



Hon Rachel Nolan MP
Member for Ipswich



**Minister for Finance, Natural
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Mr John Trowbridge
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Natural Disaster Insurance Review
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Dear Mr Trowbridge

Thank you for the invitation to provide a submission to the Natural Disaster Insurance Review.

Given the overlap between the two inquiries, the same comments have been provided to Mr Graham Perrett, Chair of the House of Representatives Standing Committee on Social Policy and Legal Affairs' inquiry into the operation of the insurance industry during the recent natural disasters.

The recent Queensland floods and cyclones affected more people than any other natural disaster in our nation's history, bringing many people into close contact with the insurance industry for the first time. As such, the Queensland Government values the opportunity to comment on the operation of the industry at this time.

The regulation of insurance is a well established Commonwealth responsibility. Nonetheless, the industry's failings had direct consequences for Queenslanders and the Queensland Government, which has sought to assist people where the insurance industry was unable.

The most prominent lesson from the summer of natural disasters was that the definition of flood was not adequately or clearly defined in most standard home, contents or business insurance policies.

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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 the subject of public discussion or general community knowledge.

In the wake of the floods therefore, many people found themselves uninsured while others found that their claims took a long time to be processed as hydrological reports were needed to establish the cause of flooding.

Even in cases where there was no dispute, many Queenslanders were frustrated with the time taken for claims to be processed. An often expressed view in communities was that even if insurance companies were going to say no, they should just get on and do it.

Frustration was also experienced because insurance companies brought in contractors from interstate to undertake work rather than using local firms. This practice may have been simple for the firms involved but it exacerbated difficulties for local tradespeople whose industry had already suffered as a result of the natural disasters. In its own repair work, the Queensland Government sought to engage local contractors.

The Queensland Government sought to assist Queenslanders dealing with these industry failings in a number of ways.

First, the Premier met with the Insurance Council of Australia repeatedly in order to urge a higher level of responsiveness to the issues raised above.

Second, the Government coordinated the Premier's disaster relief fund which has raised \$273 million. To 6 July 2011 this fund has distributed \$163.5 million to over 30,332 individuals and households and \$10 million to St Vincent de Paul, at a payout rate faster than the Victorian bushfire fund or any other such scheme in history. These payments have been particularly critical for those people referred to above who, to their surprise, found themselves uninsured or underinsured.

Third, the Queensland Government has assisted individuals and businesses with insurance disputes through the provision of free legal assistance through Legal Aid Queensland.

Fourth, the Queensland Government, often in partnership with the Australian Government, has provided housing; payments such as household assistance grants; and other social support such as psychological and financial counselling support to those who have been affected.

While some insurance firms, notably Suncorp, provided an adequate overall response to the natural disasters, there is no doubt that frustrations and failures were experienced by many Queenslanders and that these failures exacerbated the impact of the natural disasters for many people.

The Queensland Government supports the Australian Government's efforts now to strengthen regulation. In particular, we advocate:

1. the adoption of a standard, clearer definition of flood;
2. streamlining of assessment processes; and
3. encouragement for insurance companies to use local labour where possible.

These changes would assist Queenslanders in their everyday lives should they be hit with natural disasters in the future.

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized loop that encircles the name 'RACHEL NOLAN' printed below it. The signature starts with a small loop, then extends upwards and to the right, crossing itself, and finally loops back down and to the left to form a large circle around the name.

RACHEL NOLAN

Queensland Government Submission

The Natural Disaster Insurance Review; and

Commonwealth House of Representatives Standing Committee
on Social Policy and Legal Affairs inquiry into the operation of
the insurance industry during disaster events.

July 2011

Introduction

The Queensland Government supports these inquiries as important processes to ensure the insurance market provides appropriate services to the community. The purpose of the Queensland Government submission is to provide information on matters which may assist the inquiry, particularly as they relate to disaster events that have impacted Queensland in the past twelve months.

The Queensland Floods Commission of Inquiry will also be examining the performance of private insurers in meeting their claims responsibilities. The Commission has announced that the second round of hearings will commence on 19 September 2011, with a particular focus on insurance and land planning matters. The findings will be included in the final report to Government due by 24 February 2012.

Responsibility for Insurance

States and Territories have principal responsibility for disaster preparedness and response within Australia and for managing any natural disaster within their own jurisdiction.

While government agencies (at all levels) will continue to play a critical role in providing assistance to the community in the event of a natural disaster, insurance has an important role to play in the recovery process.

Government intervention should only be called upon where there is clear evidence of a market failure be it through insurance becoming unavailable or unaffordable.

The Insurance Council of Australia has maintained that there is no general market failure with respect to flood cover.

Insurance Regulation is a Commonwealth Government responsibility

The Commonwealth Government has responsibility for regulating the general insurance industry and is best placed to determine what if any intervention in relation to flood insurance is required – from a federal Government funding perspective as well as any broader implications.

Establishing best practice standards for the insurance industry are most appropriately developed at a Commonwealth level with consideration and input from relevant stakeholders.

Well-enforced regulations and service standards are essential. Based on recent consumer experience there is merit in exploring a Code of Conduct for claims management which enables insurers and policyholders to more clearly understand expectations in relation to the claims process in advance rather than during a disaster event.

Insurance issues arising from recent floods and Cyclone Yasi

Three areas of concern to the community and insurance policyholders generally that have been raised with the Queensland Government are the definition of flooding, the timeliness of processing claims and the use of interstate firms by insurers.

The first issue relates to the mistaken belief that they are covered for all types of flooding events (whether from a river, rainfall or storm surge).

Following the devastating Queensland floods and Cyclone Yasi, there were many in the community who were not fully aware of the extent of their insurance coverage. Many assumed they were covered automatically for all types of flooding events, severe storms and other natural disasters, only to discover, post event, that they did not have the necessary insurance protection.

The number of disputed claims arising from the Queensland floods reinforces the need for a standard, unambiguous definition to be enshrined in Federal legislation and for the insurance industry to provide greater clarity in product disclosure statements as precise policy coverage.

A clear, standard definition of flood is required to ensure policyholders know where they stand and have confidence in the insurance product they are purchasing. Consumers need to know that when disaster strikes, they can be certain that their insurance policy will respond to their claim. Without such certainty, consumers start to question why they should take out insurance cover in the first place, thereby increasing the demand for government intervention and financial support.

In addition, policyholders must be fully informed about the insurance cover they are purchasing or renewing. If a policyholder is made aware that flood cover is available, and the cost of such cover, but elects not to take out this option, then their policy should clearly reflect their intention. The policyholder should be given the opportunity to make an election on each and every occasion of the policy's renewal.

Expectations of policyholders to read extensive Policy Disclosure Statements to understand and therefore agree that coverage meets their needs is an expectation that should be challenged. Consideration of an agreed industry standard summary of cover to be attached to all Certificates of Insurance – both new business and at renewal – will go a long way to alerting policyholders to the extent of their cover. There should be no ambiguity.

While a standard flood definition and clear disclosure statements regarding precise policy coverage may not help current flood victims whose claims have been denied, it will go some way to providing certainty for policyholders in the future.

Secondly, many Queenslanders' efforts to get back on their feet were frustrated by lengthy delays in having claims processed. This failure of insurers to process claims in a timely manner meant delays in families and businesses returning to their premises extending the flow on impacts of displacement and adding unnecessary stress for

people who had already been through difficult circumstances. A streamlined assessment process would ensure all policy holders could have certainty about the processing of their claims and assist in getting people back into their homes and businesses sooner.

Further, the businesses of many local tradespeople were devastated by the disasters and would have benefitted from the additional work associated with insurance repairs. However, a number of insurers used interstate firms to conduct works, leaving local tradespeople without the boost to assist getting their business back on track. It would be beneficial, in time of disaster, for insurers to be encouraged to use local firms.

Implications for the Queensland Government arising from the recent floods

Damage to homes

The Queensland Reconstruction Authority (QRA) maintains data on the extent of the impact of the recent flood events and Tropical Cyclone Yasi (based on advice from the Insurance Council of Australia). A summary of key statistics (as at 29 June 2011) includes:

- Over 136,000 homes and businesses in the flood line and Cyclone Yasi destructive wind zone;
- A total of 124,500 insurance claims (property, business, vehicles, residential etc);
- Over 67,800 residential insurance claims; and
- Over 7,200 claims for significant damage (insurance claims A and B and Structural Assistance Grants through the Department of Communities).

Of the 124,500 insurance claims, 68,300 relate to Cyclone Yasi with an estimated total reserved insured value of \$1.09 billion. A total of 56,200 claims relate to the 2011 flood events with an estimated total reserved insured value of \$2.55 billion. In excess of 99 per cent of claims have now been assessed and determined, with approximately 47 per cent of residential property claims now closed following completion of repairs or cash settlement.

Approximately \$1.23 billion has been paid to insured Queenslanders so far. Approximately eight per cent of residential property claims in Queensland have been denied, the majority of these related to flood exclusions in the policy purchased by the property owner.

Legal assistance services

Legal Aid Queensland (LAQ), in partnership with other Queensland legal organisations, set up Flood and Cyclone Legal Help in early 2011 in response to the natural disasters experienced across the state.

LAQ met its own costs for matters associated with Flood and Cyclone Legal Help and community legal centres will also be reimbursed for some of their travel costs from the Legal Practitioner Interest on Trust Account Fund.

LAQ received \$200,000 from the Commonwealth Attorney-General to fund legal help, as well as \$250,000 from the Insurance Council of Australia. This funding was shared with Caxton Legal Centre and enabled LAQ and Caxton Legal Centre to devote the time of their lawyers to helping people affected by floods and cyclones.

LAQ's partner organisations in Flood and Cyclone Legal Help included:

- Queensland Association of Independent Legal Services
- Queensland Public Interest Law Clearing House
- Aboriginal and Torres Strait Islander Legal Service
- Queensland Law Society
- Queensland Bar Association
- Department of Justice and Attorney-General.

Initial response

The initial response following the flood and cyclone disasters included:

- establishing LAQ's 1300 number and call centre as the first point of contact for Flood and Cyclone Legal Help
- developing a website, as a subset of the LAQ website, which includes links to legal information resources, relevant information and websites, upcoming events and media releases
- developing 14 factsheets and the LAQ insurance claim guide in response to the natural disasters, all of which are available on the website – and establishing a direct link from the Queensland Premier's flood assistance page
- compiling resources kits for lawyers from LAQ and partner organisations working under the Flood and Cyclone Legal Help Banner
- coordinating or supporting the attendance of lawyers from LAQ and partner organisations at recovery centres to provide legal help
- convening community meetings in affected areas, including joint meetings with the Insurance Council of Australia and the Financial Ombudsman Service. The community meetings were well attended. Eg three joint community meetings held in the evening in different parts of Ipswich in the week of 7 February attracted over 500 people
- supporting and leading a coordinating group to manage the above activities

Insurance Law Service

Following the initial response, LAQ established a new collaborative Insurance Law Service to help clients experiencing delays in getting a response or who had their claim fully or partially refused.

The Insurance Law Service was a collaboration between LAQ, Caxton Legal Centre, the National Insurance Law Service and Legal Aid NSW.

As at June 2011, LAQ had approximately 450 clients challenging insurance claim refusals, while the other partners in the Insurance Law Service had a further 250 files.

The Insurance Law Service used an early resolution model by supporting clients to seek address of adverse insurance decisions or unreasonable delays in decisions through internal review by insurance companies, or by redress through the Financial Ombudsman.

For each of their clients, LAQ lawyers would take a statement and then make a submission marshalling the facts of the case and identifying legal issues. This could include studying detailed hydrologist's reports, examining product disclosure statements, gathering photographic evidence and taking statements from neighbours to support each case.

LAQ has already had a number of successful wins for clients in overturning claim decisions on review and the team is continuing the fight for other clients.

Self-help guide

To support the work of the Insurance Law Service, LAQ also produced a new self-help guide to help people with their insurance claims after a storm, cyclone or flood.

The guide *When disaster strikes – cyclones, storms and floods: A guide to getting your insurance claim paid* provides a range of important information including how to submit an insurance claim, understanding what your insurance policy covers, how to prove the cause of damage to your property, and what your options are if your insurance claim is refused.

Community legal centres

LAQ provided \$250,000 directly to community legal centres to create a State-wide network of lawyers to deliver free flood and cyclone legal information and advice.

Community legal centres have made an important contribution, enabling lawyers to be on the ground in affected areas helping flood and cyclone victims with legal issues, predominantly insurance claims.

The funding from Legal Aid Queensland has allowed community legal centres to provide extra services and supported the coordination of the legal profession's pro bono work.

It has extended free flood and cyclone legal advice services into regional Queensland. Community legal centres in Cairns, Townsville, Central Queensland, Toowoomba and South-West Brisbane benefited from the funding.

Centres used the funding to advertise their services in local communities and to hold advice and information clinics in some areas.

It allowed these community legal centres to devote part of their practice to helping flood and cyclone victims with legal issues, such as insurance claims, as well as tenancy agreements, employment, credit, debt, fencing, damage to motor vehicles and family law.

