

Transcript of Proceedings

Issued subject to correction upon revision.

THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

MR P CALLAGHAN SC, Counsel Assisting

MS E WILSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 27/10/2011

..DAY 52

THE COMMISSION RESUMED AT 11.31 A.M.

1

COMMISSIONER: Yes, Ms Mellifont?

MS MELLIFONT: Madam Commissioner, I tender the Suncorp submission to the Commission dated the 11th of March 2011.

COMMISSIONER: That will be Exhibit 890.

10

ADMITTED AND MARKED "EXHIBIT 890"

MS MELLIFONT: I call Graham Ian Dale.

20

GRAHAM IAN DALE, SWORN AND EXAMINED:

MS MELLIFONT: Good morning?-- Good morning.

Is your full name Graham Ian Dale?-- Yes, it is.

Are you the general manager, personal insurance claims, for RACQ Insurance Limited?-- Yes, I am.

30

Can I just ask you to accept that whenever I refer to RACQ I am referring to RACQ Insurance for the rest of your evidence, please. Are you responsible for managing the end to end claims process for personal insurance claims?-- Yes, I am.

And were you appointed to your current position in December of 2007?-- Yes.

40

And prior to that were you the executive manager of personal insurance claims in RACQ since February 2004?-- Yes.

You have prepared a number of statements in response to requirements issued by the Commissioner?-- Yes, I have.

I will tender those. I am going to start by showing you your first statement dated the 1st of September 2011. Is that your first statement? And it relates to a particular policy holder, Ms Sihvola?-- Yes, it does.

50

Right. Is that statement true and correct to the best of your knowledge?-- Yes.

I tender that statement.

COMMISSIONER: Exhibit 891.

ADMITTED AND MARKED "EXHIBIT 891"

MS MELLIFONT: Can I please show you your second statement, we will call your general statement, sworn 19 September 2011? Is that your second statement?-- Yes, it is.

10

I will just quickly ask you to briefly identify the folders in the boxes as relating to that statement. I don't mean to go through each one.

COMMISSIONER: I don't know if this is realistic, is it?

MS MELLIFONT: They're just one on top of each. I tender that statement, your Honour.

COMMISSIONER: You're not going to take any issue about whether they are the right folders, are you Mr Doyle?

20

MR DOYLE: Not unless it proves they're wrong, but for the moment I will assume they're correct.

COMMISSIONER: Exhibit 892.

ADMITTED AND MARKED "EXHIBIT 892"

30

MS MELLIFONT: Can I take you, please, in respect of your second statement to paragraph 32, which refers to finalisation percentages of claims. Have you prepared a document updating that position as at 30 September 2011?-- Yes, I have.

All right. I will show you a copy of that document, please. I will hand up three copies for Madam Commissioner and Deputies. So, insofar as the Queensland flood claims are concerned, as at the 30th of September 2011 92.6 per cent have been finalised?-- Yes, that's correct.

40

And by the term "finalised", you mean claim denied or accepted and paid?-- The term "finalised" relates to the claim file being closed on our internal records and that means that the claim has been settled. That could be declined, accepted, and it could also mean that all of the rebuilding work that's been undertaken as part of the claim settlement has been completed and all invoices paid and any recoveries made that were appropriate.

50

In respect of the 7.4 per cent which remain unfinalised, can you assist us in telling us the reasons why?-- Yes. They - the majority of those would be due to the ongoing rebuilding process. So, the rebuilding process for the customer's house would be still being completed or, in fact, maybe it's

completed and invoices are outstanding and still not need to be paid to the contractor.

1

Do any relate to claims which haven't either been accepted or declined?-- No.

Yes, you might just move the mike a little bit closer to you and we will just ask you to keep your voice up. Thank you?-- Thank you.

10

Can I show you, please, your third statement? It's dated the 14th of September-----

COMMISSIONER: 893 you were tendering?

MS MELLIFONT: Yes, sorry, thank you.

COMMISSIONER: Yes.

20

ADMITTED AND MARKED "EXHIBIT 893"

MS MELLIFONT: Your third statement's already been tendered, Exhibit 591. Can I show you please your fourth statement, dated the 16th of September 2011? Is that your fourth statement?-- Yes, it is.

30

True and correct to the best of your knowledge?-- Yes, it is.

I tender that statement.

COMMISSIONER: Exhibit 894.

ADMITTED AND MARKED "EXHIBIT 894"

40

MS MELLIFONT: I take you, please, to your fifth statement dated the 21st of September 2011. Tell me if that's your fifth statement?-- Yes, it is.

Is it true and correct to the best of your knowledge?-- Yes.

I tender that statement.

50

COMMISSIONER: Exhibit 895.

ADMITTED AND MARKED "EXHIBIT 895"

COMMISSIONER: These two statements, do they relate to particular customers, or are they about general-----

1

MS MELLIFONT: Statement 4 relates to Dianne Crowton and statement 5 is a general statement.

COMMISSIONER: Thank you.

MS MELLIFONT: I will show you statement 6, which is in relation to a particular customers Barry and Josephine Sledge. It's a dated the 13th of October 2011. Do you have an addition to make with respect to paragraph 44 of that affidavit?-- Yes, I believe there - sorry, I believe there is a supplementary addition to that, that statement.

10

All right. Do I understand that to be that the average speed of answer in RACQ's teleclaims call centre for March 2011 was 136 seconds and had returned to being under 60 seconds from April through to October 2011?-- Yes, that's correct.

20

I tender that statement, please.

COMMISSIONER: Exhibit 896.

ADMITTED AND MARKED "EXHIBIT 896"

MS MELLIFONT: I will show you a second statement which is in respect of policy holder Leslie Cameron. The statement is dated the 13th of October 2011. Is that your seventh statement?-- Yes, it is.

30

True and correct to the best of your knowledge?-- Yes.

I tender that statement.

COMMISSIONER: 897.

40

ADMITTED AND MARKED "EXHIBIT 89 7"

MS MELLIFONT: Your eighth statement of 15 October in respect of Mr Sharp and your supplementary eighth statement, 17th of October, also in respect of Mr Sharp are Exhibits 581 and 582 respectively. Can I show you, please, your ninth statement in response to policy holder Michael Gourley. That's dated the 19th of October 2011. Is that your ninth statement?-- Yes, it is.

50

I tender that statement.

COMMISSIONER: Exhibit 898.

ADMITTED AND MARKED "EXHIBIT 898"

MS MELLIFONT: I show you your 10th and final statement which is in response to policyholder Tammy Tarrant dated - your statement is dated the 20th of October 2011. Is that your 10th statement?-- Yes, it is.

10

Is that true and correct to the best of your knowledge?-- Yes.

May I tender that statement, please?

COMMISSIONER: Exhibit 899.

20

ADMITTED AND MARKED "EXHIBIT 899"

MS MELLIFONT: May I also, please, Madam Commissioner, tender a statement of Mr Heath, dated the 20th of October 2011, which is his second statement?

COMMISSIONER: I'm sorry, I didn't catch the name.

30

MS MELLIFONT: Bradley Heath, the chief executive officer.

COMMISSIONER: Thank you.

MS MELLIFONT: It is his second statement and is dated the 20th of October 2011.

COMMISSIONER: That will be Exhibit 900.

40

ADMITTED AND MARKED "EXHIBIT 900"

MS MELLIFONT: Insofar as household insurance policies of RACQ are concerned, they provided at the relevant times we are speaking of, December 2010/January 2011, provided cover for flash flood and stormwater run-off; correct?-- Yes.

50

And that term was defined in product disclosure statement documents to mean, "A sudden flood caused by heavy rain that fell no more than 24 hours prior to the flash flood or stormwater run-off."?-- Yes, that's correct.

And unless optional cover was taken in addition to the standard cover, the householder insurance policy excluded

damage caused by flood as that term was defined in the PDS documents?-- Yes, that's correct, flood is an optional cover. 1

Flood is an optional cover. And the relevant definition of "flood" in the PDS documents at the time was, "Rising water which enters your home as a result of it running off or overflowing from any origin or course."?-- Yes.

Can I ask you for how long has RACQ used those definitions and exclusions?-- To my recollection, as long as I have been there, since 2004. There might have been minor changes to the stormwater description, but - but from my recollection they have been in police for some time, probably since 2004. 10

And perhaps even before that?-- Yes, perhaps before that.

Now, I think you accept that insofar as the processing of claims is concerned, delay was an issue for RACQ?-- Yes.

At your second affidavit at paragraph 62, you state that you believe, "The processes and procedures implemented by RACQ were appropriate for it to adopt and implement in the circumstances.", and then you say, "The process and procedures had to be implemented and, of course, errors and delays can arise. I do not suggest that in the implementation of the processes and procedures errors or delays did not occur." Can I ask you whether you did - whether you have identified such errors or delays?-- Given the complexity of the coverage issues associated with the Queensland flood events, there were delays caused by a number of factors to enable us to or which - to enable us to make determinations under policies. 20 30

All right. You have dealt with some of those in your affidavit?-- Yes.

Are there any more in addition to those set out in your affidavit?-- No.

What about errors? Have you identified errors in the course of your experience?-- I think what I was trying to point out in my affidavit is that there's a massive amount of claims and I personally can't sit there and say in the processes we designed and what have you that there wouldn't be instances of errors and I believe that where we - where we have identified those, then those would have been rectified as and when they - as and when they arose. 40

That's what I am asking you, what kind of errors you did identify?-- I can't think of any at this particular point in point in time. 50

Given further time you might be able to identify those for us?-- Yes.

Yes? All right. Can I refer you to paragraph 34? There you state that, "Special processes were established by RACQ to manage the claims and they were intended to operate so that RACQ could respond to the claims in a fast, professional,

practical and compassionate manner." Can I ask you specifically what in the special processes was directed at a fast response?-- We established a dedicated response team which isolated claims initially from the Queensland flood events so that they were isolated into another team and could be given - so that that team was dedicated to managing those claims. Our - from when it - from when - from late December it became very clear to me that the - the complexity around claims determination to do with inundation claims was going to be a particular challenge for us and we developed a hydrology strategy which - there's been a lot of reference to regional - regional reports. Our reports were a hybrid report where each claim was - was - each customer's claim was determined through a process which enabled consideration to be given at the individual property level. So, there was assembling the dedicated response team, there was a specific hydrology strategy developed in response to the events.

1

10

And that hydrology strategy is set out in your affidavit?-- Yes.

20

You're not intending to indicate by your evidence here there was something beyond that in terms of the hydrology strategy?-- No.

Okay. Anything else?-- The Queensland flood events were also book ended by two significant other events. In December there was a significant hail event in Brisbane and at the beginning of February there was Cyclone Yasi, which in themselves generated close to 5,000 or just over 5,000 claims each. So, over that period of time we received 15,800 or so claims in a short period of - or relatively short period of two months, and when the Queensland flood events arose - we had existing agreements with McLarens Young International, our loss adjustors, and Stream Builders to help us with rebuilding and what have you. I made some decisions at that point which were where - where McLarens Young would take the loss adjusting lead in relation to the Queensland flood event claims and that was designed because Stream were already busy at that point still mopping up the Brisbane hail events. So, there was some decisions made which were designed to make sure that the external resources that we had were focussed on the things that they could be and could deliver the best service for us and our customers.

30

40

All right. So, by the dedicated response team and your statement - your statement also refers to a recruiting additional staff?-- Yeah.

You have got making the decision with respect to the loss adjuster as to who would be engaged-----?-- Yes.

50

-----for the particular task of assessing the flood claims?-- Yep.

And you have the hydrology strategy?-- Yes.

And you knew you needed to have a hydrology strategy very

early on because of the complexity of the definition in your policy?-- That was a part of it. The other - the other part of it was purely - sitting in my office towards the end of December I didn't really have a view as to whether we might get one thousand inundation claims or 10,000, so there was a scale issue as well. All I really knew was that there would be a large number of them. 1

And you knew that in order to assess those claims, whether they would be one or 10,000, you knew you'd need some hydrology reports in order to assess those claims?-- Yes. 10

Is that correct?-- Yes.

And without having those hydrology reports, those hybrid hydrology reports as you term them, you couldn't determine whether the course of the damage to a particular property fell within or without - without the terms of policy?-- Yes, we needed expert advice in that regard. 20

That was the first and foremost reason for getting the hydrology reports; that is, to enable you to assess the claims?-- Well, the hydrology reports were - the hydrology reports were actually commissioned by our legal advisors and obtained by them so that we could - so that they could provide us with legal advice as to policy coverage.

I take it that that advice was in respect of whatever the hydrologist report found, taking those factual findings, that your legal team could give you advice as to whether those findings meant that a claim fell within or without the policy - inside or outside the policy?-- Yes. Some of the scenarios that presented themselves were complex in terms of our policy coverage and so advice was sought and obtained in relation to policy coverage. 30

Yes. So, complex in the sense of working out whether it was - whether or not it was a sudden flood caused by heavy rain that fell no more than 24 hours prior the flash flood or stormwater?-- Complex - that's correct, complex in the terms of in some instances there were multiple mechanisms going on at once which added to the complexity of policy coverage. 40

So, for example, there might have been rain events occurring, there might have been rising river levels?-- Yes.

You might have had them occurring simultaneously?-- Yes.

