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Date: 15 August 2011

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Attn: Christine Barron
Natural Disaster Insurance Review Secretariat
Via email: christine.barron@treasury.gov.au

Dear Christine

Submission by Legal Aid Queensland

Legal Aid Queensland's submission to the Natural Disaster Insurance Review highlights the experience of our clients from the 2010/11 floods in Queensland across the wide variety of issues set out in the Review's Issues Paper released in June 2011.

Legal Aid Queensland (LAQ) is the leading provider of legal services to disadvantaged Queenslanders.

In response to the natural disasters of early 2011, LAQ led the provision of legal assistance to victims of the disasters through the Queensland Flood and Cyclone Legal Help service and also the Collaborative Insurance Law Service. Attachment A describes the legal assistance in more detail.

LAQ is currently providing advocacy in over 470 cases where clients are seeking to challenge insurance decisions about damage caused by the natural disasters. Attachment B classifies the cases by insurance company and by region.

The manner in which individual insurers have approached claims has, however, been variable.

At the outset, the impact of the sheer variety and complexity of insurance policies and the complexity of provisions about flood insurance cover within those policies should be noted. Most policies viewed by LAQ contain 50 – 70 pages and policy wording and definition of key terms vary substantially between insurers. This causes great, if not insurmountable, difficulty for many consumers to understand or compare policies. The variety of wording and definitions also causes impediments to resolution of claims, such as where assessor or hydrology reports makes findings based upon definitions that do not match the wording or definitions in the actual policy pertaining to the property being assessed.

This difficulty has been compounded by the practice of insurance policies being sold over the phone.

Our concerns about the performance of private insurers in meeting their claims responsibilities are as follows:

- Many people experienced significant delay in having their claims processed.
- Many people purchase insurance over the phone. The unavailability in many instances of records of phone calls between insurers and customers has created problems in seeking to resolve dispute about claims, particularly where those claims rely upon verification of claims about representations made by insurers.

- Some clients reported to LAQ that they were dissuaded from lodging their insurance claims by insurers at the first point of contact after the summer events. Our understanding is that this occurred either because they were told over the phone that they would not be covered and ought not to bother lodging a claim or because they were led to believe lodging a claim would be futile.
- Some claims were arbitrarily dismissed by insurers without proper examination, for example, without an assessor being sent to the affected property.
- While some insurance companies prepared individualised responses to claims, others used pro forma responses that raised concerns that the individual claim may not have been assessed on its merits.
- While some insurance companies provided access to hydrology reports as part of their response to claims, not all did so.
- Many clients found themselves unable to afford to call their insurer to progress claims because they were using a mobile phone (their landline not operational as a result of the flood). Unfortunately calls to 1300 numbers for most clients were charged at mobile phone rates.
- LAQ has been disappointed by the attitude of some insurers in not accepting evidence of misrepresentation by clients in the absence of any refuting evidence held by the insurer. Conversely, some insurers have understood their duty of utmost good faith and when a client has shown that promises were made, the insurer has sought to honour them.
- Affordable and Adequate Home and Contents Insurance is a real issue for a number of our clients.

We have set out in Attachment C, a number of case studies that highlight the issues that we raised above that are relevant to the issues in the Review's Issues Paper.

The Financial Ombudsman Service offers a real opportunity for Queenslanders to have their insurance claims reviewed. The process is robust and independent and free for consumers. In order to access the gateway of the Ombudsman, clients must first approach the Internal Dispute Resolution (IDR) team for the relevant insurer. This requirement is waived where the complaint is for failure to make a decision at all.

There is a wide discrepancy between genuine engagement in IDR by some insurers and the arbitrary pro-forma dismissal of arguments adopted by others who have treated the IDR process as an opportunity to re-state their decision without considering points raised in a request to review the decision.

If you have any queries about the above submission, please contact Paul Holmes, Senior Solicitor/Consumer Advocate on (07) 3227 7124.

Yours sincerely



Anthony Reilly
Chief Executive Officer
Legal Aid Queensland

Attachment A – Queensland Flood and Cyclone Legal Help and the Collaborative Insurance Law Service

Legal Aid Queensland, in partnership with other Queensland legal organisations, set up Flood and Cyclone Legal Help earlier this year in response to the natural disasters experienced across the state.