Implications for community response services

In response to a natural disaster which displaces people from their homes the Department of Communities has a responsibility to provide assistance to those who need it to find alternative accommodation. The housing recovery response involves:

- Allocation to social housing;
- Assistance to find accommodation in the private rental market;
- Provision of temporary housing into an impacted community.

The recovery response also involves the payment of financial assistance to enable replacement and/or repair of damaged housing. The response might also include referral for the provision of specialist information and/or support

It is important to ensure displaced households are made aware of the available options for assistance. Housing and Homelessness Services has participated in two rounds of information sessions for flood impacted households. The first of these was organised by the Queensland Building Services Authority and involved 12 sessions held in the period 8 February 2011 to 2 March 2011. The second round were 5 focussed housing information sessions held in the period 22 March 2011 to 30 March 2011.

Social Housing Assistance

As at 28 June, 575 applications for social housing have been received from people who report being a victim of flood (474) or cyclone (101). Of these:

- 375 have been allocated social housing or allocation is being processed. This includes a small number who would not normally have been eligible for social housing;
- 165 have withdrawn their application or it has been cancelled or client is ineligible; and
- the balance are still being assessed or are on hold.

Private Market Assistance

People have been assisted to find alternative private rental accommodation:

- 4,791 bond loans have been provided as at 8 June 2011¹
- 901 rental grants advanced as at 8 June 2011¹
- As at 28 June 2011, there have been 182 Mortgage Relief enquiries with 12 Mortgage Relief loans advanced.
- RentConnect Advisory Service (Levels 2&3) – 1,469 (as at 29 June 2011)
- Referral to Tenant Advice and Advisory Service Queensland - services are provided, statistics not collected
- Home Assist Secure – services are provided, statistics not collected

1. Bond Loan and Rental Grants data are based on matching the postcode of the property the bond loan/rental grant was approved for, with a list of postcodes affected by the disasters. The figures provided above may be overstated as it is not possible to identify individual households affected by these disasters.

There has also been agreement for an additional 123 rental properties to be made available under the Community Rent Scheme, most of are in the Ipswich area. These will be managed as medium-term transitional accommodation.

Provision of Temporary Accommodation

Over 100 temporary units of accommodation, including 12 caravans, have been provided for use by displaced people. A further 69 units have been provided for worker and/or office accommodation in impacted communities.

Structural Assistance Grants

Structural Assistance Grants are means-tested building repairs grant assistance of up to \$10,500 for eligible individuals and up to \$14,200 for eligible couples or families. As at 29 June 2011*:

- 1,787 applications received
- 310 finalised and approved for payment
- \$2,434,340 paid and finalised

*The “Approved for payment” figure only includes those payments that are finalised. Cases where part payments have been made but the full amount to be paid has not yet been disbursed are not included in this figure. All figures are subject to final validation from Department of Communities finance systems.

Role for State Government

The State government has a clearly established role in minimising climate change and natural disaster impacts on key areas of service delivery and publicly-owned infrastructure. The Queensland Government has taken a number of actions to increase the preparedness of communities for natural disasters and for the impacts of climate change.

Resilience

Queensland is a participant in the National Strategy for Disaster Resilience (NSDR), endorsed by COAG on 13 February 2011. The Strategy is a high level strategic direction setting document and its first step in developing a national, integrated approach to disaster resilience.

The NSDR promotes the responsibility of governments at all levels, individuals, communities and the business and non-government sectors to work together to enhance Australia’s capacity to withstand and recover from disasters. It highlights as a key role for governments, the need to develop and implement effective risk-based land use planning arrangements in the context of climate change, as a way of strengthening the nation’s resilience to disasters.

The NSDR builds on the Federal and State Government Natural Disaster Resilience Program (NDRP), a disaster risk reduction and community resilience grants program. The NDRP in Queensland is jointly funded by the Federal and State Governments (each providing \$22 million over four years commencing in 2009-10). In Queensland, local governments are also required to contribute to the total project cost. In Queensland the NDRP's focus is to build community resilience to flooding, cyclones, severe storm surge and bushfires.

Land Use Planning

State Planning Policy (SPP) 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* is one of a suite of SPPs that are statutory instruments under the framework provided by the *Sustainable Planning Act 2009* and its precursor the *Integrated Planning Act 1997*. SPP 1/03 expresses the State's interest in minimising the adverse impacts of these three natural hazards on people, property, economic activity and the environment when making decisions about development.