You knew that in order to decide whether or not to accept a claim that the cause - the actual cause of the damage to that house had to be determined?-- Yes. 50

You needed hydrology reports - a hydrology report to give you expert opinion on the precise cause of damage for that house, for that damage?-- On the mechanisms that - yeah, that led to inundation.

Yes. And without that hydrology report, you would have been

in a position where you simply couldn't make a decision on the claim; you'd accept that?-- Yes. 1

And so given that RACQ's prime role in receiving these claims was to make a decision as to whether to accept or decline, that really was the governing reason as to why you were getting hydrology reports, that was the prime reason you were getting the hydrology reports; do you accept that?-- Sorry, could you say that for me again? 10

All right. Given that what RACQ was required to do when it received a claim, was to make a decision as to accept or decline the claim, the prime reason for getting the hydrology report was to exercise that function?-- Yes, as I have said, that the reports were obtained by our legal advisors in order that they could provide advice to us on policy coverage.

Can I take you, please, to affidavit 5, Exhibit 8?

COMMISSIONER: Did you need legal advice for every single one of them? You couldn't just look at the hydrology report and say, "Yep, that's covered.", or, "Not covered.", without legal advice?-- The hydrology reports in themselves are - I think this can be seen from the documents that are exhibited to my statements - they are complex, technical reports. There would be some claims which are not so complex and those would be easier to determine and there are a - large numbers of claims where the complexity caused by either more than one inundation or the mechanisms which were going on became important in terms of the 24 hour - particularly the 24 hour flash flood. 30

That sounds like a factual complexity, sorting out what actually happened. Is there some legal aspect to that?-- In instances where - we didn't separate the two out, we don't know which claims might involve complexity or might not involve complexity from the outset and so, therefore, the reports were obtained and advice was given in relation to the reports as a whole.

And was legal advice given individually in respect of every claim or was it given generally?-- It was - it was given - both. Generally the legal advice would be given in relation to iterations of the reports that we received, because the reports were iterative. In a lot of instances there were reports where effectively the hydrologists said that further investigation was required and that was an iterative process. Whatever they asked for that had to be done, I said, "Yes, go and do that, go and do that further investigation." So, it was - it was - most of the legal advice would have been in terms of the iterations of the reports and there would have been maybe the odd occasion where the legal advice related to either one property or a very small number of properties. 50

Thank you.

MS MELLIFONT: I take it this hasn't - the 2010/2011 floods was not the first occasion on which RACQ needed to determine coverage where there were potential multiple sources of

inundation?-- To my knowledge, it's the first one since 1974. We have had other inundation events, we had flash flooding occur in Mackay in 2008, for example, but the circumstances of that were such that there was - I can't remember the numbers, but somewhere in the region of 600 mils of rain fell overnight or through a day and one - you know, in one short period, and it was obvious that those homes would meet our definition of flash flood.

1

So, are you able to say now whether RACQ definitely hasn't received such multiple cause - potential multiple cause inundations in the past, or is something you'd need to further look at?-- I might to need further look at that, but-----

10

Now, you should have Exhibit 8 of your fifth affidavit in front of you. Can I take you, please, to page 4? This is a report analysing complaints received by RACQ. Now, we can see from that that the greatest number of complaints concerned claim declines, but that the next highest number of complaints, which is 60 complaints representing nine per cent of total complaints, concerned timeliness of claim handling?-- I'm sorry, could you refer me to which page you're looking at?

20

At the very bottom right-hand corner it's got a page 52 and a little bit up from that in the middle it's got page 4 and the document's up on the screen?-- Yes, thank you.

30

40

50

Okay, all right. So we see that 9 per cent of total complaints concerned timeliness of claim handling. Can I ask you whether, having received those complaints, RACQ came to the view that some of those complaints in terms of timeliness were in fact justified and if so what has been done about processes to address those issues?-- We did receive a number of complaints over timeliness. Given the volume of inundation claims that we received and were processing it did take some time, particularly where there was complexity around the inundation mechanisms to make those decisions. For my part I was constantly applying pressure to get claims determinations through as quickly as I could but I was also conscious of the fact that we need to make - we need to get the decision right for our customers and for a range of other stakeholders.

1

10

Applying pressure to who?-- Applying pressure to the - through our legal advisers to the hydrologists and what have you to make sure that all that was being done to expedite the production of reports and to complete their investigations was happening.

20

What about to internal staff? Did you need to apply pressure to internal staff to get things moving along?-- Not in relation to the hydrology outcomes.

In relation to any aspect of timeliness of claim handling?-- My view on those - on those complaints that we are receiving there, the majority of those would be due to the fact that we didn't have a claim's determination as yet for the customer so we were unable to say to them, "Your claim is accepted," or, "declined".

30

And the ones that didn't fall into that category?-- I believe the vast majority of them would do because that was really the - that was really the issue.

Right. So you don't know whether any fall outside that category?-- As I've said, the vast majority of those would be for delays in making a claim's determination, because once - once we've advised the customer that their claim's accepted or declined, then a determination has been made, and I saw a number of these complaints coming through and that's what they were about. They were about delays in making that determination.

40

Yes. And you continue to use the word "vast" majority, and I accept that, what I'm asking you about is the leftovers. Do you know whether any of the leftovers concern complaints about other aspects of timeliness or not? If you don't know you don't know, you merely need to tell us that. You don't know?-- I don't know whether there are any claims in those numbers which don't - don't involve that.

50

Can I ask you whether there have been any changes to RACQ processes as a result of the complaints about timeliness of claim handling? I'm talking about forward-moving here-----?-- Yeah, I understand that. We don't - we don't get complaints - we only get the odd complaint in relation to timeliness of

claims decisions or claims processing in a business as usual sense and so these - the claims that are in here are a result of the determination process and the decision-making process around those claims.

1

Can I ask you more broadly then, putting aside the complaints, have there been any changes in the RACQ processes in terms of the timeliness of the handling of its claims in consequence of its experience in the 2010 and 2011 floods?-- You mean have we put in place improvement actions?

10

Yes?-- We've established a dedicated response team going forward in advance of this summer's storm season, so we've now got a permanent event team which increases our capacity to be able to respond quickly to those events. We've done a number of other things around forward recruitment into our teleclaims area and we've learned a lot from the process redesign that we put in place as a result of the Queensland floods.

All right. So there has been a process - sorry. Just so I understand. Is the process redesign something that's been put in place subsequent to the floods having regard to the experience-----?-- No, we have a-----

20

-----of the floods or are you speaking of the processes you put in place for the floods of 2010/2011?-- What we did was we reviewed our existing processes - when the Queensland floods happened we reviewed our existing processes for suitability for Queensland floods and some processes were redesigned to cater for the types of claims we were getting. We did an extensive redesign of processes at the beginning of February, around there, specifically for the nature of claims that we were getting here, and those lessons that we learnt going forward. So it was part of - it wasn't a post-event review, there was a review at the time and there will also be - there were also going forward ongoing reviews.

30

All right. And in terms of ongoing reviews you've got your dedicated response team?-- Yep.

40

Can I take you, please, to paragraph 199 of your second affidavit? Now, we've touched on this topic in part but you state in the last part of that paragraph, "the Queensland floods have, I believe, given rise to claims which generally are more serious and complex thus making the time taken to decide and finalise them, on average, longer." What do you mean by the term "serious" in that particular context?-- I don't know if you could isolate the word "serious". It is - it's really about the complexity around - like, there was an awful lot of customers who suffered extensive damage to their homes, and so I guess that's the serious part of it, that the claims in themselves are large claims involving very difficult circumstances for our customers and the complexity comes around the ability to make a claim's determination in relation to the policy coverage.

50

All right. And in terms of difficulty of circumstance with a customer you are speaking about the impact on them as

customers to having lost their home or lost their contents?--
Yes.

1

All right. So would it be fair to say that in terms of the characteristics of claims out of the Queensland floods that had an impact on timeliness, it was more related to the complexity rather than the seriousness?-- Look, of the 5,000-plus claims that we got, household claims that we got from the Queensland floods, 2,323 of those presented as inundation claims. The balance of the 3,000 are uncomplex really in terms of policy coverage, so those would typically be storm-type sort of claims, leaking roofs, those sort of things. You don't need a hydrology investigation in order to determine that that's a claim which is covered under the policy. It's the 2,323 claims which were complex in terms of the inundation mechanisms and therefore the policy coverage.

10

Yes. So I think your answer to my question is "yes", it's the complexity which has - which leads to effect on timeliness rather than the seriousness of the claim in the way you've described earlier?-- It's the complexity and also the volume of claims that we were dealing with during that period.

20

All right. Now, as I understand it, and tell me if I am wrong - sorry. Is the complexity that you refer to in that paragraph, is that limited to the issues related to the definition of "flood", that is whether the inundation was flooding and therefore not insured for unless someone had expressly optioned it in or whether it was caused by flash flooding or stormwater as defined in the PDS?-- That's the first part of the complexity and there would be a second part which is - given the nature of damage to homes, then it takes more time to repair, reinstate, settle the claims because you've got a large volume of claims which are more serious in their nature then we might expect - than we see in our normal mix of claims.

30

But that second aspect kicks in once a decision has been made to accept the claim?-- Yes, it does.

40

So is it fair to say that you would expect claims could be decided within - inundation claims could be decided within a short time of receiving the hydrology report for the area? And by "decided" I mean accepted or declined. I'm not talking about quantum. Would you expect that a decision to accept or decline could be made within a short time of receiving the hydrology report for the area?-- Once I had made the decision, and I made the decisions in relation to causation of damage after considering the hydrological investigations and the legal advice I was given, I effectively handed - so it was an iterative process. I effectively handed lists of claims to the claims people to manage from there. There was some - it is a relatively short period of time but there was stuff - there was other stuff that we were doing around our special fund and other bits and pieces which meant that I wanted those investigations and their eligibility under the terms of that fund to be determined before the customer was contacted.

50

Sorry, under-----

1

COMMISSIONER: What do you mean - sorry - when you say it was "an iterative process" so far as you're concerned looking at the claims and then handing them over to the teams; what are you saying?-- I'm saying is that if you take an area like Brisbane, it wasn't as though I got one report with 1100 claims on it that - and then received advice on those 1100 claims and got them all in one - in one hit, because of the nature of the investigations undertaken by the hydrologist, what I tended to get was an initial regional report and then iterations of that report which effectively classified claims within it, and so-----

10

But what's iterative about your decision-making and handing it back?-- Well, I'm making a decision based on that bundle of claims which the hydrologist has given advice on at that time, and if the - if there were other claims which the hydrologist said, "We need to undertake further investigations on these claims to understand, for example, whether there was stormwater issues at that particular site," then I would tell them to go away and do those investigations and then subsequently they would give me another report which then dealt with another batch of claims.

20

Yes, I grasp all that. Right, thank you.

MS MELLIFONT: So in terms of that process you would get a hydrology report and it might say, for example, for this particular area it was caused by flood as that term is used by RACQ, but in respect of these 50 properties you need to do some further investigations, so would you give a direction then to the next rung down to refuse all the ones where it doesn't - where it - sorry, refuse all the ones where the hydrology report concluded it was flood and then with respect to the rest some further investigations would be undertaken?-- When I got the report which - I would consider that and the legal advice, and based on that I would issue lists of claims to the - to our customer services officers, to our team that was managing it, to action those claims.

30

40

I'm not sure that quite answers my question, but let me start here: did you get legal advice with every hydrology report that you received?-- Yes.

Right. And in terms of a hydrology report, a hybrid hydrology report, how long would it take you to process in terms of then handing the direction down to the next team?-- Sometimes I would get those reports at 9 o'clock at night and I would do it that night, sometimes it might be the next day, sometimes it might be three days later. All I can really say in that regard is that I was incredibly conscious of the fact that decisions needed to be made as soon as possible and I got - you know, I dealt with those reports as quickly as I could as soon as I got them.

50

Yeah, I'm not - my question's not so much directed in terms of what other things you needed to do but rather when you

actually physically picked up a hydrology report-----?-- Yes. 1

-----and your legal advice, how long would it take you to get through it before you could hand it down?-- It would depend on the complexity. Some - some reports that - you know, it takes a while to assimilate the information that's in a report and the legal advice that sits over the top of it. Some were less complex than others, and in some instances I might go back and seek clarification of the - my interpretation of the advice in the report, but generally - and I'm not sure whether there's a schedule attached anywhere to my affidavits, or whatever, but generally, you know, that process might take me one to two to three days. There might be exceptions to that where it was more complex and I either sort clarification of it but----- 10

All right. I might take you, please, to Exhibit 23 of your second affidavit. I think this is the table you might have just referred to. In interpreting this document do we take the "Date Report Received" to indicate when you received the hydrology report or when you received the hydrology report together with legal advice or was that one and the same date?-- The latter. 20

One and the same date. Okay. And then the "Date Causation Decisions Was Made" does that designate when you made a decision-----?-- Yes.

-----about what to do with respect to the hydrology report and the claims?-- It indicates the date on which lists of claims were released to the staff. 30

I missed the last part of the sentence?-- Sorry. It indicates the dates on which - generally on which lists of claims were released to the staff for action.

Released from you - by you to the staff?-- Yes.

Okay. Now, at paragraph 141 of your second affidavit you state that, "a decision on causation in terms of inundation has been made on all claims, and that, "there are only two claims where further investigation is required to enable a claim's decision to be made". Can you tell me why those claims were not decided by the time of your affidavit?-- My recollection is that those claims were lodged late - call it "late", they were - it's not like they were lodged in January and we were still sitting there in August making the decision, so the only reason I can think of why we would still be making or needing to make determinations at that point would be that the claim was lodged sometime after - you know, closer to the date on which we made a determination. 40 50

All right. So you might already have your hybrid report for the area. You then receive a new claim for that area?-- Yes.

What do you do in terms of hydrology?-- Well, it would be the same process. The - a lost adjuster would be appointed. He or she would go to the site, confirm inundation, confirm that

the - the circumstances of the loss presented as needing hydrological investigation and then it would be referred back to our legal advisors to seek a further report from the hydrologist.

1

All right. And that would be - I'm asking, would that be instructions to the hydrologist, "cause of inundation for that particular property, please"?-- Yes. In essence.

All right. Anything else?-- No.

10

All right. Now, in terms of your answer as to why these two claims were not decided, are you presuming the reason you've given to be the correct reason or do you know that?-- I can't recall the two particular claims but I can't think of any other reason why it would be that we would be determining those claims, you know, at that stage, if they were lodged back in January or February, or something like that, so it's an assumption on my part.

20

Have those two claims now been determined?-- Yes.

Accepted or declined?-- Accepted.

In both cases?-- Yes.

Can I take you, please, to Exhibit 10 of your second affidavit? Now, is this an internal e-mail from you on the 30th of December 2010?-- Yes, it is.

30

Now, we see in the third paragraph, "we are receiving a range of a different types of claims". You see that paragraph?-- Yes.

And it concludes, "in respect of a lot of areas where there may be water inundation ie rising water, we will not know whether the damage is caused by flood or flash flood until we visit the site of the loss". When you say "'we' visit the site of the loss," visit by who? RACQ internal staff or an assessor, a loss adjuster, who?-- Our service providers, really.

40

Sorry?-- Our service providers. So loss adjuster, hydrologist, whoever that turns out to be that's required in order to help us make a determination.

All right, thank you. But in so far as damage caused by water inundation were there cases which RACQ considered it could determine in the absence of commissioning a hydrologist?-- No. The purpose of - the purpose of this e-mail, my concern was that customers may perceive what's happened to them as flood and effectively default lodging a claim from us, so the purpose of this e-mail was to make it very clear to my people that if - and it was a reinforcement of an existing process to say that our process will be, "When someone rings up and tells you that their property has been inundated, we will lodge a claim in all circumstances," because at that point all we have is the information provided by the customer and obviously

50

further investigation was required in order to determine whether that falls into our flash flood coverage or is flood and is excluded if you haven't taken the optional cover. I think that's borne out by the fact that of the 2,323 inundation claims that we've got - that we got, 1215 or so of those or 52 per cent of those turned out to be flash flood once the investigations were completed.

1

Now, there have been a number of claims with respect to RACQ which have been the subject of referral or submission to the Financial Ombudsman Service?-- Yes.

10

Have any decisions by the Financial Ombudsman resulted in claims being accepted where RACQ had declined them?-- The last time I looked, and please forgive me if my knowledge isn't completely up-to-date, but the last time I looked I believe that we only had five or six determinations back from the Financial Ombudsman Service. I'm aware that, at least in one of those instances, the insured had, I believe, engaged their own hydrologist or had their own hydrology information and that was presented through that process and the outcome was something like that RACQ Insurance should bear 25 per cent of that loss, so that was the determination which was delivered. From memory, there are four that have upheld the decision of RACQ Insurance.

20

And when was the last time you checked about how many decisions you have got from FOS?-- Probably two weeks ago, somewhere in that sort of range.

30

I want to ask you some questions about the Ipswich decision, and the context is an initial decline with a subsequent acceptance in respect of some of the Ipswich claims?-- Yes.

Now, you deal with this in paragraphs 174 through 183 of your second affidavit, and can I ask you whether you are also familiar with what Mr Heath has had to say about the topic in his affidavit?-- Yes, I am.

And that's the affidavit which was - has been tendered previously, Madam Commissioner, Exhibit 824, not the one tendered this morning.

40

Now, Mr Dale, your affidavit deals with the Ipswich - can I call it "the Ipswich reversal" for convenience?-- Reassessment.

"Reassessment". The Ipswich reassessment in the context of making the point that, "the information and data was sometimes slow to be provided to Water Technology by the relevant local and State authorities". Do you agree that that's how your affidavit addresses-----?-- Yes.

50

-----and aspect of the reassessment?-- Yes.

And a difficult - this difficulty is one which you say caused

delay in processing, assessing and deciding claims?-- Yes.

1

Now, Water Technology provided its regional report, its hybrid report for Ipswich on the 9th of March 2011?-- The first issue of the report was on the 9th of March.

Yes. And, for the record, that's Exhibit 3 to Mr Heath's affidavit and Exhibit 74 to yours. Now, a critical question that that report needed to address was the effect of the Brisbane River on the Bremer River flood levels; correct?-- Yes.

10

Specifically the effect of Brisbane River tailwater being - that is, being elevated Brisbane River levels at the Brisbane and Bremer River junction leading to an elevation of water levels in the Bremer River?-- Yes.

And you're aware that the report stated, at page 16, "without the model referred in section 8.2 of the report," and I'll come back to that 8.2 in a middle, but, "without the model referred to in section 8.2 we are not presently able to identify the extent of the effect of that tailwater upstream of the Ipswich gauge". Okay. So you're familiar with that part of the report?-- Yes.

20

All right. And you would have been familiar with it, having read it on or about the time of its receipt?-- Yes.

And - well, if you go to 8.2, which is at page 17 - we'll have that up on the screen - you see that that refers to, "a hydraulic model of the Brisbane and Bremer Rivers has been previously developed by others for use in flood planning and management of the rivers. Request to access to this model or equivalent have recently been made to Seqwater, Brisbane City Council and Ipswich City Council. Unfortunately, at the time of writing this report, no response to whether or not this model is available has been received." So you're familiar with that part of the report as well?-- Yes.

30

40

50

And so far as you understand the first request was made to Seqwater on 21 February, is that correct? I could take you to paragraph 176 of your affidavit and you can follow this along?-- Yes, that's correct.

And requests were made to Brisbane City Council and Ipswich City Council on 23rd of February, is that correct?-- Yes.

And we won't go through all of the correspondence concerning the request but the long and the short of it is that the model which Water Technology had requested was not available to it by the time it provided its report to your solicitors?-- Yes. 10

Now, it is your understanding that Water Technology developed a MIKE-11 hydraulic model based on the data available to it in order to undertake a preliminary assessment of the impact of Brisbane River tailwater levels?-- Yes.

So we're talking about determining heights of the river?-- Yes. 20

Right. The information was being sought so as to determine whether or not water damage fell within the exclusion of flood within the household insurance policy, is that correct?-- Yes.

Now, the result of the modelling, as stated on page 17, was that "Based on the modelling assumptions, without elevated Brisbane River levels, Bremer River flows would have been essentially confined within bank." Do you see that there? Is that your understanding of-----?-- Yes, it is. 30

-----the state of the information and conclusions by Water Technology?-- Yes, it is.

And we see that the report at page 7 shows the approach that the report's taken which is that it provided - 17, I'm sorry - the approach taken by Water Technology provided a reasonable estimate of the extent of the Brisbane River inundation?-- Yes. 40

You are familiar with that aspect of the report?-- Yes.

I won't go through all of the steps in the process but ultimately, as you say in paragraph 179 of your second affidavit, this led to RACQ Insurance making a decision to decline many claims in Ipswich?-- That's correct.

Okay. Because in terms as basic as I can express them, RACQ considered that it did not have sufficient evidence to establish that the definition of flash flood or stormwater run-off was met. Would that be fair?-- I think - what we had, in my view, was we had a report which reached a reasonable conclusion based on the best information available at that time, and we had asked for other information which we didn't - Water Tech didn't know whether they would get it, whether when they got it it would change the conclusions that 50

they had reached, and so therefore it was reasonable to assume, based on their investigations at that time, that the effect of the Brisbane River tailwater was causative to the inundation of those properties. 1

So can I - tell me if this is a fair conclusion: so RACQ were prepared to rely upon what was expressed to be a reasonable estimate in a report which also spoke of outstanding information in declining the claims?-- In the context of not knowing whether that information would - well, as I understood it, whether that information that might be being sought either existed or would be provided, or when provided would it change the conclusion. There was - at that stage - this is the 9th of March - in addition to that there was an awful lot of - I hesitate to use the word "pressure" but there was genuine desire to be able to make decisions for our customers, an awful lot of pressure in that regard, and I did stress test the particular - you know, this particular aspect of the report, and got to understand it in the context I have just described, and reached a conclusion that it was appropriate to make a decision at that time based on the information that we had and that it drew reasonable conclusions. 10 20

What do you mean you stress tested it?-- I stress tested with our legal advisors the - whether should I or should I not make decisions based on the strength of this report, given that it was indicating that there was a desire to obtain further information. But, as I say, at that time after stress testing it, the issue was that we didn't know whether it would be obtained or not, we didn't know whether it was actually available, and we didn't know whether, if it was available, it would actually change the conclusions that had been reached - the reasonable conclusions that had been reached in the report of 9 March. 30

COMMISSIONER: I still don't know what you mean by stress testing either?-- I guess it is a phrase that I use, and I apologise. It means I went back to the lawyers and said to the lawyers, "Look, this report seems to be suggesting that it is based on all of the information available to them at this time but it is suggesting that there might be further information which is available." Based on what I've got, I wanted to discuss with them whether it was their advice that I should make decisions based on what I had or whether in fact I should wait. I guess the problem with - you know, after considering that, I reached the conclusion that we should make a decision at this point because at that point, it wasn't - it was clear to me there was actually no undertaking to provide a further information by a certain date or anything that looked like that. So, therefore, the decision was based on the best information that we had available at that time. 40 50

MS MELLIFONT: Were you asking your lawyers - in this stress testing process, was the nature of the question to your lawyer, "Look, can I sustain a denial of claims based on the information that we have thus far even though I know it is not complete"? Is that what you were asking?-- No.

Can I take you - and you accept, I take it, that the decision to rely upon that report, such as it was, resulted in a number of claims being denied in March and April, is that correct?-- That's right.

1

You'd accept at the time of those denials that you would have held some hesitation as to the adequacy of the information available to RACQ in determining the claims?-- I think I accepted that there was all - there would always be the possibility that if additional information came to hand, then there might be a possibility of - as it has turned out - that there might be a possibility of those determinations having to be reviewed. I have said, though, that the - at that point in time, that was - we had a report which drew reasonable conclusions based on the information which was available, we had no view as to whether additional information would in fact - whether what the hydrologists were seeking would in fact be provided, and then, if it was provided, that it would actually make a difference to the reasonable conclusions that they had reached.

10

20

Had you ever been told by Ipswich City Council or Brisbane City Council that you would not get the report - the information requested?-- We were told - I might have to go to the relevant part of my affidavit, but my recollection is that we were told by Seqwater that they wouldn't release the information. We were told by Ipswich originally to make a request through - a formal request for information and that they would consider that within a period of time. I can't remember what that was, 20, 25, 30 days, or whatever.

30

And subsequently were informed through your lawyers by Ipswich City Council that the information did not exist?-- That's right.

Right. Now, what about BCC?-- And I think the initial advice from BCC was that they requested that we request the information formally, which was done, and that the models or the information was provided by the Brisbane City Council and was of use to Water Technology.

40

All right. So I am just not sure I entirely understand whether at the time that you made the decision to decline you had been told with certainty by BCC that you would not be provided the MIKE-11 information?-- Perhaps if I could just check some of the dates and Mr Heath's-----

Yeah, I can give you the rough paragraph numbers. 177 through 178. Page 35, 177 and 178?-- I am referring now to Mr Heath's affidavit where - just to refresh my memory of the actual dates involved - where it is stated in that affidavit - and this is my recollection as well - that on - you know, around about the 2nd of March, Brisbane City Council and, in fact, Ipswich City Council were still in the process of considering our request for information, and we had - our legal advisors and, in fact, my CEO had made personal contact with some people as well, I understand. But, effectively, we had been trying to stress the urgency of that information, and

50

as at the 9th of March we didn't have that information and, in fact, it was only come the - sort of the beginning of April where, you know, we received a proposed user agreement from the Brisbane City Council to - which indicated, you know, subject to those processes being worked through, that we would get the information.

1

So we can take from that, therefore, that at least at the time of the decisions in March to decline claims, that RACQ had not been told with certainty it would not get the MIKE-11 information from BCC? That's fair?-- I am not sure.

10

Well, if I can take you to the first sentence in paragraph 178 of your second affidavit?-- Sorry, which paragraph?

178?-- Yes.

You have "Up until it was received (see details below), it was not known whether the MIKE-11 model with better data would be made available to Water Technology."?-- Yes.

20

So when you talk about "see details below", that's obviously the latter paragraphs in your affidavit, which also refers to the proposed user agreement for the model by BCC. So it is fair to say that at all earlier times RACQ was in a state - in the state where it knew it might get the report, might get the MIKE-11 or it might not; it just didn't know?-- It just didn't know.

Right?-- We had no - we had no - if somebody had written to us at that point and said, "Yes, we're going to release that information to you on this date", then we might have had some certainty around that, but we didn't. We didn't know whether we would get it and we didn't know whether it would make a difference if and when we did get it.

30

So in those circumstances, were your customers given the option of, "Look, we can decline your claim now based on what we know, or would you like to wait until we get a definitive response as to whether we can get this MIKE-11 data which we could then use to determine your claim?"?-- No, they weren't. We believe that we had a report which drew reasonable conclusions based on the best information available at that time and had no view as to whether any additional information would in fact be provided and whether it would make a difference when we did get it.

40

But you'll accept that the best information you had at that time itself identified the desirability of further inquiry?-- Yes, in the context of the report still drawing reasonable conclusions, I would accept that.

50

So your own - if I can come back to the question I just asked, but put it in the context of your own experts saying, "It would be good to have this extra stuff"-----?-- Mmm.

-----why wouldn't you go to your client - your customer and say, "Look, we can decline the claim now or you can wait to

see if we get this extra information? What do you want to do?" Why not do that for a client in terms of somebody who - a customer, in terms of somebody who has lost presumably substantial aspects of their home?-- As I say, I considered the report and the legal advice that I had and decided, after consideration of both of those, that the correct decision was to make a decision based on the best information that we had available at that time.

1

Yes. No, I understand that, okay? Was the option I've just canvassed with you not thought about?-- If - if I was faced with a report in which I didn't believe the conclusions reached based on the information were reasonable, then I may have given more thought to that, but I didn't. My view was that the report provided a reasonable basis for making claims determinations. That was my view at that time.

10

Would you take the same decision in future cases; that is, where you've got your own hydrology experts saying, "It would be good to have this extra information"? Would you take the same decision now?-- Yes. I would.

20

And still not offer the customer the opportunity of a delayed decision once-----?-- I am not quite sure-----

-----inquiries had been exhausted?-- I am not quite sure what I would tell them in the context of at that particular point in time, not knowing if information would be released, whether when it might be released if it was going to be released, and if it would make a difference when released.

30

All right. Do I take it from that that you still would be in a situation where you wouldn't be sure that you'd give to a customer now your hydrology report that you are relying upon to come to its decision?-- I am sorry, I don't understand your question.

I am just trying to understand the context of your answer - or the details of your answer. You said you're not quite sure about the information you'd give to the customer. Is that a fair representation of what you've just said?-- You suggested that perhaps in this circumstance the customer should have been given the option to - you know, that maybe I should have said to them, "Look, there is a possibility of further information may be becoming available. Would you like - would you like us to hold off before we make a determination?" What I'm saying is that certainly in my seat, I had a report which in my view drew reasonable conclusions based on the best information available at that time. I didn't know whether the additional information being referred to would be given. I didn't know when it would be given and I didn't know that if it was given, that it would actually make a difference to the conclusions reached in the report on the 9th of March. And in those circumstances, yes, I made a decision that those claims - that it was appropriate to decline those claims at that point in time.

50

COMMISSIONER: The other prospect is to let the customer know

that this is the situation by simply providing them with the hydrology report. Did that happen?-- No, it didn't.

1

Any reason?-- The advice I had at that - the advice I had was that our hydrology reports were subject to legal professional privilege.

You realise that - putting aside the question of whether it was or wasn't - the entitlement to claim legal professional privilege isn't an obligation? In other words, just because you have it, you don't have to rely on it?-- Yes.

10

So your answer is you decided you would rely on that advice because - why?-- Sorry, which advice? In relation to-----

Why the decision to rely on the advice when there was an option of just releasing the report so the customer knew where he or she stood?-- If you go back - if I go back to the nature of our reports, they weren't simple regional reports. They - they contained information which effectively classified properties into - you know, in accordance with the mechanisms that were there and some of those properties needed further investigation in order to determine causation, so-----

20

Are you saying your customers weren't bright enough to understand the reports? What are you saying?-- I wouldn't suggest that but they are - even for myself, some of the complexity in the reports, it is difficult to relate back to your particular property. And I refer in other places to we did release to customers plain English - what I refer to as plain English reports which was an effort to try to simplify the information that was contained in the hydrology reports, and when we actually released the hydrology reports subsequently, one of the things we had to do was explain to the customer the relationship where their property had appeared on schedules so they had the ability to interpret the report in relation to their property.

30

This didn't happen in this context?-- Not in this context, no.

40

All right.

MS MELLIFONT: Just in terms of your answer, you spoke about the nature of the report, that they weren't simple regional reports. Does a particular report come to mind that might provide a good example?-- Condamine. You know, in a place like Dalby, there was - there was multiple inundation events over a period of 20 days. Some customers were effectively subjected to what in the end turned out to be a flash flood event and then there was a flood event after that, and there was another flash flood event and then a flood event after that. So it was quite complex in terms of understanding the mechanisms and in terms of the policy coverage that applied.

50

Insofar as RACQ have provided hydrology reports to their customers, that did not come about until the Financial Ombudsman Service indicated that in the absence of those

hydrology reports being handed over, he may draw adverse inferences to RACQ, is that correct?-- That's correct.

1

And insofar as hydrology reports have been handed over, are they limited to those cases which made their way to FOS?-- No. We reviewed our complaints register, and in any case where there had been complaint in relation to acceptance of the claim which related to hydrology, the reports were released to - we went backwards and released the reports to anybody who had made a complaint, and we also, from that point on, made a decision to release it to anybody who requested it. As I said, it is not - giving the reports to somebody just in an envelope and saying, "There you go, there's the Ipswich report", when we decided to release them, one of the things we needed to do was we needed to provide context to the customer as to where their property appeared in the schedule so that they were able to interpret the report in the context of their individual property.

10

That was something able to be done once a decision had been done to hand over the hydrology report, correct?-- Yes.

20

When was your complaints register reviewed for that purpose?-- From recollection, around about the 19th of July.

What was the trigger?-- The trigger was, as you have suggested, the advice from the Financial Ombudsman Service in the absence of providing those reports that they would - they may find adversely against us.

30

And that was-----

COMMISSIONER: Essentially, is that, "Show us your evidence or we'll conclude you haven't got any?" Was that the thrust of that?-- Yeah, I believe so.

All right, thanks?-- I would just like to say at this point that RACQ Insurance provided - it provided the plain English reports on request through the claims process. So if somebody during the claims process said, "I want to see your hydrology information", we gave them the plain English information sheet at that point. Also in relation to-----

40

MS MELLIFONT: But not the report?-- But not the report.

Right?-- And in relation to the - any matter which went to the FOS, a signed statement was provided by the hydrologist as part of that process, and that information exchange with the customer as part of that process, which effectively took the findings in the regional report and specifically related the hydrology outcomes in relation to that customer's property.

50

But those statements didn't annex the hydrology report, correct?-- No.

That is correct?-- Yes, I believe that to be correct.

Okay. Would that be a convenient time?

COMMISSIONER: Yes. We will resume at 2.30.

THE COURT ADJOURNED AT 12.56 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.31 P.M.

1

GRAHAM IAN DALE, CONTINUING:

COMMISSIONER: Yes?

10

MS MELLIFONT: Thank you. Just before lunch, in response to Madam Commissioner's question which was to the effect of why you decided to claim legal professional privilege over hydrology reports, you answered - and please correct me if I have got this wrong - you answered, "The nature of the reports weren't simple regional reports. For example, some properties needed further investigations.", and then I asked you for a typical example of that. You referred to the Condamine/Dalby report. Is that a fair - please correct me if I have-----?-- Yeah.

20

-----misconstrued your answers?-- The advice that I had was that the reports were subject to legal professional privilege.

Yes. But Madam Commissioner's question was directed to your decision to claim that legal professional privilege, that is to uphold it rather than waive it?-- Mmm.

You understood that that was the question asked of you before lunch?-- Yes.

30

Okay. So, you understand that although you were entitled to claim legal professional privilege, if, in fact, that exists in the circumstances, you can make a decision in any particular case to waive it?-- Yes.

All right. And you took decisions on all occasions up until the FOS intervention not to waive it?-- Yes.

And as I understand your answers before lunch - and again correct me if I'm wrong - the reason you gave for taking that decision was that the nature of the reports weren't simple regional reports and, for example, some needed further investigations?-- Yes, and I think there's probably other reasons around the scope for possible class actions, those types of considerations as well.

40

That consideration, that there might be some class action, was, I take it, part of your understanding as to why you were able to claim legal professional privilege if you wanted to?-- Yes.

50

As opposed to the decision why you actually decided to take the claim rather than waive it?-- Well, it was a consideration from the point of view of - with that being a - it's something I considered in reaching the decision to - to maintain.

All right. So, we have got those two aspects?-- Yes.

1

Now, what I would like to do - sorry, was there anything else?-- No, no.

Okay. So you feel you have given a complete answer to Madam Commissioner's question about that?-- Yes.

All right. I want to take you, please, to Exhibit 63 of your second affidavit, which is one of the hydrological regional reports and this one, for example, covers Dalby. What I would like to know is what was it about this particular report which caused you to decide to claim the privilege rather than waive it?-- I didn't make that decision on an individual report basis, so there are 18 regions or something like that, I didn't make 18 separate decisions.

10

So, there was a blanket decision made by you not to provide the hydrological reports because of the generalised - sorry, because of their nature?-- Yes.

20

Now, can I take you, please, to paragraph 180 of your second affidavit and in that paragraph you state that, "Brisbane City Council provided Water Technology with access to the Mike-11 model on the 17th of May 2011."?-- Yes.

That's as you understand it?-- Yes.

Okay. And you also came to understand from Water Technology that the Mike-11 model provided by - for which access was provided by BCC was a vastly more informative and accurate model than the one caused by Water Technology initially?-- Yes.

30

Okay. At what point of time did you become aware that it was vastly more informative and accurate?-- I'm not sure, to be honest. Obviously after - after they were provided it and - some time in between then and the production of the report that was a product of it.

40

All right. So, they produce their report to your lawyers on the 14th of June 2011. So your presumption is you came into that knowledge that it was vastly more informative and accurate some time between the 17th of May 2011 and the 14th of June 2011?-- I believe that just prior to the 14th of June the report was provided in respect of some properties and One Mile in Churchill and that this model - we had been - there'd been a problem identified with properties in One Mile and Churchill and effectively I had a report saying decline and then shortly after that I believe the hydrologist visited one property which caused him to reconsider that, and immediately at that point we put - we put any decisions in One Mile and Churchill on hold, and my recollection was that prior to the 14th of June I got a report in respect of those properties at One Mile and Churchill for which this model had been applied to in some way or other, and I believe that that assisted the hydrologist to determine more clearly the outcomes that happened in One Mile and Churchill.

50

All right. I am not sure that assists me in pinning down-----?-- Sorry.

-----when you became aware it was vastly more accurate and informative. Are you saying it was when you became aware of the One Mile issue that it's likely you came into that knowledge at that time?-- Around about that time, yes.

And did you come into that knowledge by direct information provided from Water Technology to you or did it come by your lawyers?-- It wouldn't have come directly to me.

10

Would not have?-- Would not have.

Okay. Do you know whether it came directly from Water Technology to an RACQ person and then to you?-- I don't believe it would have.

All right. Do you know the mechanism of the information passing?-- Well, if they were coming direct - sorry, it would have come to the lawyers and then come via the lawyers to me.

20

You're presuming that to be the case as opposed to knowing that from direct knowledge?-- That was the relationship that was established.

All right. Did you have any conversations directly with Water Technology about their reports at any stage?-- No, I don't believe I did.

30

Now, the report was provided to your lawyers from Water Technology on or about the 14th of June 2011; is that as you understand it?-- I know the report was dated the 14th of June 2011.

When did you first receive the Water Technology report?-- 11th of July.

Were you aware that - do you know whether it had come in to the lawyers any time - much in advance of the 11th of July?-- I understand that there were discussions between - once Water Tech put - applied the new model and was drawing conclusions from that, I understand that there would have been discussions between Water Tech and the lawyers, you know, during that period.

40

I guess what I am trying to understand is did you know prior to the 11th of July 2011 the new report was in and your lawyers were looking at it?-- Sorry, prior to the?

50

11th of July 2011 when you received the report?-- Yes.

And do you know how much before the 11th of July you knew that?-- No, not really.

Now, having received that report on the 11th of July 2011 and given that it related to 247 claims potentially, I take it

would have given it significant priority?-- Yes.

1

Right. Can you tell me why a decision, the reversal decision, the reassessment decision, was not announced until the 2nd of August 2011?-- I know that in between the 11th of July and the announcement on the 2nd of August I did with my team a lot of preparatory work setting up for the announcement of that, so there needed to be analysis of the claims to make sure that we had every one, we didn't want to be in a position where we announced reassessments and then find that we'd got those claims wrong, if you like. We had to - given - given that there was - where are we - given that there was seven and a half months or so that had passed sentence the actual inundation event, I needed to dedicate resources - come up with a claims management strategy, if you like, and dedicate resources to how we were going to manage this. So, for example, one of the things that we did was I allocated these 247 claims to our internal loss adjusters to manage and we divided the claims up geographically so that they would be able to get to the people as soon as possible. We came up with a strategy to attempt to phone them all within two days or so so that we could get - you know, confirm to people that they were part of that review and that their decision had been reversed. At that same time we were trying to make a loss adjustment appointment with them if that suited them at that particular time, and there was also internal communications that needed to be prepared to make sure that the reasons for this and who it applied to were understood throughout the claims function and, indeed, in other parts of the company.

10

20

30

Did that preparatory work commence some time on or after the 11th of July 2011?-- Yes.

So, did you have no inkling prior to the 11th of July 2011 that it would be likely there would be a reassessment or a reversal?-- I probably had an inkling but it's difficult to prepare for something that you don't know what it looks like, what size it is or those types the of things. It's hard to couple up with a claims strategy in that - in that space.

40

Can I take you to paragraph 183 of your second affidavit, please? The last sentence, "I believe that had the BCC Mike-11 model or the Seqwater model and data or if they had at the Ipswich City Council model and data been available to Water Technology sooner, the claims in Ipswich which were accepted in August would not have been declined in the first place." Do you still - sorry, in light of that paragraph and that statement in that paragraph, do you still maintain that your earlier decision to decline the claims in the absence of that information was justified?-- Yes.

50

For the reasons you have given earlier?-- Yes.

And there's no further reason you would like to advance?-- No.

I will move on to another topic, please. Were some of the complaints received by RACQ concerned with being transferred

from one department to another and then another before being able to speak to somebody who could deal with their claim?-- Yes.

1

Okay. And it's correct to say, isn't it, that the call would come in to the teleclaims number, that would be then transferred to the Household Claims Department, and that would then be transferred to the Technical Claims Department?-- It can be a little bit confusing, we - having read, you know, all of the transcripts and other bits of pieces. See, traditionally we don't have a Dedicated Response Team, so if you're working on household claims and you're working in the Dedicated Response Team, it's likely that you would answer the phone, "Hi, it's John here from household claims.", or that teleclaims would say, "I will put you through to the Household Claims Department." In other words, it wasn't, "I'll put you through to the Dedicated Response Team." So, where it gets a bit confusing is I believe that some of those calls have gone through to the Dedicated Response Team directly from the teleclaims function, and in other instances where, for example, household claims, the actual business as usual household claims, was answering telephones for the Dedicated Response Team and I had them doing other tasks or whatever, then they could have been answered there as well.

10

20

All right. In my question I referred to the Technical Claims Department. Do you take that to be the Dedicated Response Team or something else?-- The technical - the technical team was a part of the Dedicated Response Team that we put in place.

30

You will accept that an examination of the transcripts does reveal in many cases - you come - that the caller comes into the teleclaims number, then off to household claims and then to the Technical Claims Department?-- Yes.

Okay. Now, in looking forward-----?-- Yes.

-----for an event in the future, you have spoken of the Dedicated Response Team plans for this wet season?-- Yes.

40

Is the plan to remove or reduce that three step process to something a little bit more customer friendly?-- We'd always - we are always looking for ways to improve so I think the answer is yes. We got feedback from our customers that said that, you know, that - when that happened to them, that wasn't great customer service, and - but - and I have said elsewhere in my affidavit we were under extraordinary pressure here and there were times where I, for example, diverted the people within the Dedicated Response Team to performing particular tasks and they weren't available at that time and I think that caused issues.

50

Yes, and that information is in your affidavit. I am just asking you about the next wet season?-- Yes.

Have you changed the process already or now having heard the suggestion is it something that RACQ might look into?-- It's

something we would look to do better.

1

Okay. Can I take you, please, to paragraph 218 of your second affidavit? This is about telerecordings?-- Yes.

And, as I understand it, all claims calls which are handled by teleclaims are recorded by a system Verint, and then you refer to some claims calls having to be diverted if they are in overflow to many switches. Can I just clarify that the calls which can be diverted to places where there isn't automatic or mandatory recording, are they nonclaims calls?-- During - during these events-----

10

Yes?-- -----some calls were answered by the RACQ Club call centres, right, to support our event response. In that world, there is an automatic overflow of calls from their call centre to their branches and that enables them to answer more calls obviously and quickly, more quickly. When it goes out of their call centre and into their branch-land, that - as I understand it, calls aren't recorded once it goes to a branch.

20

Is there any particular reason why the branches don't have the recording facilities?-- That's outside my knowledge.

All right?-- I think - it's just there that the - the overflow process is just there to, as I understand it, to increase their call answering capacity and make them more effective.

All right. And do you know whether the ability to record calls in branches is something RACQ is looking into?-- I don't know.

30

Okay. Who would know?-- Perhaps their chief operating officer or something like that at the club.

The club. Okay. So the individual club, chief operating officer perhaps. You say at paragraph 220 that you instructed that arrangements be put in place for calls to and from the Dedicated Response Team to be recorded. Were those arrangements put in place?-- Yes.

40

And were they able to be put in place efficiently and quickly?-- Yes.

COMMISSIONER: Can I just ask you: what do you see as the pros and cons of recording calls? What's the expense, what's the burden and what are the advantages?-- I can't really talk too much about the expense because I don't really understand, you know, that part in any detail. What I would say is that clearly at the beginning of January I have given an instruction to - for the calls in and out of the Dedicated Response Team to be recorded. The reason that I have - the reason I have done that is for recognising the complexity that would be involved in these claims and the possibility of large numbers of disputes and that sort of thing. I believe that it was in the customer's interest and in RACQ Insurance's interest to have those calls - to have a

50

record of those calls.

1

I see that you say sometimes you provide transcripts. In what circumstances do you do that?-- I think it's a bit of a mixture. Like, it's - if we are requested to provide a call we generally will provide that on a disc. It's not necessarily so that that disc will always be transcribed and written down when given to the insured, so sometimes I believe the practice is that we generally would provide the discs.

10

I am just wondering about it because I would have thought if there were a particular expense in providing material to customers, it would be transcribing and providing a transcript. So, do you know what determines whether you do or don't do that?-- I don't think it's - I don't think it's expense. If the - we generally would look to provide the disc because the disc records the conversation obviously and it also gives intonation and those type of things, and if the customer specifically requested a transcript then we would look to provide that in addition to the disc.

20

Thank you. Is that a process that will continue, the recording of calls, or is it a one-off?-- It's continued throughout the life of the Dedicated Response Team. One of the things that we will need to consider going forward is whether, in fact, all of our claims operations should have calls recorded, whether that's a viable and - you know, desirable and - thing to do.

What are the considerations, do you think?-- Oh, I think it's - it think it's expense versus customer service, the number of disputes that you might normally get in a business as usual sense which aren't high and so - but obviously - you know, I believe it's in the interest of both parties and that's why I did it in this instance, it was in the interests of both parties to have records available of those claim conversations and they have proved useful.

30

Thanks.

40

MS MELLIFONT: Can I take you now to paragraph 150 of your second affidavit, page 129?-- Sorry, paragraph 150?

150. The second last sentence, "On occasions RACQ insurance identified to Water Technology that an individual inspection should be undertaken. One example of this that I recall involved a site where RACQ Insurance was aware from a customer that the site had been inundated on a previous occasion." Now, can I ask you what were the prompts for RACQ identifying to Water Technology that individual inspections should be taken?-- I'm not sure there were - that there were any specific prompts that I can point to. I would say it would be each case on its merits, because the information could be different. In the context of this event, it wasn't - it wasn't uncommon, for example, for customers to say, well, at my place it's different, the water came from the drain or the water came from here, those types of representations to be made fairly early on. The hybrid hydrology process that we

50

had in place deals with that, because where there are - you know, site-specific things to consider, then the hydrologist would consider that. So - but there were-----

1

Sorry, can I just ask you about that?-- Yep.

You say, "The hybrid hydrology process dealt with that", dealt with that in the sense of asking the hydrologists to let us know of any of the particular properties identified might fall outside the generalised conclusion?-- Yes.

10

As opposed to, for example, being given specific information from the client about possible cause, such as being next to a drain?-- Yes.

Okay. Sorry. I cut you off, probably upset your train of thought. So I was asking you about a particular prompt. You told me you would assess it on the merits. You spoke about the hydrology process you had in place?-- Yep.

20

Can you think of any other specific prompts or can you think of any specific prompts?-- I know that there were instances where - in relation to - I can recall one in relation to the Ipswich report where the hydrologist specifically came back to us and asked us whether - to review the records that we had to see whether there was suggestions of stormwater, because something had happened over there, so we did that, and, in fact, referred back a number of claims with that information to him to assist in his investigations and, in fact, consider those properties further.

30

So that seems to be a request from the hydrologist back to RACQ to consider-----?-- Yes.

-----whether there should be some individual attention given?-- Yeah.

But this paragraph seems to contemplate RACQ identifying individual inspections to Water Technology. We have got the one example of the property being previously inundated. Are you able to speak of any other specific prompts for identifying to Water Technology whether an individual inspection should be undertaken?-- Personally I know of one other where the customer lived approximate to a gully and made representations to us about that gully and as a result of those representations we asked the hydrologist to specifically give us an individual site report in relation to that property.

40

Now, do you know whether that was subsequent to getting the general report?-- No, I couldn't say.

50

Can I take you, please, to a couple - to three examples of requests for specific - for site specific reports to be - to Water Technology? So, it's Exhibit 40 and I will start with a request for 14 Barry Street, East Ipswich, which is page 713 of the exhibits?-- Yes.

And you will see that that commissioning letter states, "We are instructed that the property has been the subject of media attention. Therefore, if you experience any interference from the media or any third party sources, please cease your investigations immediately and contact us." See that part of the letter?-- Which paragraph is that, sorry?

1

10

20

30

40

50

Right towards the end. I'll just identify it for you?-- Yes.

1

Have you got it?-- Yes.

You've got it there?-- Yes, thank you.

All right then. What I want you to do then now is to please look at the letter for 67 Old Toowoomba Road, One Mile, at page 875 of the exhibits, and you'll see that the same paragraph is included, paragraph 23?-- Yes.

10

All right. And can I take you finally to page 995 of the exhibits, which relates to properties at Gympie, paragraph 22?-- Nine nine five?

Nine nine five, yes, and it's paragraph 22. So it's page 998?-- Yes.

Can I ask you the extent to which the fact that the property had been the subject of media attention operated as a prompt to get a site-specific report?-- It wasn't a driver, in my view.

20

Not at all?-- No.

Can I now take you, please, to an e-mail - just excuse me. Still within Exhibit 40, there's an e-mail from your lawyers to Water Technology on the 6th of April, page 993, and if I can take you to page 994 of that e-mail. You see that paragraph, "Although we have provided you with the insured's telephone contact details please ensure that no-one from Water Technology speaks with the insureds until we have provided you with a protocol on this issue." Do you know whether a protocol was in fact provided to Water Technology?-- Sorry, which paragraph - which sentence are you at in that?

30

Okay. The very last sentence of the e-mail which appears on the second page of the e-mail, which is page 994 of the exhibits?-- Yes.

40

Okay. You see it starts, "Although we have provided you with"?-- Yes.

All right. Was such a protocol provided to Water Technology?-- We - I don't know about a "protocol" but we sent, where we could, for site inspections we sent an RACQ Insurance representative there with Water Technology.

All right. And do you know whether there was a protocol given to that RACQ staff member about speaking with insured persons?-- I can't remember the details of that but I'm sure that the essence of it was that the RACQ Insurance person was to take the lead with the customer. In other words, explain why Water Tech was there, what was going on, those types of things.

50

So if there was a protocol that's something you could ascertain given time?-- Yes.

I'll take you to paragraph 158, please. One five eight of the second affidavit?-- Yes.

1

Now, this sets out the information customers were given when told that their claims had been denied?-- Yes.

Dealing first with the reasons customers were given, sub-paragraph (a) states in the case of inundation claims, "The reasons were (most typically) that the policy did not cover the insured for flood and that the cause or a real cause of the damage to the insured property was floods." And that's as you understand it?-- Yes.

10

Okay. Now, those reasons were communicated by telephone first, wherever possible-----?-- Yes.

-----and then confirmed in writing?-- Yes.

Now, if I could just take you to an example of a telephone communication of a denied claim. Exhibit 33 to the seventh affidavit, at pages 864 to 865. And if we can go down to the part where it starts, "Now we have completed our investigations". You see about halfway down the page you've got Tez saying, "Now we have completed our investigations I wanted to let you know that it's been determined the damage at the property was caused by flooding." Lois says, "Thank you Lord." Tez says, "You just wanted an answer." Lois, "Thank you so very much." Tez: "Okay, now, it is caused by flooding, not flash flooding though, so the flooding is not covered under this. The policy doesn't cover this type of flooding." Lois says, "So we're not covered?" Tez says, "That's right, yes. It was on this basis the claim has not been accepted." Now, you'd accept that that is typical - that's a typical example of what customers were told if their inundation claim was denied?-- Yes. If the cause was flood, yeah.

20

30

If the cause was flood. Can I take you now to Exhibit 19 of affidavit eight? If I could take you - so this is a letter dated the 23rd of May 2011 to the Sharps?-- Yes.

40

And you will see - just there is fine, thank you - paragraph, "We have now completed our investigations relating to your claim. It has been determined that the damage at your property has been caused by flooding," and there's a reference to the definition and then, "as your policy does not include cover for flood we must advise your claim has not been accepted." Now, that piece of correspondence is also typical of the reasons given by RACQ in correspondence as to why a claim has been denied?-- Yes.

