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## **SUBMISSION**

**By Email:** [floodinsurance@treasury.gov.au](mailto:floodinsurance@treasury.gov.au)

**RE:** [\*CONSULTATION PAPER – REFORMING FLOOD INSURANCE\*](#)

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I thank your group for calling for submissions.

### **SUBMITTER**

I am a loss adjuster – Fellow of the Australasian Chartered Institute of Loss Adjusters and previously being a director of that Institute, from time to time.

I have 35 years experience in loss adjusting and a number of years before that worked in the insurance industry.

Further, I live on the Hawkesbury River and until 20 years ago was used to floods on a regular basis with a major flood occurring probably on average every four years but for the past 20 years nothing.

I am an experienced insurance assessor and director of Equity Adjusters (NSW) Pty Ltd a member of Australian Network Adjusters. I act on behalf of both Insurers and Insureds.

Quite a bit of my work now comes from people complaining about treatment by Insurers. In the main, by the time it gets to us, many complaints are justified.

### **FLOOD IN GENERAL – AS IT RELATES TO DOMESTIC HOUSEHOLD CLAIMS**

In all countries around the world flood proves to be a problem.

When many communities were first developed, say those over 100 years old, water had to be obtained from a river for daily domestic use, not to mention that a lot of transport was by watercraft.

Often this water has had to be carried manually and indeed, in many parts of the world still is and as water gets very heavy to carry, the best place to live was fairly close to a riverbank.

In more recent years we have developed systems of pumping, filtering and conveying water so that most people are able to live quite remotely from rivers, albeit that they might want to farm on riverbanks and perhaps be fishermen in the river itself.

Thus, we are stuck with the problems of history in that still a large number of substantial towns are built on riverbanks.

Indeed, this is compounded by the fact that a large number of areas close to rivers used to be swamp and these were able to be filled in and built upon because the land was cheap. This has placed exposure to a large number of people who often have built quite expensive houses, with high cost contents in areas very close to water.

Indeed, the Gold Coast area is one such area.

In 1974 there was a cyclone in that area.

A large volume of water flowed out to sea but still there was a substantial inundation of homes.

Since then a lot of houses have been constructed in an area where flooding had previously occurred.

Everybody thought that that event was severe however; it was a storm where the tidal surge was not too bad.

Had the storm surge been, say, 3m, it would have built water up within the rivers – being unable to escape into the sea – by another metre or so which is likely to have inundated a very substantial number of residences and commercial buildings on the Gold Coast.

For Insurers, these events result in substantially more claims, than those relating to only flood. Usually storms are associated, in the main with high winds and other perils that cause damage. Thus the flood problems are compounded by many non-flood claims.

Since 1974 the mouth of the river on the Gold Coast has been opened up and some walls put in place.

This has allowed for water to more easily escape into the sea.

The difficulty here is that, if there is a high storm surge coming in, the water has got nowhere to go as it is merely trying to run into a wall of water coming towards it, caused by the incoming storm surge.

There is no simple solution.

In the Hawkesbury area I note that there have been considerable steps taken to try and lift the flood height so that people are unable to build close to the river.

This has worked with some considerable success – at least in relation to new development.

We are always going to have an event which is going to cause a major problem, say, in the Windsor/Richmond area but these are likely to be events that occur once every 200 years.

Warragamba Dam was built in this area for water supply and storage, not for flood mitigation.

It does assist if there is a lot of rain after a very dry period but, once the dam is full, as was proven in the early 1960's, water can merely flow at a normal rate over the top and very substantial floods occurred in the early 1960's.

Similarly now we have buildings in a number of areas, say, Mackay in Queensland where they are flooded every few years. These have been allowed to develop in areas where buildings should never have been allowed in the first place.

The same situation was evident in many areas of Brisbane this year where newer buildings were constructed in areas subject to the 1974 flood, which was about 1 metre lower than the previous recorded high level in February 1893.

Most people I dealt with in the Brisbane flood did not want to relocate as they enjoyed the amenity of living near the river and generally thought that an inconvenience every 30 years was the price they had to bear for the benefit of such a lifestyle.

Notwithstanding, most Councils and the State and Federal Governments (bearing in mind the Councils are an arm of the State Government) are aware of the problems, particularly with political backlash and are doing as much as they can by either lifting the height above rivers at which people can build or alternatively, where there are buildings that are inundated on a regular basis, these are often purchased by the local government authority and converted into parkland.

### **FLOOD DEFINITION**

I am pleased that there is a flood definition. It is close to a definition used by most Insurers.

The uniformity of this is of assistance, in that it is a standard.

Notwithstanding, this does not solve the problem.

We will all have to bear the problems associated with any definition.

With flooding you have water running towards a watercourse and then you have water which flows out of the watercourse.

Sometimes properties can be damaged by water running towards the watercourse and insured.

Sometimes properties are damaged by water coming out of the creek, possibly not insured.

Sometimes damages occur for both reasons and in regard to these Insurers may be able to rely on the "Wagon Mound" case and deny indemnity if there is a restriction on flood cover.

The basic problem is that the definition alone will not change the present points for argument and thus there will still be stress on politicians and insurers.

### **OPT OUT PROVISIONS**

Regrettably, I am against this.

My view is that once you give an opt-out clause, the people who have to pay a very high premium are not going to be able to afford the premium and they are going to be the people who are most likely to complain. Although they usually know they are in a flood area, they will still contend that Insurers should be providing them cover (or alternatively, that the government(s) should cover their costs) and, further, that politicians should be enforcing this point.

It seems much better to work out a system whereby there is an overall levy on all insured people to try and cover the flood costs, perhaps with an increased penalty, by way of higher "flood" policy excess' on those who are in a situation where they are likely to be flooded every, one to five years.

An excess, which for high risk areas might have to run up to, say, \$20,000.

An excess will have an insured party effectively self-insure to a limited amount. Once the claim exceeds that amount they will be able to lodge a claim and receive payment for the balance between the excess and the total claimable amount.

If insurers settle these claims for cash the insured can adjust their costs. Perhaps repairing the building but not replacing all of the contents (at least immediately).

Such self-insurance requires most people to look at risk management techniques, which might minimise or avoid the damage in the future. One will notice many homes in known flood areas have earthen walls around them, particularly in western areas of the eastern states, which at worst minimise the number of events causing damage, and at best fully protect low lying properties.

Again, there is no clear logical way of doing all of this but spreading the cost over the entire market is much better than having a few people bear the cost through in the most extreme risk areas by paying a high premium, even if there is some sort of levy on a particular group of these people, say an excess.

When you look at fire insurance, there are a number of areas around the various states where properties are continually exposed to fire.

We see this in Victoria and currently in Western Australia and from time to time throughout areas of all the other states and territories.

We all know that we cover fire and that some people are more exposed than others.

I recall reading at one stage that the average likelihood of any house being burnt down in a town area was once every 400 years and I suspect that these are figures obtained when houses in town areas were constructed more of timber and without all of the fire precautions that are in place now.

Notwithstanding, we allow people to build in the bush and we give them cover for fire damage.

Insurers rightly argue that they cover unexpected or fortuitous losses. Some flood areas are definitely going to be damaged. However, such an argument is not solving the current problem.

Basically an OPT OUT provision leaves much of the current grounds for complaint intact. A spread of premium is best, with self-insurance through meaningful policy excess' worth considering.

### **INCREASED AWARENESS OF FLOOD RISKS**

Most councils are now providing maps.

Generally, once people have been in an area for some time, they work out where there is likely to be flooding.

Indeed working recently in Brisbane' I was surprised how many people had sustained damage to homes they lived in, in 1974, and understood the Insurer's position.

Continual promotion is necessary, at least drawing people's attention to the fact that flooding may ensue puts them at risk.

It might be that, when people purchase or construct a home, part of their search obligation should be that they see what the flood levels are and whether their property will be affected.

With the movement of conveyancing away from solicitor who would probably normally look at this for the purchaser (to conveyancers or self conveyance), it might be something where Councils may have to alert people to "current known flood" exposure at the time of property title transfer (such advice might need qualification to limit potential liability of Council).

High excess' may encourage better risk management.

The education of the general population will be ongoing. This is made worse by many people knowingly purchasing, or building in flood zones and looking for someone else to blame, either politician or insurer. These people can be very aggressive as they are trying to shift blame and defend their decisions.

### **INCREASING AVAILABILITY OF FLOOD INSURANCE**

Perhaps the outcome of any changes is going to be that fewer Insurers will be able to provide flood insurance, probably not, as in reality there are only a few insurers covering the bulk of the market.

Full cover will require increased capital commitment which can only be achieved through an overall increase in premium.

If the general flood losses seem, on average, seem to amount to \$450m. The premium increase may not as much as one might expect to the total premium pool of about \$35bn. A lot of the "flood" claims are already being met, for a variety of reasons (some already being insured). I suspect out of the \$450m that about \$350m might be being met.

It is an area probably best run by the general insurance industry as this takes control of distribution of monies away from the government and, thus, the political arm is allowed to criticise insurers when something goes wrong rather than have to bear the odium of having that problem directed back against them. The commercial nature of Insurers competing for market share, should limit cost increases.

Reinsurance also has to be obtained. Quite often you will have losses that might amount to a few billion dollars for flood claims alone, say, on the Gold Coast if there is severe flooding reinsurance cover is needed in this area. This from time to time this can be expensive as we all understand in the reinsurance market at the moment and premiums have to reflect this cost, provided that they are not over the top.

Reinsurers only lend money to Insurers, but the industry needs this form of "banking".

