

QUEENSLAND FLOODS COMMISSION OF INQUIRY

Commissions of Inquiry Act 1950

FIFTH AFFIDAVIT

I, **GRAHAM IAN DALE** c/- 2649 Logan Road Eight Mile Plains, Brisbane in the State of Queensland, General Manager, say on oath:

BACKGROUND

1. I am the General Manager, Personal Insurance Claims of RACQ Insurance Limited (**RACQ Insurance**).
2. This affidavit is provided on behalf of RACQ Insurance in response to a notice served on me on 12 September 2011 by Justice C E Holmes, Commissioner of Inquiry, pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* (Qld) to provide information in respect of matters listed in that notice (**Fifth Letter of Inquiry**).
3. Copies of the Fifth Letter of Inquiry and its cover letter are **Exhibits 1 and 2** to this affidavit.

RESPONSE TO FIFTH LETTER OF INQUIRY

4. The matters set out below are not, or are not necessarily, matters of which I have direct knowledge other than by having regard to the records of RACQ Insurance (which I have done in order to provide this affidavit). I have, in answering the questions in the Fifth Letter of Inquiry done so based on my experience, my own knowledge where possible and relying on material maintained by RACQ Insurance or provided by others.
5. Also I have, with the assistance of others, assembled information and material to respond to the questions the subject of the Fifth Letter of Inquiry. I have, however, not been able to personally review all of the material which has been assembled for that purpose or exhibited to this affidavit.
6. For ease of reference I have set out in this affidavit the headings and questions from the Fifth Letter of Inquiry and provided my response to them below.

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Filed on [redacted] limited

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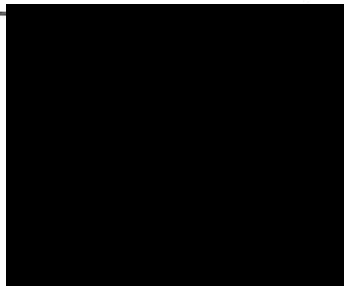
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Insurance Claims

The following questions relate to household insurance claims made as a result of the events comprising the Queensland floods (in December 2010 and January 2011).

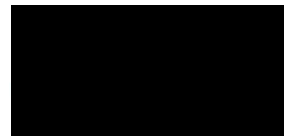
27. Were policyholders advised of all information upon which RACQ Insurance relied in determining their complaints/disputes? If so, was this advice given voluntarily or only if requested? If any piece of information was not provided, or withheld for any period of time:
- 27.1. What was the nature of the information?
- 27.2 Why was it not provided?
7. The question set out above combines questions 27 and 28 of the Second Letter of Inquiry (save for some limited wording changes).
8. I refer to paragraphs 246 to 250 of my Second Affidavit sworn on 19 September 2011. In those paragraphs I have provided material in answer to this question. Accordingly I rely on the matters stated in my Second Affidavit in this regard, as well as what is set out below.
9. As contemplated by the Code, some complaints can be resolved relatively informally. This can take place over the phone in discussions between the customer and the Claims Manager or other RACQ Insurance officer.
10. If that occurs, there is no formal determination of the complaint as such and no written reasons given. Of course depending on the nature of the resolution reached it may have to be implemented and steps will be taken to do so (which may well involve written communications with the customer). There are some kinds of complaints for which in any event a written response will be given; such as where the claim is declined or the complaint relates to hardship, quite apart from whether the customer seems satisfied on the phone.
11. Where however such a complaint is not resolved over the phone and the complaint is escalated to the next stage of the internal dispute resolution process as mentioned in paragraphs 237 to 242 of my Second Affidavit, a decision on the dispute is made.
12. In that case a written advice should be given to the customer setting out the decision and the reasons for it. I expect this to have occurred in every case.
13. In each case the customer, if a request was made, should be given copies of all the reports or other documents which were relied on by RACQ Insurance. The exceptions are (i) legal advice; (ii) the Water Technology reports (until more recently as explained in my Second Affidavit).