The initial response included:

- Establishing Legal Aid Queensland'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 Legal Aid Queensland website, which includes links to legal information resources, relevant information and websites, upcoming events, fact sheets and an insurance claim guide – all directly linked from the Premier's disaster assistance page
- Compiling resources kits for lawyers from Legal Aid Queensland and partner organisations working under the Flood and Cyclone Legal Help banner
- Coordinating or supporting the attendance of lawyers from Legal Aid Queensland and partner organisations at recovery centres to provide legal help
- Convening community meetings in affected areas such as Ipswich, Goodna, Karalee, Oxley, Yeronga and Indooroopilly. The forums included joint meetings with the Insurance Council of Australia and the Financial Ombudsman Service.

Hundreds of people turned out for the above community meetings, most with pressing concerns about the progress of their insurance claims and many bewildered by the dawning realisation that their insurance policies were inadequate.

Many people expressed anger and dissatisfaction with the progress of their insurance claims at the forums. CPU staff were not able to point to any law or regulation or industry code which mandated an insurer response to a claim within a time limit or that required insurers to expedite a claim where the insured's home was unliveable.

Following the initial response, Legal Aid Queensland also established a new Collaborative Insurance Law Service (CILS) with to help clients experiencing delays in getting a response or who have had their claim fully or partially refused.

CILS was aimed at helping clients experiencing delays in getting a response from their insurer or who had their insurance claim fully or partially refused. Our partners in CILS are Caxton Legal Service, Legal Aid New South Wales and the National Insurance Law Service which is hosted by the Consumer Credit Legal Centre (NSW).

The service aims to help people through insurers' internal dispute resolution processes, and if appropriate through external dispute resolution with the Financial Services Ombudsman, to resolve claims without needing to go to court.

Lawyers use a person's insurance policy, their statement of facts, hydrology reports and damage assessments to prepare a strategy for each individual claim. Detailed submissions marshalling the facts and flagging legal arguments are sent to insurers, seeking review of refused claims.

The service is providing assistance to over 600 Queenslanders and it has already had a number of successful wins for clients in overturning claim decisions on review and is continuing the fight for other clients.

Legal Aid Queensland also provided \$250,000 directly to community legal centres to create a statewide network of lawyers to deliver free flood and cyclone legal information and advice.

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

- 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

Attachment B – LAQ insurance matters by insurer and location

As 15 August 2011, LAQ acted for clients as set out below by geographical region and by insurer. Some clients have multiple claims because their contents and home insurers were not the same company.

AAMI	54	BEACHMERE	1
AIS	1	BOHLE	1
Allianz	45	BUDERIM	1
APIA	3	BUNDABERG	2
Argis	1	CAIRNS	1
Asset Insure	1	CITY	9
Australian Seniors	2	COLUMBOOLA	1
Budget Direct	12	DARLING DOWNS	1
Calliden	1	EAST BRISBANE	1
CGU	48	EMERALD	6
CHU	6	ESK	1
CommInsure	18	HERVEY BAY	1
CSA	3	INJUNE	1
CUA	3	INNER WEST	66
CUNA Mutual Group	4	INNISFAIL	1
Defence Service	2	IPSWICH	216
Duplex Flood Insurance	1	LOCKYER VALLEY	12
Elders	9	NERANG	1
HBA	1	NORTH BRISBANE	6
Hollard Insurance	1	OAKEY	2
Lumley Insurance	1	ROCKHAMPTON	1
MemberCare	1	SOMERSET	25
MHIA	3	SOUTH SIDE	58
National Seniors	1	SOUTHERN DOWNS	2
NAB	2	TOOWOOMBA	3
NRMA	62	TULLY	1
QBE	54	WARWICK	1
RACQ	115	WEST BRISBANE	56
REAL	4	TOTAL	478
Seniors Insurance Agency	1		
Suncorp	16		
West Farmers Insurance	2		
Westpac	5		
WFI	2		
Youi	2		
Zurich	1		
TOTAL	488		

Attachment C – LAQ Case Studies

Complexity of Policy Documents, Difficulty obtaining relevant Insurance Documents and Understanding of Insurance Policies

1. Case Study – broker - difficulty obtaining copy of the policy

Ms C had goods in storage and obtained insurance with Q as part of the storage package. Ms C does not recall receiving a PDS. Ms C's claim was refused in May 2011 and the letter of refusal attached a copy of the page listing exclusions, flood being among the exclusions. LAQ wrote informing Q that LAQ was acting and requesting a copy of relevant documents. In late June Q informed LAQ that the policy was arranged through its broker, and they had asked for copies of documents from the broker but had yet to receive them. Late on 14 July LAQ again requested a copy of the policy/PDS. As the PDS had still not arrived by 26 July LAQ rang and again requested a copy (necessary to prepare the IDR). Q's representative promised to email it that day. LAQ is still waiting (as at 28 July).

2. Case Study – broker -difficulty obtaining copy of the policy

Mr R obtained a B policy through a broker. LAQ requested a copy of the relevant documents and a copy of the PDS was sent by mail promptly after this request. However, the PDS refers to coverage "as set out in your schedule" and so on 3 June 2011 LAQ requested a copy of this schedule. B responded on the same day that all policy related documentation would be with the broker and that they would "attempt" to obtain that information for LAQ. LAQ queried further why B would not have a copy of everything in its records and confirmed the need for the document. B sent the document by email 4 days later.

3. Case Study – difficulty obtaining copy of the policy

Mrs M was born overseas and English is her second language. She is on a carer's benefit as she resides with her husband who is disabled. Mrs M had organised home and contents insurance with insurer F. The home was affected by the events of January 2011 and a claim was lodged. Payment was made for the capped amount of \$15,000 less the excess for the damage to the home. She estimated that the total damage was over \$100,000 and this was the amount of her claim to F.

Until LAQ started representing Mrs M, the only written communication that had been received by Mrs M from F was a survey asking for client satisfaction. This was posted by F to Mrs M after the payment had been made.

In early April LAQ wrote to F advising that it was representing Mrs M and formally requested that the decision to refuse a pay out above the capped amount be reviewed. So as to enable an IDR submission to be made LAQ requested copies of all of the material F relied upon, including the PDS.

A reply from F dated 3 days later stated that F 'was not prepared to provide copies of the information requested ... unless you have compelling legal grounds.' F stated that it was not aware of a dispute and LAQ first had to provide a brief outline of the basis before the material would be provided by F.

Eventually the IDR was submitted to F on Mrs M's behalf and this issue of lack of written communication was also raised. The insurer in its response, again refusing the claim states:

- all claims are concluded electronically and that is the standard process;
- the survey is sent to gauge customer feedback and improve the process;
- it is not part of F's settled claims process to provide customers with details of the dispute resolution process and if it was required, then Mrs M should have requested the information.

4. Case Study - Client expectations in relation to taking out insurance

M, recent arrival in Australia and speaking English as a second language rang to arrange comprehensive home insurance.

He reports:

"The conversation I had when taking out the policy was more around cost and they were talking about the house structure, how it was built, we talked about the discount because I also had contents and car with them. I told them I wanted full coverage. Very clearly I said this. They said 'Yep'.

I said I wanted to be covered for 600,000 for the house. I said their cover was a little too expensive but I thought I had full coverage so that was ok.

They sent the booklet (PDS). I didn't thoroughly read this. If I am receiving a professional service, so they should make it known to you what is the exact details of the policy. This is why you pay a premium rate to a company. They are to tell you what you need."

5. Case Study - Client expectations in relation to taking out insurance

I thought I was covered for flood. I had asked for full cover. I took out the policy over the phone. I said that I wanted the house fully covered for everything, for disasters. I thought that the purpose of insurance was for peace of mind, and at the time I left feeling that I was fully covered.

The house is covered for about \$180,000.

I thought that we were covered for any natural disaster because that was what I had asked for when I was taking out the policy.

6. Case Study - Client reflections on their policy

LAQ client commented:

"I didn't really read the PDS. It's not in plain English, I don't really understand what it means. You need a law degree to work it all out."

Policy Definitions do not match with definitions used in Hydrology and Assessor's Reports

7. Case Study - inadequacy of the assessor's report as definitions not same as policy

Mr & Mrs A have a home and contents policy with insurer Z. After their home was affected by the events of January 2011 they lodged a claim, which was subsequently refused. The policy defines and excludes flood on page 52 of the 60 page PDS as being 'the inundation of normally dry land by water from any watercourse, lake, canal, dam or reservoir'.