### **STORM/FLOOD DISTINCTION**

The best way is merely to have everybody covered - perhaps some with an increased premium, or well structured excess' for more severe risks. This overcomes that aspect that is going to arise as to whether or not water is or is not going into or coming out of a watercourse.

### **INDUSTRY CAPACITY**

I have no doubt that the industry has capacity to underwrite flood insurance. Many "flood" claims are being met at present.

It is merely the cost of providing cover that is a problem and, as mentioned, it is better to spread the risk the over the entire market.

### **DATA REQUIREMENTS**

The data as I see it is improving all the time.

Geo Science Australia to some extent assists Councils and other State authorities.

This is an ongoing development. It will have to go on forever because from time to time the circumstances in various watercourses will change and there will need to be adjustments of the overall picture to take account of changes in climate – not necessarily as a result of global warming.

This is expensive for Councils alone to implement as they have limited funds, and ability to earn income. There may be need for more Federal involvement in the collation of information, say through Geo Science Australia.

Mitigation will have to continue. Floods are not only reflected in insurable losses. Lives are lost, disease can be a problem and lives can be severely disrupted. Problems which are not often measurable in monetary terms, except the state may have to account for medical results.

Continual data collection will be ongoing and there is an ever increasing awareness of this.

### **CHANGES TO THE INSURANCE CONTRACTS ACT 1984**

By the combination of ASIC rules and the Trade Practices Act (as it was); there is a requirement for over-disclosure of information on insurance policies.

You cannot pick up a domestic insurance policy (or PDS as they are now called, who knows why that changed) which is going to be less than 60 pages.

Prior to the Insurance Contracts Act and the Trade Practices Act, there used to be a domestic policy which was merely two pages in size.

It relied on the Common Law.

Most of the law is now covered under the Insurance Contracts Act itself which relates to fair treatment of Insureds.

It might be time for everybody to sit in a corner and see if there is some way of looking at the "prescribed contracts" as they are in the Regulations relating to the Insurance Contracts Act and see if there is not some simpler way of avoiding a lot of the confusing detail that is provided.

It is not only flood that is a problem.

I am sure that nobody reading this paper has read 100 pages of their domestic policy and fully understood it.

It was difficult enough for people to read the two page policy but at least they could look at it and see if they had cover for fire, storm and various other perils and there might be a few conditions that were going to impinge upon them.

This is an area that seriously needs looking at.

Of great assistance to the Australian Law Reform's Review of Insurance carried out by Michael Kirby was a fellow called Frank Hoffmann who may well be worth talking to if people manage to get a chance to review general insurance details of the Contracts Act.

Most Insurers will exclude in their cover actions of the sea, erosion, landslide and subsidence in certain circumstances. These should be covered according to the "standard contract".

These are generally going to relate to slow creeping problems rather than one-off events but in the main there are quite severe restrictions by most Insurers in the derogation notices provided by Insurers prior to contract.

Indeed, the courts are not a great deal of assistance in enforcement of the Contracts Act as their judgements seem to indicate that once one has the policy (PDS) that is sufficient to cover the derogation. This is further glossed over in the changing rules relating to phone sales. No clarification is made over the phone (or internet) to explain "standard" cover.

There is no table showing the "standard cover" and the variations, so the Insured, I presume, irrespective of the derogation provisions of the Insurance Contracts Act, seems to have to be aware of the terms of the "standard cover".

Not only for flood, but other perils insured against, the derogation section of the Act might need a review.

There are problems for any Insured understanding the ramifications of long policy wordings, have you ever read your full policy (PDS) and if so, you are one of the few. Did you fully understand it?

There are "good faith" provisions in the Insurance Contracts Act and "unconscionable conduct" provisions in the Australian Securities and Investment Commission Act, but these are areas of last resort for any "battles".

## **STRATA COVER**

Strata should be counted as domestic residences.

In the main, buildings subject to Strata Title in all of the states are going to be domestic.

Nowadays quite a number of the larger blocks will have commercial at the bottom and domestic above.

Oddly in some states, single storey lots can be registered as strata. When I did Real Property the purpose of strata title was to give a form of title to air space, above the ground, reflected in the land title.

If you abolish the "opt out" system, then cover would have to apply to all insureds, except commercial where the risks are more complex, less uniform and where the insured entities have no voting rights.

The main complaints relate to domestic and these are the people who vote.

They are the ones that need the cover.



**SUB-LIMITS AND EXCESSES**

By avoiding the "opt out" proposal there is no need for this to be a concern. Sub-limits were a problem in Brisbane; in a severe event limited cover was of limited benefit. A reasonable system of excess' seems worth considering.

Some insurers have attempted to limit payments for flood damage and this is a failure.

**GENERAL**

We cover motor vehicles for flood and in some areas these claims are less than, or equal to home and contents payments.

I thank you very much for allowing me to make a submission.

Good luck with the review.

Yours faithfully

**Campbell Anderson FCLA. ANZIIF (Assoc.) CIP**