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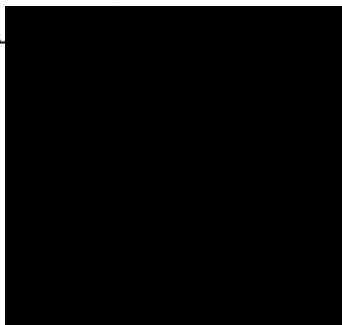
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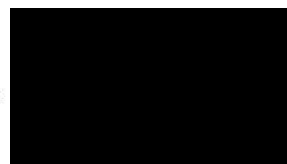
37. **Is RACQ Insurance aware of any instances of staff at RACQ Insurance having given incorrect advice in response to queries from policyholders about the terms of their cover, or about their claim?**
14. Exhibit 2 to this affidavit, which is a copy of the letter received from the Commission which enclosed the Fifth Letter of Inquiry, states that this question should be read with questions 9 and 10 of the Second Letter of Inquiry. Questions 9 and 10 of the Second Letter of Inquiry relate to claims situations.
15. I therefore understand this question as relating to communications in the course of dealing with claims arising out of the Queensland Floods rather than to the inception of new policies or some other earlier time. I have been told by RACQ Insurance's solicitors that this approach is consistent with the way Senior Counsel Assisting the Commission opened the second round of public hearings. If the question is intended to be more widely directed, RACQ Insurance will prepare and provide an additional response once so advised.
16. I refer to paragraphs 100 to 102 and exhibits 10 and 14 of my Second Affidavit, in which I deposed to the information given to policyholders in their first communication with RACQ Insurance in relation to claims.
17. As I deposed in paragraph 101 of my Second Affidavit, I was not informed of and I am not aware of any significant departures from the scripts used to provide information to policyholders in relation to claims.
18. There have been some complaints by customers to the effect that, during communications in the course of dealing with claims arising out of the Queensland Floods, customers were given incorrect advice in response to queries about the terms of their cover or about their claim. As to details of these complaints, I refer to my answer to question 29 of the Second Letter of Inquiry set out in my Second Affidavit. That question asks for a copy of material relating to all complaints and/or disputes. I have provided this in exhibit 134 to my Second Affidavit. This material provides details of any complaints that fall within this question. In practical terms the only way that I can be aware of any possible instance of incorrect advice of this nature is if it has been raised during the course of a complaint or dispute.
38. **Were written responses given in response to all complaints/disputes?**
19. Exhibit 2 to this affidavit, which is a copy of the letter received from the Commission which enclosed the Fifth Letter of Inquiry, stated this question relates to questions 26 to 29 of the Second Letter of Inquiry.
20. In answer to this question, I therefore refer to paragraphs 234 to 253 of my Second Affidavit. I make the following additional comments.

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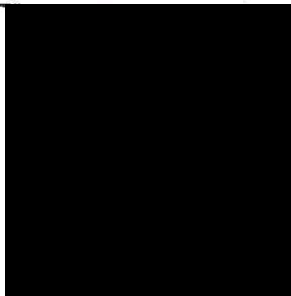
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21. As mentioned above, the Code contemplates written responses will be made to all disputes but not to complaints.
22. As set out in paragraph 236 of my Second Affidavit, complaints by customers are initially managed internally within the Personal Insurance Claims team. Many such complaints are minor in nature and are able to be resolved quickly and easily by a customer service officer or by a team leader in the course of the original call during which a complaint is made or shortly thereafter. If this is the case it may be that there would not be a response in writing, although there should be notes relating to these responses in the ClaimCenter system.
23. As set out in paragraph 238 of my Second Affidavit, a final review of a policyholder complaint is carried out within the Claims division before the complaint is transferred to the internal dispute resolution section as a dispute. Where a decision was made at this stage which resolved the complaint, it is possible that a written response may not be provided to the customer, although if the relevant complaints related to the acceptance or declinature of a claim or the amount for which a claim is to be settled or similar, written confirmation of the decision would be provided.
24. If a policyholder's unresolved complaint escalates to a dispute, the Code contemplates that a written response will be made. As far as I have been able to inform myself in the limited time allowed to prepare this affidavit, written responses have been provided to every customer dispute which has been determined by the relevant IDR decision makers (usually the IDR Committee, but during this period one of two IDR Managers).
25. If a policyholder contacted RACQ Insurance to withdraw a dispute which had reached the IDR stage it may be possible that written confirmation would not be provided, as no decision would have been reached by RACQ Insurance in relation to the dispute. However, my general understanding is that in these situations it is still often the case that a written confirmation of the withdrawal may be sent.
26. Exhibit 134 to my Second Affidavit includes copies of all written responses by RACQ Insurance deciding disputes arising out of the Queensland floods pursuant to its internal dispute resolution process.
39. **Were policyholders kept informed of the progress of their complaints/disputes in accordance with the General Insurance Code of Practice? How did/does RACQ Insurance monitor whether the standards for providing information on progress of disputes was/is adhered to?**
27. Clause 6.2 of the Code requires the insurer to keep the customer informed of the progress of the insurer's response to a complaint, and clause 6.8 requires the insurer to keep the

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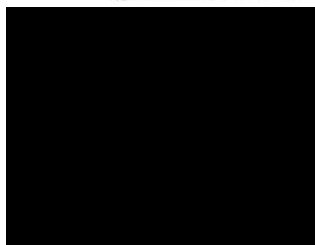
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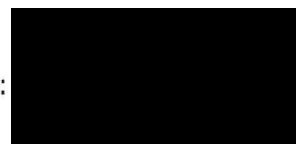
customer informed of the progress of the insurer's review of a dispute at least every 10 business days.

28. However, clause 6 must, I believe, be read with clause 4. In particular Clause 4.3 of the Code acknowledges that an insurer may not be able to meet all standards of the Code following a catastrophe or disaster.
29. In paragraphs 200 to 205 of my Second Affidavit which deals with question 19 of the Second Letter of Inquiry I comment on the extent to which RACQ Insurance was able to comply with the standards imposed in the Code in relation to communicating the progress of claims with customers.
30. The comments I make there apply equally to the dispute resolution process and I rely on those comments in response to this question. Although procedures were streamlined and additional resources were committed to the IDR team (as deposed to in paragraph 242 of my Second Affidavit), RACQ Insurance was not able to meet the standard identified in clauses 6.2 and 6.8 in every instance.
31. Unfortunately this is a consequence of the magnitude of this disaster; and the Code contemplates that this may happen when these sorts of disasters occur.
32. The Customer Dispute Resolution department monitors the progress of complaints. The Customer Dispute Resolution Manager has access to the records of RACQ Insurance, which include ClaimCenter. This review is an ongoing review and has been completed on 22 occasions in 2011 (which on average is close to once every one and a half weeks).
33. At the time of his review, he obtains a list of all matters from the complaints register which are listed as unresolved complaints and all complaints noted as "resolved" since the last review. I have included as **Exhibit 3** a sample of the list prepared as at 19 August 2011. The list (amongst other things):
 - (a) identifies the complaint and its date;
 - (b) provides an 'age' of the complaint (expressed in calendar days). This is an automatic calculation from the date of the making of the complaint until the date of the review;
 - (c) identifies the date when the complaint was made (even if that is earlier than the date it was entered in the register of complaints);
 - (d) categorises the complaints (including by sub-category); and
 - (e) records (in the column headed "Action by Reviewer") the action taken by the Customer Dispute Resolution Manager.
34. The Customer Dispute Resolution Manager reviews the records for each complaint when conducting his review. I understand that the Customer Dispute Resolution Manager focuses

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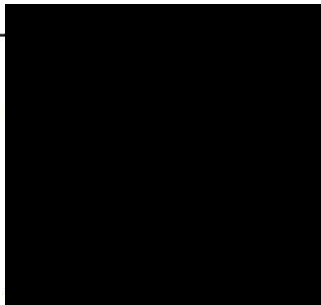
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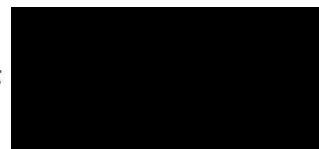
in particular on complaints with earlier complaint dates as complaints with later dates may still be in the early stages of the process.

