

Oaths Act 1867

Statutory Declaration

QUEENSLAND

TO WIT

I, Dion Paul Gooderham, care of CGU Insurance, 181 William Street, Melbourne in the State of Victoria, do solemnly and sincerely declare that:

- 1 I am employed by Insurance Australia Group Limited (**IAG**) as General Counsel for CGU Insurance Ltd (**CGU Insurance**). I have been employed by IAG in this role for approximately 20 months and my primary function is to provide legal advice to CGU Insurance. I am not involved in the management or design of insurance claims handling processes and do not provide legal advice in connection with claims for indemnity by CGU policyholders.
- 2 I am a legal practitioner admitted to practice in the Supreme Court of Victoria and the High Court of Australia. I hold a current practising certificate.
- 3 At the time of the Queensland Floods (December 2010 and January 2011) I was employed by IAG in my current role.
- 4 I provide this declaration in response to the requirement directed to me by Commissioner Justice C E Holmes dated 9 November 2011 (**requirement**).
- 5 In doing so, I should make clear that, as General Counsel, I am not a member of the claims handling team and, in order to answer the questions which follow I have had to make inquiries of those who do have knowledge of the relevant matters and to documents relevant to the questions. This was also the case in relation to the communications with ASIC to which I refer below.

Questions 1.1 and 1.2

- 6 I believe to the best of my knowledge the statements and opinions expressed in the letter were and are all true and correct, save that the claim and internal dispute resolution (**IDR**) numbers have changed since my letter was prepared.
- 7 However, these requirements relate to my letter dated 13 May 2011 to Mr Honor at ASIC and I am concerned about the generality of question 1.1 which asks that I 'Confirm whether everything represented in the letter is true and correct' and question 1.2 that follows it.
- 8 My letter to Mr Honor, which is almost 3 pages in length, does not contain any statement or opinion which is expressed as a representation. However, perhaps a number of representations are implicit in what I have said. To give a few examples from the first page of my letter, it contains statements that 'CGU takes great care...'; that its 'primary concern was to avoid unnecessary delays...' and a statement as to the terms of section 4.4 of the General Insurance Code of Practice.
- 9 I am not certain whether it is statements such as these to which these requirements are directed. Further examples could be given from the terms of pages 2 and 3 of my letter.
- 10 In the circumstances referred to above, it would be helpful to me if the Commission could identify more precisely the specific statements or opinions which are said to constitute the representations to which the requirement is directed, and ideally identifying the basis for any concern about the accuracy of the information which I conveyed.

- 11 Once that is done, I will be able to provide a more complete response directed to the specific concerns identified by the Commission.

Question 1.3

- 12 After receipt of ASIC's letter dated 20 April 2011, I made inquiries in preparation of my letter dated 13 May 2011 from the following personnel within CGU Insurance:
- 12.1 Mr [REDACTED], Claims Manager, Personal Lines in order to obtain information about the handling of flood claims generally and more specifically, the desk top triage process
- 12.2 Ms [REDACTED] Risk & Compliance Manager, Claims in order to obtain information about applicable risk and compliance procedures followed by CGU Claims.
- 12.3 Mr Chris Rodd, Technical Counsel, Internal Dispute Resolution in order to obtain information about the development of the desk top triage process (in particular the question set) and also any communications he may have had with Financial Ombudsman Service (**FOS**).
- 12.4 Mr James Merchant, National Claims Manager in order to verify and supplement any information provided by the personnel listed above.
- 13 In my role, I did not have direct access to any claims records or other claims documentation.
- 14 I provided each of the people referred to in paragraph 12, with a copy of the letter from ASIC dated 20 April 2011. The information upon which I based my response to ASIC was provided to me by, or at the direction of, the CGU Insurance Claims personnel identified above. I understood that they would make the inquiries necessary to obtain all of the relevant information. I did not manage or co-ordinate those further inquiries but relied on the information provided to me as a consequence to draft the letter of 13 May 2011.
- 15 The inquiries of the personnel set out in paragraphs 12 to 14 were made to gather the information that, in my belief, was necessary to address the questions asked, and provide the information requested by ASIC in order to prepare, and are the sources of the information contained, in my letter dated 13 May 2011.