SPP 1/03 is designed to ensure that the natural hazards of flood, bushfire and landslide are adequately considered when making decisions about new development and community infrastructure. Under SPP 1/03, local governments and State infrastructure providers must reflect SPP 1/03 by identifying natural hazard management areas (flood) and describing strategies and measures to protect people and property in planning schemes.

Local Governments must also have regard to SPP 1/03 during the assessment of development and community infrastructure. They are required to impose conditions on development applications to minimise risks from natural hazards, and should not approve development applications that result in an unacceptable level of risk to people or property. Since 2007, full responsibility for compliance of individual development applications with SPP1/03 has been delegated to local governments.

The Department of Community Safety provides advice to the Department of Local Government and Planning (DLGP) on whether draft local government planning schemes appropriately reflect the SPP to achieve the state's interests defined in the SPP. The Department of Environment and Resource Management (DERM) provides advice to DCS and local governments about floodplain management issues (and flood studies in particular), related storm tide inundation issues, protection of floodplain biodiversity and planning for climate change.

SPP 1/03 specifies that local government should regulate development outcomes within a Natural Hazard Management Area (flood). This should be determined by a Local Government undertaking either a comprehensive flood study (as the preferred measure) or by using alternative means such as the interpretation of historical flood levels.

A review of SPP 1/03 commenced in November 2010 with a new instrument to be in place by September 2013. The review will include consideration of recommendations arising from the Inland Flooding Study (IFS) report by the DERM, the then Department of Infrastructure and Planning, and the Local Government Association of Queensland in December 2010 on the approximate magnitude of climate change

impacts on flooding. The IFS additionally proposed adoption of a flood mitigation approach that identified multiple hazard zones instead of a single hazard zone based on a defined flood event as with the existing SPP.

DERM has also initiated technical investigations arising from the IFS including: the likelihood of coincident flooding from riverine flooding and high tides, storm surges or sea level rise; broader applicability of IFS study conclusions; an inventory of flood studies already conducted; characteristics of a consistent and regionally appropriate methodology for undertaking flood studies (to include climate change); and the confidence interval for current flood studies.

The Urban Land Development Authority (ULDA) also makes planning decisions, comparable to those of Local Governments, in declared Urban Development Areas such as Caloundra South, Greater Flagstone, Yarrabilba and Ripley Valley.

The Queensland Reconstruction Authority (QRA) will also make similar decisions for declared reconstruction areas and reconstruction projects.

Building Standards

Building Codes Queensland (within the DLGP) have the following responsibilities in preparedness for flooding events, generally: legislative amendments relating to flooding, including climate change adaptation; providing advice and support regarding building, plumbing and water use in the event of a natural disaster; and assistance with the preparation of disaster recovery material and assistance.

BCQ is involved in the Australian Building Codes Board (ABCB) work program for the development of a national design and construction code for building in flood prone areas. If a national flood code is included in the Building Code of Australia (BCA) it will then be able to be adopted by individual States and Territories as a mandatory building assessment for building in a designated flood prone area.

Land use planning and building requirements are likely to be considered as part of the Queensland Floods Commission of Inquiry, to minimise future infrastructure and property impact from floods. The final report from the Inquiry is expected to be released in early 2012 and there will be a need to consider relevant recommendations from the Inquiry in the development of land use plans, building standards and State planning instruments.

Natural Disaster Relief and Recovery Arrangements (NDRRA) and insurance

The Queensland Government is of the view that the prime mechanism, and most efficient means, to fund public asset restoration following a natural disaster is through the Commonwealth-State NDRRA. The NDRRA includes a range of pre-agreed relief measures and cost-sharing formula that varies in accordance with the scale of aggregate disaster costs faced by the States.

The 2011 NDRRA Determination has emphasised that the arrangements should not be seen as a disincentive to plan, mitigate or allocate resources for natural disasters nor discourage governments, individuals or businesses taking out insurance to protect their assets. In addition, the Commonwealth Government has amended the NDRRA Determination to incorporate a requirement for State Governments to assess the feasibility of insurance for public infrastructure against disaster damages. It is understood this requirement applies equally to local governments. Consequently, the Queensland Government is continuing to investigate the feasibility of reinsurance options for its infrastructure stock.

The Queensland Government supports a process of ongoing review and improvement that seeks to establish the most appropriate and effective arrangements for funding of natural disaster losses involving public assets.

The recently announced NDRRA reforms should not preclude an ongoing discussion of those arrangements to ensure they best and most effectively meet the needs of the various levels of government and the community more broadly. Where there is agreed scope for improvement this should be explored.