needs attention*

Insurance Code of Practice. These include minimum response times, advising people on the progress of their claim and responding to disasters in a fast, professional, practical way and with a compassionate manner.

The Insurance Council of Australia has singled out communication as a priority for improvement.

“In terms of communication with customers, to make sure they understand what their policy actually covers because there were some concerns about that, and also about how their claim is progressing and keeping them informed,” says the council’s CEO Rob Whelan.

## “The definitions of flood are so confusing they seem designed to outwit you.”

“We do as much as we can, as fast as we can but there are limitations, and the industry was stretched by last summer’s events.”

THERE ARE MANY REASONS why flood claims result in more delays and more disputes than other disasters.

The Insurance Council of Australia says disruptions to roads and additional hazards such as damaged utilities may make it difficult for assessors to access properties; and the unique damage caused by flooding sometimes requires expert opinions.

But community law group, the Insurance Legal Service, says there are other factors at play, including flood exclusion being buried in most policy product disclosure statements; no targeted disclosure over the phone or internet when people are buying their policy; and the fact that many Australians have no idea of their risk of flood.

According to the Financial Ombudsman Service – which is the provider of the external dispute resolution process – when insurers deny claims for flood it raises the questions of whether flooding was caused by a flood or a storm, whether sections 35 and 37 of the Insurance Contracts Act were satisfied, and what representations were made at the point of sale and what their ramifications are. These questions can be so complicated the ombudsman doubts the introduction of standard definitions will cure the confusion.

“Unfortunately, cleaning up and having a single definition of flood will not remove the question of flood or storm, because stormwater is traditionally runoff water; flood is inundation from water escaping the banks of a river. That is in very broad terms, and that is how the standard definition is heading,” says John Price, Ombudsman General Insurance.

“So there is probably a broader piece of work that needs to be done

around insurers, if they are not going to provide flood cover, clearly identifying what they mean by storm and what water coming out of a storm drain, if it is backwater from a flood, is considered flood water. There are court decisions around that, unfortunately. That needs to be clarified.”

Insurers are calling for mitigation works, with the Insurance Council of Australia releasing a 10-point plan to tackle disasters. It recommends the provision of adequate flood data, including an open source, nationally consistent, accurate mapping of flood risks; improvements to land-use planning; better building standards; and upgrades to community infrastructure.

The council’s Rob Whelan says the lack of data is one of the reasons there has been a problem with flood insurance over such a long period of time.

“Progressively we’ve been putting that data together and since 2006 approximately 3 per cent of policies in the market covered this type of flood. This year over 50 per cent do and by the end of 2012 we estimate about 80 per cent of policies will – and that’s as a consequence of information and data being available for insurers to actually quantify the risk and therefore price the risk, and so it has been about getting accurate and available information to be able to put the policies into effect.”

It’s now up to the parliamentary committee to wade through the muddled waters of this emotionally charged inquiry, with a report due early next year. •

*Shortly before the publication of this article the federal government announced that it would legislate a standard flood definition.*

**FOR MORE INFORMATION** on the inquiry into the operation of the insurance industry during disaster events, visit [www.apf.gov.au/spla](http://www.apf.gov.au/spla) or email [spla.reps@apf.gov.au](mailto:spla.reps@apf.gov.au) or phone (02) 6277 2358.