Question 1.4

- 16 The relevant communications with the FOS which contained the advice to which I referred in my letter dated 13 May 2011 were between Mr Chris Rodd and Mr John Price, General Insurance Ombudsman.
- 17 The reference to 'advice' in my letter was reference to getting an opinion or expression of comfort from Mr Price about the process CGU intended to adopt. I did not intend it to mean a formal legal advice from FOS. Such advice was not sought from FOS.
- 18 Mr Rodd's role as Technical Counsel for CGU Insurance included acting as the primary liaison with FOS in respect of general insurance claims handling or dispute resolution issues. Mr Rodd informs me that in that capacity he routinely discussed such matters with Mr Price, including issues arising out of the Queensland floods.
- 19 I had no direct communications with FOS or Mr Price.
- 20 For the purpose of the preparation of my letter to ASIC dated 13 May 2011, Mr Rodd informed me that:

- 20.1 he discussed with FOS its requirements in relation to claims arising out of the 2010/11 Queensland floods on a number of occasions between 6 and 17 January 2011.
- 20.2 he met personally with Mr Price on 17 January 2011 at CGU Insurance's offices at 181 William Street, Melbourne. These discussions included:
- 20.2.1 how best to manage limited hydrologist resources in assessing individual flood claims, as there were, based on the experience of CGU Insurance, a lack of experienced hydrologists in Australia to cater for any such requirement.
- 20.2.2 that CGU had developed a desk top triage process for claims assessment that included:
- (a) reliance on use of overarching or area hydrology assessments, flood mapping data, aerial photography and time-lined aerial photography;
 - (b) a set of questions designed with Dr Sharmil Markar, Director and Principal Engineer at WRM Water & Environment Pty Ltd, to ascertain whether water damage was likely to have been caused by flood or another event; and
 - (c) the circumstances where an assessor and/or site specific hydrology report was required.
- 20.3 the response from Mr Price in that meeting was to the effect that it seemed reasonable for CGU Insurance to use the best available evidence it had when determining flood related claims, including utilising and relying on overarching or area hydrology assessments which had been obtained either by the Insurance Council of Australia or CGU Insurance, except in cases where the area hydrology reports did not cover a particular area or region.
- 20.4 Mr Price also indicated to Mr Rodd that FOS itself intended to use the available area hydrology reports when reviewing relevant claims lodged by applicants.
- 20.5 Mr Rodd confirmed during the discussion with Mr Price on 17 January 2011 that insured customers retained all their rights to have claims reviewed both internally and externally and to furnish information or evidence as part of the claims review process.

Question 1.5

- 21 The statement on page 3 of my letter was intended as a reference to meetings with Ms Sallyanne Doyle on 14 February 2011 and to the meeting held at CGU Insurance's Brisbane office with a number of customers (including Ms Doyle) on 18 February 2011. This is referred to in paragraph 25 of the statement of Mr Peter Harmer dated 3 October 2011, which has been filed with the Commission.

Question 1.6

- 22 To the best of my knowledge the staff guidance referred to in my letter dated 13 May 2011 was provided as described in section 5/6 of the response to the Commission's requirement directed to Peter Harmer dated 14 October 2011, which was filed with the Commission on 20 October 2011. Section 5/6 is annexed hereto and marked 'Annexure 1'.

Question 1.7

- 23 The desktop triage process (also described as a desktop assessment process) is described in detail in the statement of Mr James Merchant dated 23 September 2011 filed with the Commission, in particular at page 7 – 16 of annexure 3 of that statement.
- 24 I am informed by Mr [REDACTED] and Mr Rodd that the development of this process included the development of a specific question set to be used by both CGU Insurance claims consultants and assessors when contacting customers to conduct a preliminary assessment of whether a loss was caused by flood. This question set is also referred to and annexed to Mr Merchant's statement dated 23 September 2011 as Annexure 7.
- 25 I am informed by Mr Ben Bessell, General Manager, Claims, that:
- 25.1 The desktop triage process was developed by a working group of senior CGU Claims managers comprising of the following personnel:
- 25.1.1 Mr Ben Bessell, General Manager Claims.
- 25.1.2 Mr [REDACTED], Claims Manager, Personal Lines.
- 25.1.3 Mr Chris Rodd, Technical Counsel, Internal Dispute Resolution.
- 25.1.4 Mr James Merchant, National Claims Manager.
- 25.1.5 Mr [REDACTED], National Manager, Specialist Claims.
- 25.1.6 Mr [REDACTED], Senior Corporate Affairs Adviser.
- 25.2 The desktop triage process was approved by Mr Bessell on or around 6 January.
- 25.3 Members of the working group met almost daily during the early periods of the Queensland floods to address CGU Insurance's response to the unfolding natural disaster, including the desktop triage process and any claims handling issues that arose along the way.
- 25.4 Having senior staff in attendance at the working group meetings was intended to provide a level of assurance that any changes to claims processes or procedures, including, as occurred, the desktop assessment process, properly incorporated relevant considerations of risk and compliance, including, compliance with applicable laws, the contract of insurance itself and the General Insurance Code of Practice.
- 25.5 The working group wanted to ensure that the desktop triage process properly incorporated relevant consideration of risk and compliance. This included ensuring that the process would be satisfactory from the perspective of FOS. For this reason, Mr Rodd was requested to liaise with FOS and Mr Price, in particular. I am informed by Mr Rodd that this occurred as set out in paragraphs 16 to 20 of this statement.
- 25.6 The question set referred to in paragraph 24, which was a procedure included in the desktop triage process, was developed by Mr Rodd in consultation with an expert hydrologist, Dr Sharmil Markar.
- 26 The membership of the working group and their oversight of the initiatives implemented in that group referred to in paragraph 25.4 are the risk and compliance procedures that I referred to in my letter to ASIC dated 13 May 2011.

- 27 CGU Insurance's Claims department had, at all material times, a dedicated compliance plan which included specific sections in relation to claims determinations, declining claims and also handling catastrophe or natural disaster claims. A copy of the said compliance plan is annexed hereto and marked '**Annexure 2**'.
- 28 I am informed that there are no other records establishing the risk and compliance procedures referred to in my letter to ASIC dated 13 May 2011.

Question 1.8

- 29 I am informed by Mr Merchant and Mr [REDACTED] that:
- 29.1 the desk top triage process was developed on or about 6 January for use by in-house claims staff and 7 January 2011 for use by assessors;
- 29.2 the process was first used on or about 24 January 2011; and
- 29.3 CGU Insurance claims determinations using the process were first made on or about 24 January 2011.

Question 2.1

- 30 A copy of my handwritten file note of my conversation with Ms [REDACTED] on 20 June 2011 is annexed hereto and marked '**Annexure 3**'.
- 31 I note that my letter to Ms [REDACTED] dated 30 June 2011 contains a typographical error in the first paragraph. My telephone conversation with Ms [REDACTED] referred to in that letter occurred on 20 June 2011.
- 32 To the best of my recollection, the substance of my conversation with Ms [REDACTED] was as follows:
- 32.1 Ms [REDACTED] asked CGU Insurance to provide copies of the versions of standard or template claims declination letters used by CGU Insurance in respect of the Queensland floods and any information about any changes CGU Insurance made to the messaging provided to customers about site assessment options.
- 32.2 I confirmed that I would seek to identify the requested material from CGU Claims and provide it to ASIC.
- 32.3 As I was not aware of Ms [REDACTED] involvement until the said conversation, I asked Ms [REDACTED] whether her inquiry was still specifically in relation to the anonymous customer complaint the subject of the previous ASIC letter of 20 April 2011 or whether it related to any other government inquiries on foot at the time.
- 32.4 Ms Curtis confirmed that the query still related to the anonymous complaint and was discrete from any other government inquiries.
- 32.5 I reiterated the open offer to discuss any further issues or questions that ASIC may have.

Question 2.2 and 2.3

- 33 I believe to the best of my knowledge that the statements and opinions expressed in letter dated 30 June 2011 to [REDACTED] were and are all true and correct, save for the matters set out in this statement and that:
- 33.1 the telephone conversation with Ms [REDACTED] said to have occurred on 20 January 2011, in fact occurred on 20 June 2011; and

33.2 the references to 19 January 2011 should have been references to 22 February 2011

34 However, these requirements relate to my letter dated 30 June 2011 to [REDACTED] at ASIC and I am concerned about the generality of question 2.2 which asks that I 'Confirm whether everything represented in the letter is true and correct' and question 2.3 that follows it.

35 My letter to Ms [REDACTED] which is one and a half pages in length, not counting annexures, does not contain any statement or opinion which is expressed as a representation. However, perhaps a number of representations are implicit in what I have said. To give a few examples from the first page of my letter, it contains statements that 'the claims handling process relied on a number of sources of information...' and '...the questions themselves did not change throughout the process...'

36 I am not certain whether it is statements such as these to which these requirements are directed. Further examples could be given from the second page of my letter.

37 In the circumstances referred to above, it would be helpful to me if the Commission could identify more precisely the specific statements or opinions which are said to constitute the representations to which the requirements is directed, and ideally identifying the basis for any concern about the accuracy of the information which I conveyed.

38 Once that is done, I will be able to provide a more complete response directed to the specific concerns identified by the Commission.

Question 2.4

39 In the preparation of my letter dated 30 June 2011 I made inquiries of the following personnel within CGU Insurance:

39.1 Mr [REDACTED], Claims Manager, Personal Lines to obtain copies of the standard or template decline letters and provide further detail about the desk top triage process.

39.2 Ms [REDACTED], Risk & Compliance Manager, Claims to obtain information and documents about customer complaint handling and internal review processes.

39.3 Ms [REDACTED] Team Manager, Queensland Claims to provide additional information in relation to the process for communicating with customers impacted by the Queensland floods and the experience of CGU Claims consultants in using the customer question set.

39.4 Mr James Merchant, National Claims Manager in order to verify and supplement any information provided by the personnel listed above.

40 The inquiries of the personnel set out in the paragraph immediately above were made to gather the information that, in my belief, was necessary to address the questions asked, and provide the information requested by ASIC in order to prepare, and are the sources of the information contained, in my letter dated 30 June 2011.

Question 2.5

41 The procedural changes referred to in my letter dated 30 June 2011 were part of the procedural changes referred to by Mr Merchant in his evidence (lines 1-20 of the transcript 3806) before the Commission, subject to the clarification made in my

response to questions 2.2 and 2.3 about the references in my letter to the date '19 January 2011'.

Question 2.6

- 42 As stated above, the reference in my letter to ASIC to the date '19 January 2011' should have been reference to '22 February 2011'.

Question 2.7

- 43 My letter to ASIC of 30 June 2011 was in response to a request for further information from ASIC which related to CGU Insurance's claims assessment process and customer communications during the Queensland Floods.
- 44 I considered it relevant in that context to provide further detail to ASIC that individual site assessments had not been explicitly offered to those customers where flood was considered by CGU Insurance to be the cause of the loss, up until the change in communicating the claims process was made on 22 February 2011.
- 45 This is why the relevant statement was included in my letter dated 30 June 2011.
- 46 The statement referred to in my letter was not intended to be a correction or clarification of any information in my letter dated 13 May 2011.

Question 3.1

- 47 My reference to 'related communications' was simply a reference to my prior communications with ASIC in relation to this particular matter.
- 48 Those related communications are:
- 48.1 the letters from ASIC to CGU Insurance dated 20 April 2011 and 3 August 2011. Copies of these letters were provided to the Commission on 20 October 2011;
- 48.2 the letters from CGU Insurance to ASIC dated 13 May 2011, 30 June 2011 and 7 October 2011. Copies of these letters were provided to the Commission on 20 October 2011;
- 48.3 an email from ASIC to CGU Insurance dated 20 April 2011 enclosing the letter dated 20 April 2011, and a response from CGU Insurance to ASIC dated 13 May 2011 enclosing a copy of the letter dated 13 May 2011. A copy of those emails are contained in an email chain between myself and [REDACTED] annexed hereto and marked '**Annexure 4**';
- 48.4 an email from ASIC to CGU Insurance dated 13 May 2011. A copy of the email from ASIC dated 13 May 2011 is annexed hereto and marked '**Annexure 5**';
- 48.5 my telephone call with Mr [REDACTED] of ASIC on 20 April 2011. A copy of my file note of that conversation is annexed hereto and marked '**Annexure 6**';
- 48.6 my telephone call with Ms [REDACTED] of ASIC on 20 June 2011;
- 48.7 an email from CGU Insurance to ASIC dated 30 June 2011, enclosing the letter dated 30 June 2011. A copy of this email is annexed hereto and marked '**Annexure 7**'; and
- 48.8 an automated 'out of office' email from CGU Insurance to ASIC dated 30 June 2011. A copy of this email is annexed hereto and marked '**Annexure 8**'

48.9 an email chain between ASIC and CGU Insurance enclosing ASIC's letter dated 3 August 2011. A copy of that email chain and its attachment is annexed hereto and marked '**Annexure 9**';

49 I have now reviewed Annexure 4 to 9 inclusive referred to above. On reflection, these communications ought to have been provided to the Commission in the response to the requirement dated 14 October 2011. I apologise for not having done so earlier.

Question 3.2 and 3.3

50 I believe to the best of my knowledge that the statements and opinions expressed in my letter dated 7 October 2011 to [REDACTED] were and are all true and correct to, save as otherwise stated in this statement.

51 However, these requirements relate to my letter dated 7 October 2011 to [REDACTED] at ASIC and I am concerned about the generality of question 3.2 which asks that I 'Confirm whether everything represented in the letter is true and correct' and question 3.3 that follows it.

52 My letter to Ms [REDACTED] which is two and a bit pages in length, does not contain any statement or opinion which is expressed as a representation. However, perhaps a number of representations are implicit in what I have said. To give a few examples from the first page of my letter, it contains a statement that 'a site specific assessment is conducted by a loss assessor...' and, on page 2, it contains the statement 'During the 2010/2011 Queensland Flood events, CGU ordered 126 site specific hydrology reports in total...'

53 I am not certain whether it is statements such as these to which these requirements are directed. Further examples could be given from my letter.

54 In the circumstances referred to above, it would be helpful to me if the Commission could identify more precisely the specific statements or opinions which are said to constitute the representations to which the requirements is directed, and ideally identifying the basis for any concern about the accuracy of the information which I conveyed.

55 Once that is done, I will be able to provide a more complete response directed to the specific concerns identified by the Commission.

Question 3.4

56 In the preparation of my letter dated 7 October 2011 I made inquiries of the following personnel within CGU Insurance:

56.1 Mr [REDACTED], Claims Manager, Personal Lines in order to obtain further information about communications to customer, specifically in relation to changes in the site assessment process.

56.2 Mr [REDACTED] Risk & Compliance Manager, Claims in order to obtain information about CGU Insurance's tiered dispute resolution system.


56.3 Mr Chris Rodd, Technical Counsel, Internal Dispute Resolution in order to obtain information and comment on ASIC's references to noting external dispute resolution in CGU Insurance's standard decline letters (in addition to the complaints handling brochure).

57 The inquiries of the personnel set out in the paragraph immediately above were made to gather the information that, in my belief, was necessary to address the questions asked, and provide the information requested by ASIC in order to prepare, and are the sources of the information contained, in my letter dated 7 October 2011.

Question 3.5.1

- 58 In respect of 'cases where decisions to decline were changed based on the cross-referencing of...new evidence' (referred to in the first paragraph of the second page of my letter dated 7 October 2011 to ██████████ at ASIC) (**referenced review**):
- 58.1 At the time of preparation of my letter I was not aware of the precise number of claims that had been subject to a referenced review.
- 58.2 I have subsequently been informed by Mr ██████████ in the course of preparing this statement of the following:
- 58.2.1 The number of claims the subject of a referenced review was 497 and these were reviewed on, or very shortly after, 22 February 2011.
- 58.2.2 The referenced reviews were conducted following the CGU Insurance media release on 22 February 2011 which was in response to the customer feedback received on 14 and 18 February 2011. The media release dated 22 February 2011 was provided to the Commission at Annexure 4 of the statutory declaration of Peter Harmer dated 3 October 2011.
- 58.2.3 The referenced reviews were intended to determine that sufficient claims information had been collected in relation to a referenced review claim and also took into account any new relevant information that had become available to CGU Insurance in the period between the original claim decision and the review, in particular any new or revised hydrology assessments (including site specific hydrology assessments for neighbouring properties, if these had been ordered).
- 58.2.4 No additional site assessments were ordered as part of the referenced review. If site assessments had already been conducted, the record of the site assessment formed part of the referenced reviews. Complex claims or claims that were subsequently referred to IDR were site assessed although this was not part of the referenced review process.
- 58.2.5 No claims decisions were changed as a consequence of a referenced review.
- 58.2.6 However, from 22 February 2011, cross-referencing of claim decisions occurred when new hydrological evidence became available. One claim decision was subsequently changed from a denial decision on 25 March 2011 to a partial acceptance decision on 28 July 2011. This decision was based on relevant new hydrology evidence cross-referenced against other evidence obtained in respect of the same street. A further pending decision was accepted based on the evidence for the same street. It is noted that there are some claims still the subject of either IDR or FOS review.

and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867* (Qld).


Signature of declarant

Taken and declared before me at:

MELBOURNE

.....
(Town/city/suburb)

this 21 day of NOVEMBER 2011.


.....
Justice of the Peace/Commissioner for Declarations/Solicitor

VINCENT NOLAN
181 William St. Melbourne VIC 3000
An Australian Legal Practitioner
(within the meaning of the
Legal Profession Act 2004)