

Background

Legal Aid Queensland (LAQ) has established an Insurance Law Service to respond to consumers with problems with general and content insurance claims following the floods in December 2010 and January 2011.

The Insurance Law Service is a collaborative effort between LAQ's consumer protection unit, Caxton Legal Service, the National Insurance Law Service and Legal Aid New South Wales. In addition LAQ consumer lawyers expect to support community legal centres from around the State grappling with insurance law issues over the next few months. Currently we are assisting approximately 300 consumers who have had, or are expecting to have, their insurance claims refused or only partially honoured. We are dealing with 27 separate insurance companies each with their own unique policy.

In order to assist clients we take detailed statements, review hydrology reports, assess the policy disclosure statements and insurance policies against the current benchmarks in the *Insurance Contracts Act 1984* (Cth), other applicable law and codes of practice and identify any legal issues. A written submission is prepared to rebut the insurer's claim refusal and advice given on any third party remedies. For some consumers, legal advice on its own has achieved a positive insurance outcome.

At this point many of our clients have not yet received formal refusal of their insurance claims and many more have only received insurance refusals in the past week. We have taken over 120 statements from clients but have not yet obtained statements from every client. Most of our clients have not experienced the process of claim to completion.

Issues currently identified by Legal Aid Queensland

Affordability of flood cover

Many vulnerable fixed income consumers cannot afford flood cover as offered currently by the three or four insurers who provide insurance cover for this risk. Many of our clients who were long term customers of the insurer Suncorp reluctantly changed insurers as a consequence of steeply rising premiums over the past three years. Many other low income homeowners have little chance of being able to access affordable insurance on their homes.

Claims Handling

Issues so far identified with the way insurers have handled claims include:-

- Clients persuaded not to pursue or lodge a claim
- Failure to keep the client informed of progress of a claim
- Clients initially told their claim would be accepted but later refused
- Customer service issues, for example, lack of acknowledgement, long phone delays, failure to identify insurer's staff member by name

- Cost of ringing 1300 numbers when the client has no working landline and must rely on a mobile phone
- Failure to adequately explain decisions
- Delay
- Bundling of claims that ought to have been dealt with separately as the claims related to separate events

Hydrology reports

The hydrology reports commissioned by insurers are general in nature and have been of limited use for individual clients. Each report has to be read through the lens of the definitions in use by the particular insurer in the particular policy. The terms of policy exclusions lead to artificial distinctions about when a 'storm' may have commenced and the source of water which ultimately inundated property.

Body Corporate (unit owners)

Unit owners in body corporate complexes have great difficulty in establishing what is covered by contents policies (insurance they can arrange directly) and what is covered by a policy taken out by their body corporate committee (building). Many committees seem to have assumed they could rely on management companies but those companies did not offer expert advice on insurance policies.

Many unit owners have now found that although state body corporate law required committees to take out cover for water damage, this was not done. Consequently they thought they had insurance for their units but did not. There is a market failure in that the two insurers who operate in this boutique market (approximately 90% of the market) do not offer flood cover.

Many unit owners will find that body corporate levies are imposed to repair common property which may well force them into undervalue sales of their property.

Clarity of insurance policies

Many of our clients were unaware that there were limitations to their home insurance cover and did not understand their insurance policies. We anticipate providing many case studies illustrating this and the disproportionate harm suffered as a result of consumers having to assess their own risk.

Some clients have discovered after the event that although their claims are accepted the fine print in their insurance policy limits pay-outs to a capped amount, representing a significant decrease on the sum they had thought they were insured for and not enough to fund a re-build.

Misrepresentation on and after sale of insurance policies

We are assisting many clients who were told that they would be covered for flood which is inconsistent with the written policy. A factor in the misrepresentations we have seen is a lack of understanding of products, probably due to complexity, by insurance company staff and agents.

“Third line forcing”

Many clients we have seen relied upon their mortgagee to recommend insurance assuming that the recommendation would be the best protection for the secured asset. Some of those clients were pushed towards one insurer and not encouraged by their financier to seek the best possible cover.

Mortgage Distress

Most lenders have allowed flood affected consumers a moratorium on repayments for loans and credit cards. For many of our clients waiting on insurance pay-outs their financial position is worsening and their flood affected home de-valued. We are likely to see the consequences of this weakening of client financial positions over the next few months and our case studies are likely to reflect this.

Opportunity to provide comprehensive submissions

Our investigations are at this stage preliminary and our views not yet fully formed. We expect that further information obtained through the work of LAQ and collaborative organisations in the Insurance Law Service will place us in a better position to provide valuable assistance to the Commission in its investigation of paragraph 2(b) of the Terms of Reference. We anticipate that such assistance would include provision of statistical data, illustrative case studies and submissions.

We therefore request the opportunity to provide further submissions regarding paragraph 2(b) of the Terms of Reference as such further information becomes available to us. We would welcome discussion, should you wish, as to a timetable for the provision of further submissions.

Please do not hesitate to contact us to discuss how LAQ might further assist the Commission in its investigation of paragraph 2(b) of the Terms of Reference, e.g. by advising as to any specific matters that might be addressed in client’s statements or submissions or any particular information that we may be able to provide the Commission.

Contact:

