

By email: info@floodcommission.qld.gov.au

3rd October, 2011

Commission Secretary
Queensland Floods Commission of Inquiry
PO Box 1738
Brisbane QLD 4001

Dear Secretary

Submission re Insurance Claims Handling


Financial Counselling Australia is the peak body for financial counsellors in Australia.

The attached submission to the Commission is largely based on the feedback from financial counsellors in Queensland who were involved in assisting clients affected by the floods.

The information was gathered in July 2011 and was also used to inform a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs.¹ The submission also canvasses existing systemic deficiencies in the regulatory framework.

Increased access to financial counselling services is an important component of the Queensland Government's community recovery response. Financial counsellors assist consumers in financial difficulty in a range of ways, including negotiating with financial institutions and by providing information, support and advocacy. They work in community organisations and their services are free, independent of industry and confidential.

Yours sincerely



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¹ That submission was prepared jointly by the Consumer Action Law Centre, Financial Counselling Australia, Footscray Community Legal Centre and Choice.

**SUBMISSION TO
THE QUEENSLAND FLOODS COMMISSION OF INQUIRY
FROM FINANCIAL COUNSELLING AUSTRALIA**

Preliminary Information

The various abbreviations used in this submission, often in direct quotes from financial counsellors, are set out below. The dot points also include comments about elements of the regulatory framework relevant to the insurance industry.

- IDR – Internal Dispute Resolution. Insurance companies are required by law to have IDR processes.
- EDR – External Dispute Resolution. Insurance companies are required by law to be a member of an EDR scheme.
- FOS – Financial Ombudsman Service (which is an External Dispute Resolution scheme). All general insurance companies operating in Australia are members of FOS. FOS is the independent umpire in relation to a range of financial disputes. Its services are free for consumers. Financial counsellors see EDR as an important consumer protection.
- General Insurance Code Practice – all members of the Insurance Council of Australia are signatories to the Code. The Code is voluntary however and some insurance companies are not members. This is a serious deficiency. The Code itself however also needs amendment in some important areas.
- To some extent, the nature of the work done by financial counsellors means we are more likely to see problems within an industry. We recognise therefore that casework experience is just a snapshot into industry performance and broad generalisations are problematic. However the sheer weight of casework experience, or the nature of that experience, can still point to deeper and more systemic issues. This is our view in relation to issues surrounding claims handling in the insurance industry.
- The casework experience of the financial counselling sector, and our colleagues in community legal centres and Legal Aid, indicate that insurance claims handling failed in a number of respects.

Appendix 1 includes some examples of the types of assistance a financial counsellor might provide to clients affected by the floods.

Financial Counsellor Experiences

Some Queensland financial counsellors advise that their clients received insufficient information from insurers regarding the insurer's decision to deny claims. These matters were only resolved after the financial counsellor contacted the insurer on behalf of the client, requested assistance from the local Member of Parliament or referred the client to the Financial Ombudsman Service or Legal Aid Queensland. In other words, normal claims handling processes and internal dispute resolution processes were not effective.

Deleted: ,

“Insurers saying you are not covered but would not put it in writing until the local member or myself got involved ...”

“Client who came to see me about other financial matters said she was insured with [insurer]. This company declined her (flood) claim. When my client asked to appeal they wanted to know on what grounds, saying that she could not appeal just because they had declined her claim, she had to have “proper” reasons. By the time the client saw me she felt she had no hope and didn’t want me involved in the insurance matter. I did advise client to go to FOS.”

Financial counsellors also reported that consumers had claims denied on the basis of a hydrologist's report, but the insurer was unwilling to give the insured access to the report:

Where a refusal was put in writing, the letter referred to a hydrologist’s report. When the customer asked for a copy they were told they could not have it. They got a copy if they jumped up and down or when I became involved by referring them to FOS and Legal Aid.

The insurer at one stage wanted to charge my client for the report (\$350-360). It was only when he said he would go to his local member that they agreed to give him the report. When he advised that the report was incorrect they fobbed him off by saying that he was not covered for flood damage and that was that. This is where he contacted me and I referred him to FOS and Legal Aid and to make a complaint. He was going to lodge a complaint with FOS. He did not know about FOS until I spoke to him and his insurer at no stage told him about Internal Dispute Resolution or External Dispute Resolution.

Financial counsellors also advise that consumers are usually not aware of the existence of the FOS or Legal Aid. One financial counsellor reports that:

I cannot recall out of the 30 clients I saw in the two months I was at [Financial Counselling service] anyone who knew about FOS or Legal Aid or that you have the right to challenge what the insurer is telling you. When told, some consumers then worry that the insurance company might turn nasty against you.

The length of time it took some insurers to respond to customer claims has been well publicised. A financial counsellor also shared their experience of these delays:

(A community worker) was saying that they put their claim in to repair their house and the insurance company said that the quote was too expensive. They got another quote and it was even more expensive. As far as I know the repair has still not been carried out. Driving around Tully there are lots of houses still without a roof and no sign of any work being done on them.

The involvement of hydrologists can have a significant impact on flood insurance disputes and reliance on their reports in determining disputes can raise issues for consumers.

One problem is that an incorrect hydrologist's report is likely to lead to an incorrect claim determination. One financial counsellor recounts:

One client actually got the hydrologist's report before we met but it was based on wrong information. The report referred to incorrect dates, both for when the flooding was supposed to have occurred and when the water subsided. The report included a statement that the owner had confirmed these timings. He had no contact with the hydrologist, but the tenant had done so. The tenant said his involvement with the hydrologist was to advise when they had left the house because of the threat of flood and when the water level dropped to a point where they could look inside the house. When the client advised that the report was incorrect the insurance company fobbed him off by saying that he was not covered for flood damage and that was that.

Where a claim determination or the resolution of a dispute turns on the opinion of an expert hydrologist, consumers are at a significant disadvantage because few will have the resources or the expertise to either commission their own hydrologist's report or challenge the findings of an insurer-commissioned report.

The impact of free legal advice on people's access to external dispute resolution

Free legal advice undoubtedly enhances access to external dispute resolution. However, capacity to provide free expert insurance related legal advice after a disaster will be severely limited.

Insurance is a highly specialised area of law. Upskilling community legal sector solicitors to allow them to provide comprehensive advice on insurance matters would create a significant resource drain unless specific funding was provided. Solicitors without specialist insurance expertise are only able to provide limited advice to consumers on insurance matters.

The experience of one Queensland financial counsellor indicates how, even months after the floods, insurance cases continued to overwhelm community resources:

I rang Legal Aid several months after the floods. My client had a notice threatening house repossession, so the matter was serious. The consumer lawyer gave my client a few minutes of phone advice, and then told me that the Legal Aid Consumer Protection section wasn't available for ordinary client casework because they were all busy doing flood work.

With the exception of the Insurance Law Service in New South Wales, there are no free legal services that specialise in insurance matters.

Changes to Improve Claims Handling Processes

- *Claim Processing Times* - The Queensland Premier recently suggested that insurance companies should be forced to pay their clients' full claims if they are not dealt with in a reasonable time.² We would support that proposal.

An alternative approach, is to amend the Code along the lines consumer groups have suggested, to provide that a decision about a claim must be made within six months, unless the insurance company can demonstrate exceptional circumstances.³

- *Right to Claim* – Too many claims appear to have been denied over the phone by insurance companies. This is completely unacceptable and effectively denies a consumer's legal rights, which are only triggered by a written refusal.⁴

This gatekeeper issue will apply to other insurance products as well. For example, ASIC's recent report on motor vehicle claims handling found that only 0.28% of claims were rejected, but 7% were withdrawn by consumers.⁵ The withdrawal rate is 25 times higher than the rejection rate. This raises concerns that consumers are being discouraged from continuing with claims after speaking to call centre staff.

The Code needs to be amended to provide that a consumer who contacts an insurer to ask whether their policy covers them for a specific loss, should always be advised to lodge a claim. It is not enough to leave this advice to the discretion of call centre staff, as that would only perpetuate the current situation. An amended code must be prescriptive. The Code Compliance Monitoring Committee needs to monitor this aspect.

- *Code Coverage and Review* – All insurance companies should be required to adopt the Code. The Code is subject to periodic review. The reviewer should be chosen jointly by the industry and consumer groups, or alternatively, appointed by the Code Compliance Committee.

² Media Release, Force insurance companies to pay up, 27/9/2011.

³ See for example *A Fair Go in Insurance*, <http://consumeraction.org.au/downloads/AFairGoInInsurance-Recommendations-010211.pdf> p 4.

⁴ One insurer reportedly denied claims based on an analysis of google maps.

⁵ [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep245-issued-10-August-2011.pdf/\\$file/rep245-issued-10-August-2011.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep245-issued-10-August-2011.pdf/$file/rep245-issued-10-August-2011.pdf) - see pages 5-6

- *Code Reporting* - The Code Compliance Committee should report annually on its activities including naming companies investigated. This is important for public confidence in the Code.
- *Australian Standard* - Claims handling practices could be improved by establishing an Australian Standard.⁶
- *Specialist Consumer Legal Services* - Each state needs a specialist consumer legal service, with expertise in financial services, insurance and other consumer protection law.
- *Unfair Contract Terms* - Extend national unfair contract terms protections to insurance contracts. Insurance contracts are the only type of consumer contract excluded from national unfair contract terms protections in the Australian Consumer Law.
- *Total Replacement Policies* - Encourage the insurance industry to offer total replacement policies rather than sum insured policies. Sum insured policies perpetuate underinsurance. This is a serious problem in the marketplace generally, but exacerbated after natural disasters. The impact for consumers is that they don't have enough money to rebuild their homes. Some insurance companies already offer this product and remain competitive, so it appears the barriers are artificial, rather than real. The Royal Commission into Victoria's bushfires also made a recommendation along these lines.
- *Access to independent hydrologists* - establish a panel of independent hydrologists, administered by FOS, available to provide advice to consumers in dispute with their insurers in flood damage claims. Consumers will understandably be sceptical about the veracity of hydrology reports prepared by experts employed by insurance companies.

This submission does not cover the absolutely crucial issue of access to flood insurance. It has been well documented that many Queenslanders wrongly believed their insurance policy covered them for flood. Some others believed that they had flood cover, but found it was limited, for example, only covering damage up to \$15,000. A third group of people were uninsured. It is distressing enough to be affected by a natural disaster, but these additional problems compound the effect and for some people, have been truly devastating.

As these systemic issues are being addressed in the National Disaster Insurance Review, initiated by the Assistant Treasurer, we have not touched on possible remedies. The obvious point to make however is that a solution has to be found as the situation as it existed prior to January 2011 is inequitable.

⁶ For more detail on this proposal, see this joint submission to the *Reforming Flood Insurance: Clearing the Waters* discussion paper at pp 23-4: <http://www.consumeraction.org.au/downloads/JointSubmission-ReformingFloodInsurance-May2011.pdf>

Appendix 1

Examples of How Financial Counsellors May Assist People Affected by Natural Disasters

Financial counsellors assist people in financial difficulty. They provide information, support and advocacy to help individuals and families make informed financial decisions.

In relation to the floods, examples of how a financial counsellor may assist include:

- Negotiating hardship arrangements with banks – helping people work out what is reasonable to expect, advocating with financial institutions for reasonable arrangements (some tend to be more forthcoming than others). Many, many people are going to need to renegotiate a raft of debts: credit cards, mortgages, child support payments, taxation etc. Consumers have legal rights under the National Credit Code and it is important they understand them. We also know that many people mix up their small business and personal debts and will need help trying to sort these out;
- Providing advice about managing one off and ongoing financial assistance, including helping people avoid making poor financial decisions (eg spending cash grants, rather than setting aside; paying off loans when an offset account may be more sensible);
- Helping people understand how insurance claims work, including lodging disputes if necessary about decisions by insurers or financial institutions with the Financial Ombudsman Service;
- Providing information about a myriad of issues – Centrelink payments and entitlements, debt collection, credit reporting, bankruptcy, scams;
- Generally – and this is hard to quantify – financial counsellors help people manage the stress and emotional upheaval associated with events of this nature. Many people will feel overwhelmed by what has happened. Knowing that they have options and can make decisions about managing their money is a huge relief. One of the lessons from the Victorian experience is that the engagement with people just takes longer – because of the trauma involved.