35. If, in the course of the review the Customer Dispute Resolution Manager identifies something that he believes needs to be done, he will contact the responsible officer within RACQ Insurance.
36. The Customer Dispute Resolution Manager specifically checks whether unresolved complaints have not been determined (and a written response provided) within 45 days or are approaching a period of 45 days since the complaint was made. It is his task to produce and send a letter out to customers whose complaints are not determined within that time. A sample of such letter sent by RACQ Insurance is **Exhibit 4** to this affidavit. For matters where a customer was legally represented, RACQ Insurance's lawyers Cooper Grace Ward wrote to the customer's solicitors (on a bulk basis) to provide the same advice. Samples of such letters are **Exhibit 5** to this affidavit.
37. A number of unresolved complaints, under the column headed "Final Outcome" on the table which is Exhibit 3, show the entry "Legal Rep appointed" or words to this effect. These words refer to complaints made or advanced by a lawyer on behalf of a customer.
38. Complaints shown as being unresolved on the basis of "Legal Rep appointed" generally fall into two categories. Firstly, "complaints" which are "unresolved" because RACQ Insurance is still waiting to receive the customer's submissions from their legal representatives. Secondly, complaints which are unresolved because they are in the course of being considered by RACQ Insurance.
39. The first category of such complaints arises because in most instances these "complaints" were originally just notifications by lawyers on behalf of customers that the customer was dissatisfied with a decision by RACQ Insurance and that further information and reasons to support the complaint would be provided in the future. Complaints of this type are treated by RACQ Insurance as being "unresolved" even though there is no further action required by RACQ Insurance pending the customer's lawyer taking another step.
40. In most instances where a complaint has been made on behalf of a customer by a lawyer this has been through a legal service such as Legal Aid Queensland or the Caxton Legal Centre. **Exhibit 6** to this affidavit contains copies of fairly typical examples of the types of initial complaint letters referred to above. Generally these letters indicate that the legal representatives propose to provide further submissions and request that RACQ Insurance not make a decision until those submissions have been provided.
41. In response to these initial complaint letters, RACQ Insurance's solicitors generally wrote to the customers' solicitors to acknowledge receipt of the complaint and, where information

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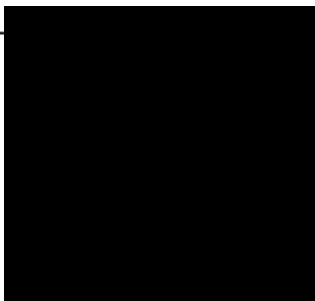
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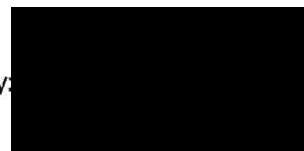
has been requested, to provide that information. As I have explained in my Second Affidavit, some information was not provided, for example because it was privileged. **Exhibit 7** to this affidavit contains copies of fairly typical examples of such letters. As at the date of this affidavit I understand that there are a number of matters where RACQ Insurance is still waiting to receive the foreshadowed submissions from legal representatives.

42. In addition, the Customer Dispute Resolution Manager provides me a report which contains ongoing analysis of the complaints received by RACQ Insurance. These are provided monthly or bi-monthly. I read the reports and discuss them with the Customer Dispute Resolution Manager (or indeed others) as are necessary. If they reveal some systemic failing I would take steps to remedy it.
43. An example of such a report (for the period June – July 2011) is **Exhibit 8** to this affidavit.
40. **Has RACQ Insurance made any public statement, or commented in any public forum, about any individual policyholder (or an advocate for a policyholder)? If so, please provide copies of the statements or comments.**
44. I am only personally aware of two instances where there has been a comment in a public forum about individual customers. In neither of these situations was the name of the customer specifically stated. I provide further details below. Within the time allowed by the Commission to respond to this question, I have not had an opportunity to review every public statement made by RACQ Insurance since the Queensland Floods.
45. The public comment was made on RACQ's website and Facebook page through a publication described as "Get the Facts". I have been given, for the purposes of this affidavit, a record from the RACQ web services content management system. This records the publishing of "Get the Facts" including content, dates and times of posting. This information was published on the RACQ website and I am advised that the same information was posted on the RACQ Facebook page. **Exhibit 9** is a copy of the record from the RACQ web content management system.
46. People were able to add comments to the Facebook page (in some instances the person making the comment identified themselves as a policyholder) and in some instances RACQ posted responses to those comments (described as "RACQ Official"). I have been able to locate two "RACQ Official" comments regarding the instances referred to above however I have not been able to confirm in the time available to prepare this affidavit whether these are the only comments made and whether in fact any other comments were made by RACQ Official or are able to be retrieved. **Exhibit 10** is a copy of the two comments that I have been able to locate.

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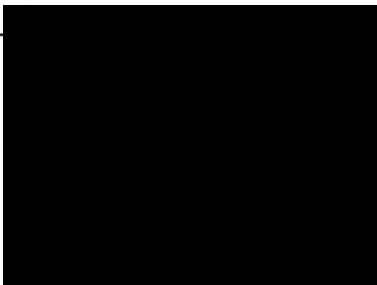


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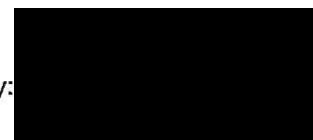


47. The first instance concerns a family living in Ipswich. Their property was damaged by stormwater runoff during the Queensland Floods. On 7 April 2011 the Today Show on Channel 9 aired a program which contained a series of allegations about RACQ Insurance's treatment of their claim.
48. On the program, it was claimed, amongst other things, that RACQ Insurance had offered an insufficient settlement sum in respect of the claim. The media played clips of a ten year old boy, breaking down because of purported bad treatment by RACQ Insurance. The thrust of the complaint was that the boy had been forced to live in unacceptable living conditions on a camp bed upstairs in a ruined house pending the resolution of the claim.
49. The story was picked up by a number of media outlets, with the general tone of the coverage being very critical of RACQ Insurance.
50. The customer had been active in the media prior to appearing on the Today show. I understand that the customer had also participated in a community meeting in Ipswich on 5 April 2011 in which similar footage of the boy was shown.
51. The family's property was inundated on 10 January 2011. RACQ Insurance engaged hydrologists to advise it in relation to the cause of the inundation affecting the Ipswich area and on the family's property specifically.
52. Prior to appearing on the Today show, RACQ Insurance had already paid the customer:
 - (a) \$5,000 on 1 February 2011 as an emergency measure. This payment was made pending a decision on the claim (that is before the hydrological evidence had been provided to RACQ Insurance);
 - (b) \$10,000 on 4 March 2011. It was this day that the claim was accepted and the payment was intended as short-term assistance pending settlement of the claim.
53. On 31 March 2011 RACQ Insurance had made an offer to settle the claim. I can provide details to the Commission of the terms of that offer if required. Ultimately that offer was accepted (on 14 April) but after the community meeting and the filming/airing of the programme to which I have referred above.
54. RACQ Insurance considered the allegations on the program to have been misleading and that it was legally permissible to respond publicly to the comments made by the customer in the media. RACQ Insurance's position is that the response made by RACQ Insurance to the public comments made by the customer was accurate and appropriate.
55. The second instance concerns a customer who received an email inadvertently from a temporary contractor working for RACQ Insurance. The email was totally inappropriate and offensive. The media obtained a copy of this email and there was media coverage about it.

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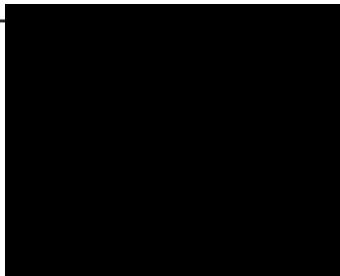


56. I personally managed matters with the customer through to an acceptable resolution.
57. I also met with all of the staff within the dedicated response team to ensure they understood the seriousness with which I viewed the matter and to strongly reinforce our company values and customer service ethos.
58. In light of the extensive media comments about the issue, a brief comment was made in the "Get the Facts" publication.

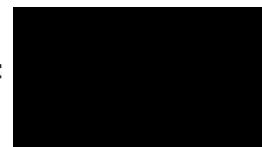
41 Is RACQ Insurance or has RACQ Insurance been the subject of any investigation by the Financial Ombudsman Service (other than disputes referred to in paragraph 33 of the original Requirement dated 2 September 2011) or any other regulatory body about the manner in which RACQ Insurance has dealt with claims relating to the Queensland floods?

59. As is set out in paragraph 164 of my Second Affidavit, RACQ Insurance has entered into correspondence with the Financial Ombudsman Service (FOS) about the non-disclosure of hydrology reports relied on to decide claims and resolve disputes.
60. Mr John Price, the General Insurance Ombudsman made reference in a face to face meeting on 4 July 2011 between Mr Price, Mr Bradley Heath and myself of the possibility, should RACQ Insurance not release the reports, that FOS may seek to investigate the position RACQ Insurance has taken on this issue for possible non-compliance with the Code. Mr Price has indicated to me by email on 9 September 2011 that the position taken by RACQ Insurance in relation to hydrology reports has been referred to the FOS systemic and code team for investigation.
61. RACQ Insurance has not received any notice to respond to any alleged breach of the Code or to provide material specifically for such an investigation.
62. From our point of view the issue of the disclosure of hydrology reports has been resolved on the basis that all of the relevant reports have now been provided to FOS for use in the dispute resolution process.
63. On 13 September 2011 a letter was sent by ASIC to RACQ Insurance requesting information in relation to two "areas of interest". A copy of this letter is **Exhibit 11** to this affidavit.
64. One of the areas of interest is the release of hydrology reports to policyholders, as discussed in the preceding paragraphs. ASIC has asked whether it is correct that RACQ Insurance has refused to release hydrology reports and, if so, what the basis for this refusal was.

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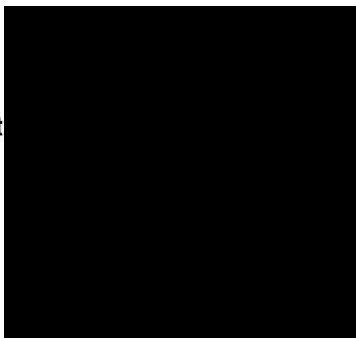
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65. The other area of interest is the decision announced by RACQ Insurance on 2 August 2011 to accept claims previously declined as excluded flood claims. ASIC has asked what the basis was for the original refusal, why the declines were reversed and whether any other reversals are likely. The request was not made with use of ASIC's compulsory powers.
66. RACQ Insurance is currently preparing a response to ASIC's request for information. I am uncertain as to whether this correspondence indicates that ASIC is contemplating beginning an investigation into these matters, or that such an investigation has already begun. This is the full extent of the correspondence we have so far received from ASIC and I am therefore unable to comment further.
67. Prior to this, on 3 May 2011, ASIC sent a letter to RACQ Insurance with a request for our response to ASIC's concerns about certain parts of the Product Disclosure Statement (PDS) which constitutes the main policy document for RACQ Insurance's household insurance policies. A copy of this letter is **Exhibit 12** to this affidavit.
68. ASIC's concern was that the explanation provided in the PDS of the cap on cover for losses caused by flash flooding and storm water runoff to 50% of the loss might not be sufficiently clear to clearly inform policyholders of that limitation. ASIC suggested that this might constitute a breach of, variously, s 1013C(3) of the *Corporations Act*, s 12DA of the *ASIC Act* or s 35(2) of the *Insurance Contracts Act*.
69. On 25 May 2011 RACQ Insurance sent a letter to ASIC responding to ASIC's letter. This letter, which is **Exhibit 13** to this affidavit, provided specific information requested by ASIC and sets out RACQ Insurance's position, which is that the PDS in its current form is sufficiently clear.
70. We have received no further correspondence from ASIC in relation to this issue. RACQ Insurance had decided to remove the cap on cover for losses caused by flash flooding and storm water runoff before receipt of the ASIC letter. The PDS has been changed to reflect this.
71. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and the means of my knowledge and sources of information appear on the face of this my Affidavit.

SWORN by **GRAHAM IAN DALE** on 21 September 2011 at Brisbane in the presence of:

Deponent



~~Barrister/Solicitor/Justice of the Peace/
Commissioner for Declarations~~