However, Z's hydrology report is based upon a definition of flood as being 'the temporary inundation of land by expanses of water that overtop i.e. have exceeded the capacity of, the natural or artificial banks of a watercourse, including a drainage channel, stream, creek, river,

estuary, lake or dam, or any associated water holding structure. A flood can be caused by excessive rainfall, storm surge, dam break or a tsunami'.

The hydrology report definitions used were not the same as the definitions within the policy. When the lawyer brought the discrepancy to the Insurer's attention it commissioned further hydrology which meant further delay to processing the claim.

8. Case Study – inadequacy of the assessor's report as definitions not same as policy

Mr M & Ms A had a home and contents policy with insurer Q. After their home was affected on 12 January 2011 they lodged a claim that has been refused. The policy defines and excludes flood. However, insurer Q will pay a capped amount if the damage is caused by a 'flash flood'. Flash flood is defined as being 'a sudden flood caused by heavy rain that fell no more than 24 hours prior to the flash flood or storm water run-off'.

The insurer's hydrologist's report notes this definition, however the discussion is in terms of 'any inundation directly associated with the Brisbane River flows below Wivenhoe dam would be attributable to the **rain event that commenced at approximately 06:00 9th January** (and indeed earlier rainfall).' [emphasis added]. This ignores the facts in the hydrology report that there were several periods since 9 January 2011 of up to 4 hours when no rain was recorded and further there is no mention in Q's definition of the words 'start' or 'commenced'.

9. Case Study – futility of definition of storm in ICA report

The ICA *Flooding in the Brisbane River Catchment Jan 2011* dated 20 February 2011 uses a flash flooding definition of "flooding occurring within 6 hours of storm or rain event" whereas most policies, for example RACQI and Comminsure, use 24 hours. Consequently the report cannot be used to refuse claims based on the finding that there was no flash flooding but some Insurers did rely upon it for this purpose.

10. Case Study – incorrect application of hydrology report by Insurer

One insurer rejected a client's claim in Fairfield on the basis of the ICA commissioned report where the definition of flood used in the report was much wider than the definition used under the specific policy. The decision was not consistent with the evidence.

Significant Delay in Claims Process/ Adequacy of Claims Handling

11. Case Study – client experience of the claims management process

This is the experience of one client's dealings about her insurance claim which is representative of the experience of many of our clients-

Call 1 yes, we have got the claim and it has been sent to an assessor, who shall contact you.

Next action the assessor comes and says they shall send their report to the insurance company in say 3 days.

Call 2 ring the insurance company well after 3 days, to then be told that the report has not been received.

More delay while this is chased up.

Call 3 once it is located the client is told that the insurer is waiting upon the hydrology reports.

Call 4 once the report is to hand, the insured is told that the insurer is now matching the report to each property and 'sorry' your SUBURB has not yet been considered.

Call 5 yes the hydro has been applied, but the final 'decision' is being reviewed 'upstairs.'

Call 6 have been refused but the refusal is in the mail.

Call 7 I haven't received the refusal yet.

12. Case Study – regional consumer – delay

Client had lodged a claim following flooding in December 2010 in his rural town. 6 months later, his claim had not been processed at all. There had been no attempt to assess his damage. He rang the insurer to complain and was told that Brisbane flooding took precedence and he would have to wait.

He contacted LAQ who complained to the insurer which led to almost immediate acceptance and payment of the claim.

13. Case Study – 74 year old pensioner – delay

Mrs A has been with the same insurance company for 10 years. Following inundation of her home on the south-side of Brisbane, which rendered it unliveable, she made a claim on her policy on 13 January 2011.

This elderly pensioner telephoned on a weekly basis chasing a response to her claim.

She received a written refusal on 18 May, only after LAQ had lodged a complaint with the Financial Ombudsman on the basis of unacceptable delay in claims handling.

14. Case Study – client distressed by delay

Ms L is an elderly lady who lodged her claim with Insurer Q about 13 January 2011. She received a rejection of her claim in late March 2011. The basis of the rejection of her claim was the reliance placed by Insurer Q on a general hydrology report that covered a wide area and contained a qualification that it should not be relied upon to assess specific properties.

In late April 2011 LAQ requested that a proper individual assessment of the property be done in order to properly assess that claim. An assessor attended the property in late June but as yet, in late July, Ms L has not received a copy of that report or an assessment of her claim on the basis of an individual assessment of what happened to her property. She also questions the utility of a report being done when there is no water around.

The delay is causing her distress as she feels that while her claim is still pending she cannot make decisions about what to do with her property and how to fix it.

15. Case Study – Delay causing distress

Mr and Mrs Z received a rejection of their insurance claim from Insurer A on 25 March 2011. The refusal was made on the basis of a general hydrology report that did not take into account the specific topography in the area. A site specific report was requested.

In early June, some 5 months after the event, the hydrologist that was appointed to assess the property presented Mr and Mrs Z with a series of questions, which included things like "Where do you think the water came from?" These questions caused Mr and Mrs Z great stress because they thought they were expected to answer hydrological questions when they had no expertise in hydrology.

They were caused even further stress by being forced to recall and detail events from January when they had real cause to fear for their lives.

16. Case Study – unreasonable request by insurer (1)

Client's home was inundated and there was no power. Insurer refused to allow client to nominate a mobile phone number for return calls, insisting that the contact number be a landline phone number as it was not the company's policy to return calls to mobile numbers.

17. Case Study - Unreasonable Request by insurer (2)

Ms U was insured with Insurer C for her home and contents. Following her property being affected by water and Ms U barely escaping with her life, she lodged a claim on 13 January 2011 by phone. After receiving a letter rejecting her claim dated 27 January 2011, she rang Insurer C to dispute her claim.

As part of the questions the Dispute Department of Insurer C wanted her to answer, she was asked whether or not she had taken samples of the water which had affected her property and many other questions she could not answer because she had been running from her property in order to save her life.

18. Case Study – distressed client - failure by insurer to communicate in plain English

LAQ has had a middle aged literate lady Ms H book a face to face appointment because she understood her insurance claim had been refused and wanted the assistance of LAQ.

She travelled into LAQ's office, which was about 1 hour, and when she arrived was quite stressed. She gave all the documents she had in relation to insurance to the solicitor who was assisting her.

When the solicitor read through the documents it turned out that Ms H's insurance company had agreed to pay her claim with the exception of a number of small items. The solicitor explained that Ms H was covered and the process for disputing the insurer's decision that certain items were not included as part of the insurance policy.

19. Case Study – privacy breach by insurer in responding to claim

Client reports:

'My claim was lodged over the phone – when I rang I said I wasn't sure if I was covered or not and they said to lodge anyway; they made no comment as to whether I was covered. They did not send or mention an assessor or a hydrologist. They rang me back the day after I had rung to claim saying they were ringing to complete the claim. I told them I had done this the day before and had claim numbers, so they said there must have been some confusion and rang off. Then later that same day I got a phone call asking for S R and I said wrong number; they hung up.'

This client received further calls about S R and realised that it was a work colleague. She was distressed that the insurer had breached her colleague's privacy by repeatedly contacting her about S R's unrelated insurance matter.

20. Case Study – Clients unable to cope with claim process

Clients are elderly and lost their unit about 2 and half years ago because a family member mortgaged the unit and it was repossessed. Moved to rental in area, now have lost all contents

they owned. Advised lawyer that they had originally intended to meet with LAQ, but that now they did not wish to pursue the claim because it was too hard for them.

21. Case Study – client wanting to drop claim in order to get on with life

A young client 25 years of age had changed insurers last year on advice from her bank. She may have had a misrepresentation case and issues relating to receipt of PDS. When rung for an appointment for a statement told LAQ she did not want to continue with her application and said "Want to move on with my life." She has changed insurance companies. She did not want to explore the strength of any claim she had.

Unavailability of relevant Insurance records

22. Case Study - inadequacy of insurer record keeping

The client reports;

On December 29 we discussed with a representative from our insurer, A, what happens when water from stormwater drains backs up from the overland flow path next to our property. A now say that they do not have a recording of the call, nor a record of the call being made.

I have since been told by A in the 2 weeks after the flood [so by the end of January] that A did not record any phone conversations – they only record them if the operator is a trainee. I believe that this call was on Saturday January 22. I asked why when you ring does it say that the call is being recorded – I was told that it is standard. So I then wanted to find what they had on file on me and I was referred to a web site by the operator.

I sent in the written request – I have had to chase this request up. The documents I have received took about 4 weeks to come. Nothing was shown of a December 2010 telephone call.

23. Case Study – Claims Handling – Inadequate record keeping of conversations with insured

Ms P has home and contents insurance with Insurer B. After her property was affected by water on 11 and 12 January 2011, on the afternoon of 12 January 2011 she rang her insurer to make a claim.

During that phone call and in a phone call the next day she was informed that she would be fully covered. It was not until the third phone call she had with Insurer B she was informed that it was yet to be determined whether she was covered or not. She has subsequently been informed that her claim has been rejected.

Having relied on her first 2 phone calls with Insurer B she and her lawyers have requested copies of the phone calls she had with her insurer. She has been informed by Insurer B that the calls were not monitored, and that no calls to Insurer B have been monitored by anyone since December.

24. Case Study – retaining record of conversations

N's insurance policy (he and wife) was up for renewal in November last year. N had seen advertisements on TV about Suncorp and flood insurance, plus they had taken the opportunity to look around a bit. N rang R, specifically raised the issue of flood cover and said they wanted it. After discussion N was satisfied they had flood cover. The conversation went for some minutes and N has his mobile phone records showing a conversation with R's number lasting for 4 minutes 30 seconds.

N's efforts to date to obtain a copy of the recording from R have been fruitless. In April R informed N that they were only able to partially retrieve about 1 minute 30 seconds, that there was nothing about taking out the policy in the conversation and argued about sending a copy. LAQ has requested a copy of the recording prior to sending the IDR submission and again in the IDR submission, but without success.

25. Case Study – retaining records of conversations

D spoke to N on 16 December 2010 to ascertain whether they were covered for flood. Comments were made to the effect that no insurer covered for flood in Brisbane. D has attempted to obtain a copy of the recording. N informed him in April that the relevant phone call was unrecorded and is not able to be traced. D questioned the validity of this and was told that sometimes recording didn't work and "it's not just your call, there were lots of calls of flood victims that weren't recorded in December".

26. Case Study - failure by insurer to record client calls

D and partner are insured for home and contents with insurer Y. D's telephone account confirms that at 8.42am on 12 January he placed an 8 minute call to his insurer on their general number from his mobile telephone. At that time there was no sign the home would flood. D thought that every time he called Y the conversation was being recorded as this was stated when he called the number and before he could talk to a person.

In material provided by Y to LAQ, there is included a copy of 'screen dumps' of the notes taken by Y's employees. Of concern is that:

- there is no record in Y's system of D's call of 12 January; and*
- the 'screen dumps' of later telephone calls there is no mention of D raising with the later employees the issue of the call of 12 January.*

During the call of 12 January D states he asked to speak with someone regarding what the home and contents insurance policy covered as he could not locate the PDS. He very clearly remembers the conversation because he asked what the insurance position was if the house was flooded. The employee of Y said that generally speaking D would be fine and the property would be covered as long as it was not directly located on a body of water—either a river or a lake. It was then discussed that the home was not riverfront but opposite a park near the river.

What concerns LAQ lawyers and this client is that whenever the client later raised the matter of the first conversation (12 January) the client was told "You know we don't cover floods" and "Whoever you spoke with was wrong". If he had not been told what he was on that Wednesday he would have moved everything out even if he had to hire a moving company. He did none of this because he thought they were covered.

Clients discouraged from making an Insurance Claim

27. Case Study- Clients dissuaded from lodging insurance claim(1)

Mr T and Ms R were living near Ipswich and insured with Insurer A during the flood event. On the Saturday after the water event, they first rang their insurer to attempt to lodge a claim. Insurer A informed them they were not covered under their insurance policy for flooding and not to bother lodging a claim. It was only after Mr T and Ms R rang Insurer A on 4 successive days that their insurance claim was lodged.

28. Case Study – Discouraged from making a claim

Ms H had insurance with Insurer AA. On approximately 16 January 2011, following her property being affected by water in the week of 10 January 2011, she rang her insurer to make a claim. As she attempted to make the claim, she was told it would be rejected. After persisting the claim was lodged and she received a written refusal 2 weeks later.

29. Case Study – Discouraged from making a claim and arbitrary dismissal of claim

Mr J had his property insured with Insurer AA. About 1 week after it was affected and damaged by water in January 2011, he rang his insurer to make a claim. He told them: "I was making a claim for the Brisbane flood and they just said I wasn't covered." Insurer AA rejected the claim on the basis of some photos and questions they asked Mr J on the phone which included "What was the colour of the water that entered your property?"

Mr J did not ask them to do a proper assessment as he did not see the point when they had already rejected his claim.

Insurance Claims Dismissed without Proper Examination

30. Case Study- Clients claim dismissed without adequate investigation

Mr and Mrs L live in the western outskirts of Brisbane. Their property was affected by water on 11 January 2011. Mr and Mrs L made a claim to Insurer U on 12 January 2011. Their claim was rejected on 24 January 2011. Insurer U told them that they would be rejecting the claim without sending an assessor out to inspect the property. They had made an assessment of the claim from Melbourne using aerial photographs they had obtained from the Internet.

31. Case Study – Inadequate Assessment of Claims

Mr and Mrs K live in Ipswich. They had their property insured with Insurer P. Their property was affected by water early on 12 January 2011.

Mr and Mrs K made a claim to their insurer about the damage suffered to their property the same week. Within 2 weeks they were informed that their claim had been rejected without sending an assessor to the property. Instead the insurer had used aerial photos which showed water had not entered the property. Mrs K requested a copy of the aerial photos that had been used. When she received the photos she discovered that they had been taken at a time many hours after the water that damaged her property had receded.

32. Case Study – Inadequate Assessment of Claims – Failure to make reasonable attempts to check records

Mr and Mrs T had insurance with Insurer O arranged through their local bank. On the day before the water event, Mrs T rang her bank to confirm that their insurance policy adequately protected them and their possessions against damage. The Bank employee acting as Insurer O's representative said "Yes" and then forwarded her call through to Insurer O for confirmation. Insurer O's employee confirmed that flood coverage was a part of their policy. Attempts by Mr and Mrs T to rely on this representation in making their claim were dismissed out of hand and described as hearsay because Mrs T could not remember the names of the people she had spoken to.

Insurer O has subsequently relied on the fact that their call centre staff receive adequate training and that none of them remember saying to a caller that they are covered for flood.

Mr and Mrs T are yet to receive the transcript of this conversation which they have requested.

33. Case Study- Clients separate claims bundled and dismissed

The Client had four separate claims, the first arising in December in relation to storm damage, the next in relation to the water damage arising out of flood. The Client made two further claims for losses from storms after the flood because the house was not sufficiently secured whilst earlier claims were being considered.

The claims were initially bundled, then appeared to be separated and the client was recently told the claim was denied, but the client was unsure which claim or if all claims had been denied.

34. Case Study – Inadequate Assessment of Claims – Failure to make reasonable attempts to assess issues raised by client

About 3 years ago Mr and Mrs K went into a branch of Insurer R's to take out flood insurance cover. During a conversation with Insurer R's representative, where the insurer was shown the house in question, they were informed that further cover was not necessary as any damage that would occur to the property would be covered by the existing policy.

Following their property being affected by water in January 2011, Mr and Mrs K had their claim rejected. When the issue of this conversation was raised, they were informed that there was no evidence that the conversation ever took place.

Affordability of Adequate Insurance

35. Case Study - difficulty funding adequate insurance cover

Mr and Mrs F are retired pensioners in their 60s who have been living in the same house for 23 years. They first took out insurance with Suncorp in 1988 when they purchased the property. They maintained their house and contents insurance up until 2008 when they were paying premiums of about \$700. In 2009 the insurance premiums went up to \$1500 and then in 2010 the premium went up to \$2,000.

Despite difficulties with rising living costs on a fixed income, Mr and Mrs F still maintained their insurance with Suncorp because they believed it was important to protect their only major asset in their retirement.

Late in 2010 they received their renewal notice from Suncorp for 2011 Home and Contents Insurance. The premium had now gone up to \$2,800. Mr and Mrs F simply could not afford another rise and had to change insurers. Despite assurances to the contrary, the insurance they changed to at a cheaper price did not cover flooding.

36. Case Study- difficulty funding adequate insurance cover (2)

Mr L is a 70 year old retiree who, with his wife, is currently living on superannuation.

They built the house they are still living at in 1970. They had been insured with Suncorp for a number of years. In approximately 2009 their Home and Contents Insurance Premium was about \$800. When they received their next insurance renewal from Suncorp, their premium had jumped to \$1400.

Mr and Mrs L were already living very frugally and could not tighten their belt any further but recognised that they needed insurance in order to protect their property. They shopped around with 3 other insurers and changed to what they thought was the same cover with another insurer. The insurance they changed to did not cover flooding.

Misrepresentation by Insurers

37. Case Study- misrepresentation at point of sale (1)

Mr H had been insured with Suncorp for a number of years. He was at the Bank B Branch withdrawing money to pay the insurance premium and said it was expensive. The teller said 'have you thought of coming over to us?' He said 'who are us?'. She said C, we are an agent of Insurer C. She invited Mr H to bring his insurance documents so she could give him a quote. She looked at his current policies and said I can better that by \$200-300. She represented herself as being an agent of C. Mr H said that he wanted the same cover as he had from Suncorp as he had flood coverage with Suncorp. She told Mr H that he had the same coverage.

It was not until after the floods that Bank B and C told him he was not covered for floods.

Mr H sought assistance from LAQ, who raised the misrepresentations that had been made by C's agent in the IDR letter that it wrote to C on Mr H's behalf.

After investigating the information provided, C has paid this claim in full.

38. Case Study - misrepresentation at point of sale (2)

Mrs C had a policy with Suncorp but rang N and specifically asked for a quote for the same cover as Suncorp.

Mrs C recollected that she was told on the phone by staff member of N that the same coverage would be given.

On 10 March LAQ raised this allegation in a submission and on 29 March N responded having investigated the claim and advising that they accepted the client's understanding and that the claim would be paid.

39. Case Study – misrepresentation that claim would be covered

Concerned about the extent of their insurance cover as the events in January worsened, Mr and Mrs Y rang Insurer P to discuss the extent of their cover. Mrs Y explained that "the staff member of Insurer P' discussed what we were and weren't covered for. She assured us that everything would be ok. That we were covered. She said that this was a 1 in 100 year event and that was why we would be covered in the context of the moral and ethical grounds. She advised that Insurer P have an ethical and moral duty to honour the policy. We queried her if this was a direction from management or her word. And she said, NO it was a direction from management. We also spoke about the fact that the Insurance Council had advised that this was likely to be a 1 in 100 year event. Through the conversation we were looking for reassurance that we were covered and that is what she gave us time and again.'

40. Case Study – misrepresentation, arbitrary dismissal of client's complaint (1)

Clients were insured with Suncorp for 20 years. They received advice of premium increase and rang Insurer L seeking insurance. The clients explained that they had a creek at the back of the property and sought assurance that any policy sold would cover flooding from the creek. They were told that they would be covered for flash flooding.

LAQ raised these concerns in a submission to Insurer L but received a pro-forma rejection of the misrepresentations raised without consideration of the specific allegations.

41. Case Study – misrepresentation, arbitrary dismissal of client's complaint (2)

Clients attended a branch office of the insurer in late 2008 after heavy rainfall and localised flash flooding. They sought assurance from counter staff that their existing policy would adequately cover any future flood damage to their property and were told that the policy they had would be adequate. The clients were able to detail the conversation in the submission made by LAQ when their claim was refused.

Their insurer dismissed the claims on the basis that the clients' recollection did not constitute evidence in the absence of any conflicting evidence at all by the branch office which had no recollection of the discussion and no record of the client's attendance at the branch.

Case Study 42 - No insurance because duplex owners in stalemate over cover

A duplex owner had been unable to reach agreement with the other sole owner of the premises in relation to the extent of insurance cover for the building (flood).

The building was inundated and she is left without insurance cover (except for contents).

This lady spoke publicly at a forum at Ipswich, which the Assistant Treasurer, Bill Shorten attended. He suggested that this sort of disagreement ought to be able to be resolved as simply as a Dividing Fence Act notice and, if necessary, court action.

A legal mechanism does exist in current body corporate law to require an adjoining duplex owner to adequately insure property but it seems that no consumer has ever accessed this process.

Case Study 43 - Express requirements in the body corporate legislation that committee members feel they are unable to comply with (leaving them liable)

Committee members of Body Corporate committees expressed anger at forums that they may be liable for inadequate insurance because of express obligations upon them under the State law in circumstances where they have been unable to source adequate body corporate insurance (to cover flood).

Case Study 44 - Unit holders unaware that their buildings were not adequately insured

At every forum dozens of strata title unit holders expressed their disbelief and anger that, on early indications, they will be left without any insurance for their 'flood' damage.