50

So it's correct to say that in the majority of cases customers were not in the first instance, that is either by telephone and/or in the communication first advising of the declined claim, they weren't advised of the information on which RACQ had relied in reaching its decision? You would agree with that?-- Yes.

Okay. Now, is there any reason why when a customer is being told that their claim is being declined that the customer is not told the reason RACQ considers that the damage was caused by flooding and not flash flooding or stormwater? So, for example-----?-- The letter - the letter states that the - that the - it's been determined that the damage at the property has been caused by the flood.

1

Yes, but you'd accept it doesn't say why, why it's not flash flooding, why it's not stormwater? You accept that the letter doesn't do that?-- No, because the cause has been determined as flood.

10

Yes-----

COMMISSIONER: What about telling them the basis of concluding that?-- Sorry, Commissioner?

What about telling them the basis for drawing that conclusion, that the cause of the damage is flood? Could you do that or would you do it?-- It's not a part of our business as usual process either to - to - like - you know, if, for example, something's stolen from the open air and that cover doesn't apply then we would tell them, "You're not covered because it's been stolen from the open air and that cover doesn't apply." That's generally our first step in the process.

20

Yes but here this plainly wasn't an obvious thing because you've got a hydrology report, which, as you pointed out, was in many cases fairly complex, so why not give the customer some clue of what was involved?-- I just don't believe there was an obligation to do that. We are telling the customer that the cause of the damage to their property is excluded under the policy and therefore the policy can't respond.

30

MS MELLIFONT: You accept that detailed analysis was required in order to reach conclusions in accordance with the terms in the household policy?-- Yes.

And even though RACQ has - had those terms in its policy, subject to the potential for minor differences, as you've mentioned earlier, since at least 2004, RACQ still engaged lawyers to provide advice to RACQ, and in particular in relation to the meaning of the operation of the policies?-- Yes.

40

All right. So we were dealing with a situation which, as you've described in your terms, is one of complexity?-- Yes.

All right. So why not - why not provide the reason to the customer to help the customer understand why, when their house got wet from water coming in or out below ground level, that RACQ says, "You're not covered"? For example, it could have been as simple as saying, "We believe that the cause of the flooding was the rising of the waters from the river and not flooding caused by stormwater or flash flooding." Why not do something like that?-- Well, our policy doesn't automatically exclude water that comes from the river.

50

All right. Well, why not say, "We believe the cause of the flooding was X and therefore it's not flash flooding or stormwater"? Why not do that to help the customer understand why they're being knocked back?-- I'm not really following the line of what you're asking. From my point of view the policy doesn't cover flood and we're stating to the customer that we've ascertained that the cause is flood and we're telling them that's excluded.

1

Are you of the view that the policy wording and its reference to "flood" is so very clear that a customer is automatically going to understand what it covers and what it doesn't? Are you coming from that premise?-- I'm coming from the premise that our obligation is to advise the customer why the claim isn't covered and I believe that in the conversation in the scripting and in the letters we communicate that.

10

So there was a decision to do what is required, in your view - required, in your view, by what RACQ - sorry. There's a decision taken by RACQ to do whatever it is obliged to do but not go further than that?-- I was involved in the - in the signing off of these letters and I didn't go through a thought process that said, "Well, I'll just do what I feel that we're obliged to do," as opposed to doing something different.

20

COMMISSIONER: Helpful? You could have been helpful?-- Well, I appreciate that view's being expressed but the purpose of the letter is to communicate - the purpose of this particular letter is to communicate that the loss isn't covered by the policy, it does that, and it also explains to the customer their opportunities for review from that point.

30

MS MELLIFONT: Has RACQ changed it's approach in light of its experience from the 2010/2011 floods?-- In relation to that particular issue?

In relation to the level of reasoning it gives to a customer where it declines a claim. Let me put it another way. If you had a flood tomorrow and the claim was being - a claim was being knocked back because it was flooding and not flash flooding or stormwater would your decline letter say why it is RACQ has concluded it is not flash flooding or stormwater or are customers still going to get the bare response of, "It's not" - "It's flood"?-- We haven't reviewed that letter or that process as yet.

40

Right. So what would happen? What would happen under current procedure? Would the same thing happen?-- Unless we reviewed the letter, yes.

50

Can I take you, please, to paragraph 158(iii) and (iv) of your second affidavit? You can see there-----?-- Sorry, counsel, which-----

Second-----?-- Second.

Second?-- Second affidavit, paragraph?

One five eight?-- Yes.

1

Sub(a) and then (iii) and (iv). Is it correct to say that, "The information relied upon to make a determination of the claim was not provided to a customer unless asked for"? Is that correct?-- Yes, with the exception of the - initially the hydrology reports and then the legal advice.

All right. And the exception applies to what was provided. That is, you had a request, the customer would then be provided with the information but not the hydrology reports?-- Yes. Initially.

10

Initially. Now, is the reason for that situation, that is that information was not provided until it was requested, is the reason for that set out in paragraph 276 of that affidavit? Which is, "In general terms it is my understanding of the Code of Practice requires information regarding claims decisions to be made available to customers at their request. As some customers do not require extensive written documentation I believe that this is the most sensible approach as it allows insurers to otherwise focus on the job of processing claims."?-- Yes.

20

I just want to clarify some statements in 276. Regarding the first sentence what do you - by "information" in that sentence do you mean written reports or something else?-- It could be - could be a range of things. Could include written reports, could be telephone calls, could be all sorts of records that have been relied on in the determination of the claim.

30

COURT REPORTER: Sorry, "relied on"?

WITNESS: Yes.

MS MELLIFONT: "relied on in the examination of the claim"? Is that what you said?-- Yes.

Could it be - sorry, do you include by the word "information" the list of the information relied on?-- Generally I'd expect in a covering letter, if we were providing information and attaching information I would expect reference in that covering letter to the information that's attached. If that was a - if the nature of the information was such that it required a list then it might be appropriate to list it.

40

How does a customer come to know the list of information that RACQ relied upon in determining the claim?-- Generally - generally if you took - in terms of an accepted claim customers generally aren't interested. Once they've got the acceptance decision the rest of it doesn't generally matter-----

50

Yeah, let's focus on declines?-- So in terms of declined claims, it - in our normal business-as-usual process if we - if we felt that a report, or whatever, was important to provide to an insured we may do that but it's not a standard thing to say, "You must always provide a report," you know,

"when declining a claim". So it may be covered off in the letter. The letter should explain, as I believe the flood letter does, the reasons for the declination.

1

Excuse me a second. All right. So if I understand the situation correctly, you send your decline letter out. It says, "You're not covered, it's flooding," and that letter doesn't state the information which RACQ relied upon to determine the claim; correct?-- The letter doesn't state that, that's right.

10

Okay. So you then state that you generally don't give information to a client unless they ask for it; right?-- Yes.

How does a client know what to ask for?-- In relation to the flood claims, I mean, we work - customers knew that we - that a loss adjuster had visited, the customers knew that we had hydrology investigations that we were undertaking, so, you know, where people did ask for copies of the loss adjuster's reports those things were given. When they asked for a copy of the hydrology report, for reasons that I've explained, we gave them a plain English information sheet in response to that request.

20

Why not just say to them in their letter declining claim, "In declining your claim we took into account, the information you've given us, the loss adjustor's report," X, Y and Z, so they knew what it was that RACQ had taken into account; why not do that?-- It's just not part of our business-as-usual practice.

30

You don't regard yourself as obliged to do that and so you don't do it; is that fair to say?-- No, I don't - I don't - I don't think it's a matter of obligation as such. It's not a thought process that says, "Well, we're not obliged to do it so we won't do it," it's just a question of clearly communicating to the customer why their claim has been declined.

And by that clear communication you say that is telling them it's flooding?-- Yes.

40

You say in this first - sorry. In the second sentence you say, "As some customers do not require extensive written documentation I believe that this is the most sensible approach as it allows insurers to otherwise focus on the job of processing claims."?-- Yes.

So from that can we say that the reason RACQ does not, when informing a customer their claim has been denied, provide information as to what was relied upon, is that that the reason is because some customers do not require extensive written documentation? Is that what you are meaning to convey by that second sentence?-- I think what this sentence is really relating to, there seemed to be some sort of suggestion that - I know we're talking about declined claims but there seemed to be some sort of suggestion that in relation to all claims we should send our information in relation to - you

50

know, the reports, or whatever, that we've relied on in making a decision to deny. If we had to do that for all claims, accepted claims, declined claims, all the rest of it, then that would certainly take, you know, time and effort and resource to do that, and in most instances it's not required.

1

Right. But does that second sentence apply to declined claims?-- Yes.

So is it fair to say that the reason RACQ doesn't provide the information as to what was relied upon at the time the customer has their claim denied is because some customers don't require extensive written documentation?-- Yes.

10

How is it that RACQ have determined that customer preference?-- Through - through our existing processes-----

Well----- ?-- -----so-----

So in so far as declined claims are concerned, how is it that RACQ has determined that some customers don't require extensive written documentation?-- Generally the letters that we provide for customers will give them enough of an explanation to understand the reasons for the decision that's been made and if they request information beyond that then we're generally happy to provide it for them. I think-----

20

That doesn't answer the question, with respect, Mr Dale. How is it that you determined the customer preference, that is some customers do not require extensive written documentation?-- It doesn't say "customer preference" there it says, "as some customers do not require extensive written documentation".

30

All right. Well, take, for example, a customer who put in a claim as a result of these floods who was declined, who received one of the typical declined letters that we've referred to already today-----?-- Yep.

-----how do you determine whether that customer's preference is not to receive extensive written documentation in respect to their claim or do you simply presume that?

40

COMMISSIONER: I'm not quite sure that's fair because it does say "require" rather than "prefer".

MS MELLIFONT: All right. How do you determine that that customer doesn't require written extensive documentation or are you simply presuming that?-- We give them the information - we give them the decision and then if they require information, further information they're free to ask for it and where we can we will provide it. And so, yeah, I'd accept that there's a presumption in there

50

Does that presumption still remain within RACQ's current practices?-- We haven't had another event like this yet so I'd isolate this event from our business-as-usual processes, as I've said-----

Certainly, but you have spoken about moving forward in the future and setting up a dedicated response team. Do those processes which apply to that dedicated response team shift from this position that's set out in your statement?-- If we had another Queensland, you know, significant flood event tomorrow then I would be happy to reevaluate whether that information is sufficient for customers.

1

That's not a process which has currently started?-- No. The context - I'd just like to say one thing in that regard. There was large volumes of claims and so - and tremendous pressure to make decisions as quickly as we can, which was a massive driver for me and my team. I won't say it was a conscious thought process but as - if there was a requirement to specifically put into all of the individual letters the circumstances which might be specific to that particular claimant then that would completely change in its nature the task of those letters and what have you. Do you understand what I mean?

10

20

30

40

50

Yeah, I understand what you are speaking of. Can I ask you this: if you had an example of somebody who had their claim declined and they asked for a list of information, was that provided by RACQ? Was that list of information provided-----?-- In this sense?

Yes?-- I am not sure.

Now, I do want to turn specifically to the issue of the hydrology reports, and then on provision. Paragraph 158 of your second affidavit, at subparagraph (a)(iv), you state that, "Where hydrological information was requested as discussed below, RACQ Insurance offered the customer an information sheet which summarised hydrological findings relevant to the customer's claim." That still remains your understanding of what occurred?-- Yes.

10

Okay. And we know from your evidence this morning that if the customer actually requested a copy of the hydrology report, it wasn't provided until the FOS became involved and there was a meeting in July 2011; that's correct?-- Yes.

20

Now, at paragraph 160, you say in the second sentence, "Where the hydrology report was not provided, the customer was offered a plain English information sheet which summarised hydrological findings relevant to the customer's claim." When you say "offer", do you mean given to a customer if the customer requested hydrological information, or do you mean generally volunteered by staff in the process of declining a claim?-- Given if asked for. If - if hydrological information was asked for.

30

Okay. Now, you set out at paragraphs 160 through 164 decisions - reasons as to why the hydrological reports were not provided. Now, am I correct in saying that the matters to which those paragraphs refer are still the subject of Inquiry by ASIC and FOS or has that been finished?-- We received a request from ASIC to respond to that, and we've also received a requirement from the FOS to respond to the possibility of a systemic breach.

40

COMMISSIONER: Sorry, what's the question? What's the issue that ASIC and FOS raise about it; whether you were entitled to do it in the first place, or what is it? To claim the privilege or-----?-- I believe it relates generally to the decision not to release the hydrology reports and the reasons for that and-----

Are they asking you to justify that decision, or what's happening?-- In essence, yes. I guess they are.

50

Right.

MS MELLIFONT: Have those responses to those requests by ASIC and the Financial Ombudsman Service been provided as yet?-- I am just trying to remember. I think they have. Sorry, the one to the FOS hasn't because it is not due yet-----

When is it due?-- -----but I believe we've responded to ASIC.

Okay?-- So the one for the FOS is due 31 October.

31 October?-- Something like that.

Yep?-- I believe.

And insofar as you believe that there has been a response to ASIC, do you know whether anything has come back or whether you are still awaiting a response from ASIC?-- I believe that we've - I am trying to remember. I can't be sure but I believe that we've provided a response to them and it is in their hands.

10

Now, looking at the reasons you've advanced in your affidavit, tell me if you think this is a fair summary: until late July or early August of this year RACQ did not release copies of its hydrology reports to customers or their legal representatives even if requested; that's correct?-- Yes.

20

The basis on which the reports were not released were - this is the basis claimed by RACQ - were protection of personal information which was contained in schedules to the reports and legal professional privilege?-- Yes.

These bases were, you believed, consistent with the Code of Practice? That's your belief?-- Yes.

30

And you say this because you understand that the Code permitted RACQ to not disclose any information which would infringe a person's privacy, or where the information was protected from disclosure by law which you understood to include documents the subject of legal professional privilege which you understood to include the Water Technology reports?-- Yes.

And you also say that the reports were prepared on a regional basis and contained schedules containing personal information about other customers, and RACQ was concerned to preserve the privacy of customers as it is required to do by the privacy law?-- Yes.

40

COMMISSIONER: That seems a pretty simple matter of redacting names and information, doesn't it, that last one?-- Yes.

MS MELLIFONT: Or, in fact, just not including the schedules which have the list of all of the client information?-- I think not including the schedules would change the nature of the reports.

50

Right. So it could have been solved by blacking out the rest of it, as Madam Commissioner suggested? Yes? So ultimately the premise for not providing hydrology reports really comes down to this claim of legal professional privilege. Would you accept that?-- Yes, and there are probably two other considerations, one - we had to resolve one of those when we

released the reports, which was in order for the reports to make sense they had to be - as I alluded to before, you sort of had to provide a customer to overcome the fact that in order for them to make sense of the report, it had to be related to their property in some way. And the other consideration that went through my mind was there was an awful lot of media coverage, et cetera, et cetera, about hydrology reports, and if we had given the hydrology reports as they were to people at that time, we would have drowned in inquiries from customers as to interpretation of the reports and the information contained therein, which, again, my staff aren't really qualified to be able to handle. So it would have had, in my view - and it is probably with the benefit of hindsight - I won't say this was a consideration at the time - but it would have had a substantial impact on our claims processing.

1

10

In respect to the first of those considerations, that is the perceived need to provide to the client something in writing which assisted them in applying the report to their specific property, that could have been overcome?-- Yes, and, indeed, it was when we released them.

20

Right. Now, can you just give me one second? Now, the Financial Ombudsman Service first raised the issue of nondisclosure of the reports with RACQ in early May, is that correct?-- Yes.

And, thereafter, there was exchange of much correspondence between your lawyers and the Financial Ombudsman Service, which is exhibited to Mr Heath's affidavit, correct?-- Yes.

30

And there was a meeting between you and Mr Heath and Mr John Price about the issue on the 4th of July 2011?-- Yes.

And as a result of the position expressed by the Financial Ombudsman of which you have already given evidence, the copies were released, correct?-- Yes.

Now, until that time - I think you have accepted this already - what customers were given were information sheets which summarised hydrological findings relevant to the customer's claim, is that correct?-- Yes.

40

Okay. With the exception of the statements you referred to earlier in your evidence?-- Yes. When - if it was part of the FOS process, detailed statements.

I will come to those statements soon, but dealing with these information sheets, you've copied all of them and they are exhibited to your second affidavit, is that correct?-- Yes.

50

Now, probably the most convenient example to take you to, in fact, comes in your ninth affidavit, exhibit 18. This is the response to policy holder Mr Gourley's information?-- Sorry, ninth affidavit, exhibit?

Exhibit 18. Can you just page down, please? Now, is this a

typical example of an information sheet provided to those customers who requested hydrological information?-- Yes.

1

I think you said that the information sheet was only given in response to a customer request?-- Yes.

Okay. Not in any other circumstance?-- No, I don't believe so.

And take the time to read the document if you need to but do you agree that the information sheet does not itself contain any reference to the property to which the claim related, the specific property?-- Yes, I agree.

10

It does not explain how the information contained in it, or the information received by RACQ about hydrology related specifically to the customer's property. Do you agree with that?-- Yes.

And that's the case even though the covering letter - if you go up, please - states, "This report outlines the conclusions that RACQ Insurance has reached in relation to hydrological issues relevant to the region which we have applied to your particular property and claim. We hope this further clarifies RACQ Insurance's decision on your claim." Does that covering position accurately reflect RACQ's use of the document, in your view?-- Look, maybe it could have been worded a little bit better, but it is basically saying that these findings within this region were relevant to your property.

20

You would accept that there is nothing there, either in the covering letter or in the attached document, which would assist the customer to understand how specifically the information has been applied by RACQ to determine that claim? Do you accept that?-- Oh, in the strictest interpretation, yes.

30

Well, do you say there is information in there that does do that, and if so please take me to it?-- It is explaining the investigations that we - that had been undertaken. It is explaining the mechanisms of what's happened within that region. It is explaining the impact of that on the application of the policy, and by reference to the fact that it is including that information and saying that this is - this is - that these outcomes affected or applied to your particular property and claim, it is explaining - it is going probably that next step further and saying, "Well, this is how we've - these are the key results and mechanisms and how they apply to your property."

40

And there is nothing else you'd rely upon in terms of how you say this assists a customer in understanding how particularly the information was applied to that customer's specific property? Nothing else?-- No.

50

This covering letter is typical of the letters which were sent in response to questions - to requests for hydrological information?-- Yes.

Can I take you, please, to affidavit nine, exhibit 18? I am sorry, excuse me for a second. Just give me a second. My apologies, Mr Dale. Can I take you, please, to paragraph 16 and 17 of your ninth affidavit? This is about Mr Gourley. I just want to get the chronology out, if I can. That is, "In a telephone conversation on 15 March Mr Gourley requested further information about RACQ's Insurance's hydrological conclusions regarding his claim. On 16 March 2011, RACQ Insurance sent Mr Gourley a plain English information sheet that set out those conclusions."?-- Yes.

10

Now, can I please take you to Exhibit 6 to that affidavit at page 111?-- Yes.

These are claim notes?-- Yes.

Can we go, please, to the 15th of March 2011? You will see an entry which says, "Insured has requested hydrology letter to be sent as well."?-- Yes.

20

Next action, "Hydrology letter is to be sent once available."?-- Yes.

By "hydrology letter", is that the terminology used for the information sheet?-- I think it is - I don't know whether that's the terminology used, but it seems evident from what's in there that in response to that request, however it was expressed, the regional hydrology report was sent the next day under cover of a letter.

30

When you say the regional hydrology report, you are talking about the information sheet?-- Yes, sorry.

Okay. So the typical covering letter and the typical example of the hydrology summary?-- Yes.

Now, can I take you, please, to Exhibit 5 of the same affidavit, page 97? Again, the 15th of March. You will see there it reads: "Mr Gourley also requested further information about the hydrological conclusions that RACQ Insurance had reached in deciding his claim." Now, what I'd like to know is when you had - what was the practice of RACQ when you had a customer ask for further information about hydrological conclusions. Specifically what I want to know is were the customers told, "We do have a hydrology report and we can send you an information letter about that", or was the fact of RACQ having a hydrological report kept from the client?-- Our response was to send them the information sheet under cover of the letter.

40

50

COMMISSIONER: Does that mean you didn't tell them you had a hydrology report?-- We didn't - I don't think we specifically referred to hydrology reports. We - we tried to always refer to hydrology investigations when we were talking to customers about what the process was to determine their claim.

MS MELLIFONT: Why would you try always to refer to

"hydrological investigations" rather than report?-- It is not one single - necessarily one single report. 1

Was there any direction given to staff not to mention hydrology reports?-- Yes. I believe that I did say to them, "Try not to use the word 'report'; try to use 'hydrological investigations'."

Why?-- For the reason that it mightn't be one report. 10

COMMISSIONER: How much would you have got from your hydrologists? You would get a report, maybe two reports. What else would there be?-- Some of the reports had 10, 11 iterations in relation to them.

You'd have acted on one, presumably, at the end of the day, in relation to any given claim?-- From memory, the reports - basically there would be a regional report provided and then there would be updates to that report which dealt with individual claims. 20

Okay. So you've got a report and an update for a given claim?-- Lots of updates, yes.

So what's wrong with "hydrology reports", or if we must be precise "hydrology reports plus updates"? Why be coy about investigations?-- Simply because that's what we were doing.

It does sound like the sort of answer your six year old gives you, with respect, Mr Dale, "Because I did." Is there no better reason you can offer?-- No. 30

MS MELLIFONT: Now, we've seen there that Mr Gourley requested further information about the hydrological conclusions that RACQ Insurance had reached, and you've seen the covering letter given to him and the information given to him in response to that request. Do you agree that neither of those documents meaningfully address his specific request for further information about the hydrological conclusions that RACQ Insurance had reached in deciding his claim?-- No. No, I believe - excuse me - I believe that the letter and the plain English report which was given to him explain to him the mechanisms which have led to the decision in relation to his property. I accept that it is not, you know, the full technical hydrological report. 40

Is there any reason why the covering letter didn't advise Mr Gourley, in light of his specific request - didn't advise Mr Gourley, "Look we have got a full hydrological report or reports, but what we're going to give to you is an information sheet"? Why not tell Mr Gourley that there is a report or reports?-- Um----- 50

No reason?-- I can't answer that.

COMMISSIONER: Mr Dale, there is water there if you want a glass of water. You are getting a little hoarse?-- Sorry, I am just struggling with a little bit of a flu, but I'll be

right.

1

MS MELLIFONT: Now, I want to take you, please, to Exhibit 587, which is the General Insurance Code of Practice and I want to take you specifically to 3.4.3. Page 6 of the document that's being handed to you. I will just ask you to read through 3.4.3. It starts, "You will have access to information which we have relied on in assessing your claim and an opportunity to correct any mistakes or inaccuracies."?-- Yes.

10

In light of that, and in light of the specific request for further information about the hydrological conclusions RACQ had reached in deciding his claim, how is it that RACQ would contemplate that Mr Gourley would know to request the actual hydrological report or reports? How is it that he would know to seek access?

COMMISSIONER: I am not sure I understand the question. What's that got to do with his knowing how to seek access?

20

MS MELLIFONT: All right. Sorry, I will rephrase the question. Perhaps I'll come back to it, your Honour, I'm sorry. Can I just come back to a topic we were discussing before, please - which was the reasons for not releasing copies of the hydrology reports, and you mentioned the concern about being drowned by media, if I could - your staff being impacted by media attention?-- Not media attention, inquiries from customers.

30

From customers?-- Seeking clarifications in relation to technical reports.

40

50

And, secondly, the need to connect the general report to the specific property. Okay. Now, can I suggest to you that the financial ombudsman requested that you advise them as to the reasons for not making the full regional hydrology reports available to both the financial ombudsman service and RACQ insureds? You were asked to do that?-- Yes.

1

Now, can I suggest - and please do correct me if I'm wrong - that those two reasons were not advanced?-- No, there were side issues. The two reasons given to the ombudsman were that I had advice that the reports were subject to legal professional privilege and that there were concerns over the privacy - information privacy of customers.

10

So, the side issues as you have mentioned, were they present in your mind at the time decisions were being made to not to hand over hydrology reports?-- The - the - the second one was, the issue of our - you know, receiving lots and lots of inquiries that might impact our claims processing ability. The first one wasn't, because I hadn't dealt with it yet, the issue of how would we get our reports and give them - you know, meaning to an individual customer, and neither of those reasons were discussed, I don't believe, in my discussions with the ombudsman. So, the two points of discussion were around legal professional privilege and privacy.

20

And nor were they mentioned in your affidavit as the reasons for not handing over the hydrology reports; you'd accept that?-- Yes.

30

Any reason they weren't included in your affidavit?-- Didn't really think about them.

Didn't really, sorry?-- Didn't really think about it, I guess.

"Didn't really think about it, I guess."?-- Well, you know, I'm giving you the best information that I can.

No, I actually didn't hear, that's why I repeated it. Can I take you now, please, to Exhibit 17 of your second affidavit? Now, just to connect the dots, paragraph 232 of that affidavit states that, "Where RACQ was able to make personal contact with a customer to inform them that the claim had been denied, the customer was also informed verbally of their right to make a complaint or seek a review of that decision, and the scripts that RACQ Insurance provided to its operators for this purpose are at Exhibit 17. I would expect that the script was followed." Firstly, can I ask at whose direction were the operators to follow these scripts? Did it come from you downwards or someone else?-- Mine.

40

50

And who settled the terms - the wording of these scripts?-- I did, after seeking legal advice.

Now, we can see at the bottom of each of the scripts a note which says, "Version 2. Date: 15 February 2001. Department: CAT Response Team." What the CAT?-- CAT Response Team, short

for "catastrophe".

1

Catastrophe. Okay. Now, this document appears to indicate this is the second version. Is there an earlier version?-- I think - the protocol is that everything - you know, that there might have been draft versions before that, but when it moves from a draft into a finalised script that it's given version 2 point something, so there might have been 1.5, 1.6, 1.7, whatever that might be, leading up to the final version.

10

All right. So, far as you understand this, version 2 was the first one disseminated to the operators for their use?-- Yes.

Okay. We see on there a date, 15 February 2011. What does that date relate to?-- By default it's suggesting it's the date it was finalised.

By you, finalised by you?-- Well, I probably approved, like, drafts and said, "Yep, that's the script to use.", and then it would have been moved into a final after that.

20

Do I take it by that you would have seen the final draft, made up whatever amendments you wanted to make to it, somehow it made it down the line to somebody who would input those amendments and it became this version?-- The final version, yep.

Okay. And does that date, the 15th of February 2011, accord with your expectation of when the operators would have been told to start?-- I am not quite sure.

30

Roughly?-- Yeah, roughly.

Can I take you to the script on page 373?-- Yes.

So, this is the script for where a customer specifically requests hydrology report and has previously been provided information sheet. Can I ask you, firstly, was there a script for where the customer requested a hydrology report but had not previously been provided an information sheet?-- No, I don't believe so, I think it was just provided to them.

40

The information sheet was just provided to them if they requested a hydrology report?-- Yes. I-----

Is that what you mean?-- If I understand your question correctly, what I'm suggesting is that there was no need for a script because if the customer asked for it, we gave them the letter and the information sheet.

50

So if a customer asked for a hydrology report, RACQ's response was to provide the cover letter and the information sheet. Do I have that correct?-- Yes.

So that's why you regard - that's why you think there's only one script?-- That's why I don't think there was a need for a script for that.

Okay.

1

COMMISSIONER: So if somebody said, "I want a hydrology report.", and this person hasn't previously got an information sheet, what did somebody said to them, "We will send you an information sheet."?-- Yeah, I think our first response would have been to send them the information sheet.

Okay.

10

MS MELLIFONT: Now, according to the script at the top you have got, "We are not in a position to release our hydrology report for your region to you because the report contains personal details of a number of customers which we are required to protect, and the report is also subject to legal professional privilege." Is there any reason customers weren't told that they could if they wanted to request a review of RACQ's decision not to provide the hydrology report?-- Our stance was that we weren't going to release them at that point. So that's all the script catered for.

20

So, no reason apart from what you have just said it?-- Apart from what's in the script, yes.

If you can turn, please, to the next script - next page, rather, 374? This one's, "Hydrology Schedule B Received. Further information required." Okay. So, this is the script for when RACQ have a regional hydrology report and insured's property had been included in Schedule B and Schedule B contained those matters where Water Technology said, "Further investigations are required"?-- Yes.

30

Okay. You will see there, "Note: Do not specifically refer to hydrology report at any time during this telephone call." Why was that direction given?-- Well, as I said before, it may not necessarily be one report, it's really - we tried to - tried to explain to people talk about hydrological investigation, because it is only one aspect of the claim investigation as well.

40

COMMISSIONER: But the only form that the conclusion from a hydrological investigation would take would be a report, wouldn't it?-- Yeah, that's probably fair.

MS MELLIFONT: So, in those circumstances, what's the problem with one of your call operators specifically referring to there being a hydrology report?-- We simply - in my communications with them, I tried to say to them use - I don't think there's anything sinister in it, we were trying to say, "Refer to hydrological investigations rather than report".

50

Yes, but it doesn't say that, does it?-- No. I accept that.

Okay. Did you perceive some potential harm in a customer knowing that there was, in fact, a hydrology report?-- No.

What were your operators to do if they received a request in this context, "Can I have a look at the hydrology report?"

Was it to send them the information sheet?-- Yes.

1

Not, "Oh, we have got a report, we're not giving it to you, we will send you an information sheet."?-- Well, as I said, the first response was to provide them with the information sheet, and then we have just looked at a script which says if they require - if they're requiring the hydrology report, I guess, that we gave them reasons why we weren't prepared to release that.

10

Excuse me. Can I take you to the next page, please?-- Which page is that, sorry?

I'm sorry, yes, it's page 375. It's headed, "Script: Query regarding ICA report for Ipswich and Courier-Mail article." - headed, "Script for RACQ responding to a query regarding the ICA report for Ipswich and The Courier-Mail article dated 23 March 2011." So, what hydrology report does that relate to?-- The script?

20

Yes. Sorry - which - sorry, let me rephrase that. Which report does this script relate to? What's the ICA report?-- That's the Insurance Council of Australia report.

Okay. Now, you see that the regional report for Ipswich, the regional hydrology report for Ipswich?-- Yeah, I believe-----

-----produced by the ICA?-- I believe it was the Ipswich local government area or whatever.

30

Okay. Now, we see it references The Courier-Mail article 23 March 2011, but we're still operating on a 15 February 2011 date on the bottom of the document. Can-----?-- Yeah, that does - that does suggest the date at the bottom of that's wrong.

So, can we take it that that date is not a reliable indicator of when the script was created?-- It can't be, because - because we wouldn't have known on the 15th of February there was a Courier-Mail article on the 23rd of March.

40

So, how would you know - can you now ascertain when each of these various scripts were directed to put into operation by the call operators?-- Yeah, I could do. I'd suggest that it's got something to do with prepopulated dates and when you print them and other bits and pieces, it might automatically update.

You are going to have to keep your voice up?-- Sorry.

50

Okay. Now, again we see that, see the direction on page 375, "Note: Do not specifically refer to hydrology report at any time during this telephone call." Which hydrology report does that direction relate to? Is it the Water Technology one commissioned by RACQ?-- Yes.

And are there any reasons for that direction being placed into that script for your operators or are we to take it that the

reasons are the same as in respect of the script I just took you to?-- The reasons are the same as I gave before.

1

All right. Now, I want to take you back to Mr Gourley's claim, the ninth affidavit. We have looked at the information sheet. Now, in the case of his claim a request for review was made after the information sheet had been provided. That's your understanding?-- Sorry, can you just tell me where you're referring?

10

Yes. I won't be a moment. So, it's paragraph 13 of your affidavit but more relevantly Exhibit 5 which sets out the chronology of the steps taken in dealing with Mr Gourley's complaint, and I can take you to page 98 of the exhibits?-- Yes.

Have you got that there?-- Yes.

Thank you. So, you will see on the 16th of March we have got RACQ sending out the information sheet?-- Yes.

20

And you have got 21st of March Mr Gourley asking about lodging a complaint about the rejection of his claim?-- Yes.

All right. So, the chronology seems to be we have got an application for review after getting the information sheet?-- Yes.

Okay. And a review was, in fact, conducted in that matter?-- Yes.

30

And as a result of the review - the result of the review was communicated by letter, a copy of which is Exhibit 24 to the ninth affidavit?-- Yes.

I will just give you a minute to read that letter. It's up on the screen if that's faster for you?-- Thank you. Yes.

All right. So, we have got, "Based on the information available, I wish to advise the review uphold the previous decision as advised to you in our letter dated 10 March 2011."?-- Yes.

40

Now, is that style of letter typical of many letters sent by people who'd applied for internal review where the decision was upheld?-- They wouldn't be untypical, yeah, that's fair to say. I think there were - there was sort of this type of letter, where there - perhaps additional information hadn't been provided to the insured, and I have also seen letters where more detail is gone into when providing the response.

50

Right. So, this is not atypical but there are some other types of letters that were sent?-- Yes.

You would accept this letter doesn't explain why the decision was upheld, that is the reasoning process? You accept that?-- Yes.

Right. Any reason why?-- I guess it's probably a continuation of the discussion we had before around - around the customer has been told that the - that the policy doesn't provide cover because it's flood, it's been reviewed, and it's saying, "We have reviewed that decision and we agree with the earlier decision."

1

And following on from the earlier discussion, your view that stating to the customer that RACQ concluded that it was flood without the factual reasoning was sufficient to discharge what you are obliged to do and, therefore, you didn't need to give anything more; is that fair?-- Again, I don't - I don't think it's, "Well, that's our minimum obligation, let's do that.", I think it was thought to be sufficient-----

10

Right?-- -----in the process.

Okay. So, why not provide at this second stage something a bit more helpful like, "This is why we say it's flood."? Why not provide that? Any reason?-- I don't - I don't - I don't quite know what else we would provide. I mean, it's - the decision's been made, it's been communicated at the claims stage that - the reason for not accepting the claim is that the cause is flood. This process is undertaking an internal dispute resolution review of that and it's confirming that decision.

20

You could provide the factual basis for saying it was flood?-- When you say "the factual basis", can you help me with that?

30

Well, in declining a claim, you rely on working out the cause of inundation and then applying that to your policy?-- Mmm.

And then a conclusion that it's flood. Why not tell them what you ascertain to be the cause of inundation?-- We have. It's flood.

No?-- Sorry, I am not - I'm just trying to understand.

COMMISSIONER: You can say, "The source of the flooding was the river.", or, "It was water from a stormwater drain which had come from the river.", or whatever it is, but you can explain why the view is reached that it's flood.

40

MR DOYLE: Can I interrupt to say, with respect - perhaps I am missing something - the information sheet does that. I think it's unfair to concentrate on the letter without taking into account what's gone before.

COMMISSIONER: Look, it may be that you can point to the information sheet and say that gives them information but this letter doesn't and that's what we're focussing on.

50

MR DOYLE: I understand, your Honour.

COMMISSIONER: And Mr Dale professed to be unable to understand what else you could say other than that it was flood. So, Ms Mellifont and I are suggesting things that you

might say.

1

MR DOYLE: Well, the point of why I'm rising is to say one can't look at the letter without knowing what's gone before it, which includes-----

COMMISSIONER: That's not what your witness is saying.

MR DOYLE: As your Honour pleases.

10

COMMISSIONER: -----Mr Doyle, so. Thank you. Anyway, we have probably exhausted that topic.

MS MELLIFONT: Yes, thank you. Now, in this particular case it is Mr Gourley's claim that he retained lawyers at the Caxton Legal Centre who requested another review be done having regard to some detailed submissions; correct?-- Yes.

And before the submissions were provided the lawyers requested copies of any evidence, hydrology reports and client information which RACQ Insurance had used to determine the claim. See that in Exhibit 25? Do you accept that?-- Yes.

20

And you see your lawyers respond to that at tab - at Exhibit 26?-- Yes.

Which says the reasons are legal professional privilege and privacy?-- Yes.

Stating that in brief terms?-- Yes.

30

Can I ask you: was this the standard - is this typical of the type of response sent to requests for hydrology reports?-- Yes. What I would understand it to be, it's still saying, "We will give you everything else", but we believe the reports are subject to legal professional privilege.

Yes. Now, in this case, Mr Gourley's lawyers made a submission which asserted that the inundation was caused by stormwater run-off and/or flash flood. If I can take you to Exhibit 29? That submission was passed on to the hydrologist for comment. Do you see that, the fourth paragraph?-- Yes.

40

"We have attached for your reference a copy of Mr Gourley's written complaint."?-- Yes.

50

Can I tell you - sorry. Can I ask you whether this occurred in all cases where RACQ Insurance received a detailed submission on internal review? That as to - sorry, which argued stormwater runoff and/or flash flood had occurred? Was it always sent to the Water Technology for their consideration or was it a case by case?-- I understand it would be case by case but it would probably rely on, you know, if the insured raised additional information, whatever the required consideration, then that would be referred back to the hydrologist to consider further.

1

10

So who would be making the decision whether the submission was worthy of forwarding on to the hydrologist?-- Probably my Customer Dispute Resolution Manager, I think.

All right. I take it he's not a hydrologist?-- No.

COMMISSIONER: Ms Mellifont, it's almost 4.30.

MS MELLIFONT: Yes.

20

COMMISSIONER: I would like to get Mr Dale through today but I don't know how much longer you are going to be or how long you will be, Mr Doyle, I don't want to constrain you.

MS MELLIFONT: I look like I'm going to be 15 or 20 minutes and then I understand the Commonwealth may wish to cross-examine, and the indication in the letter is 15 minutes, and the Brisbane City Council may wish to cross-examine as well.

30

COMMISSIONER: Mr Doyle, are you available in the morning?

MR DOYLE: I am, your Honour, yes.

COMMISSIONER: You are?

MR DOYLE: I am, sorry, yes. It's tomorrow evening that I was going to become unavailable.

40

COMMISSIONER: You are not the only one who is touchy about that, Mr Doyle. Mr Dunning, how are you placed in the morning?

MR DUNNING: Commissioner, to come here naturally I'm available. Yes, I'm fine.

COMMISSIONER: Ms Brasch, any problems?

MS BRASCH: There's no difficulty for me, your Honour.

50

MS O'GORMAN: We're equally available, Commissioner.

COMMISSIONER: All right. I think we will have to go over till tomorrow morning. Sorry, Mr Dale, you've had a hard day, we're going to-----?-- That's fine.

-----bring you back and do it all to you again, I'm afraid.

1

Yes, Mr Dunning?

MR DUNNING: Commissioner, can I raise a matter? I notice neither Mr Callaghan, nor Ms Wilson are here. In Mr Callaghan's opening he raised the issue of the Risk-Based Assessment Report. We apprehend that's something upon which at a minimum we will be asked to comment, if not in fact respond to-----

10

COMMISSIONER: The risk - the what sorry?

MR DUNNING: The Risk-Based Assessment Report in relation to flood. There's issue about not turning Q100 into-----

COMMISSIONER: Yes, yes.

MR DUNNING: We would like to canvass the issue, for example, of provision of whatever's currently available to us at the moment. We understand there is some material with the Commission, more coming. We've raised it in correspondence with the Commission and that's what we've learnt so far, but I'd like to make a submission at the appropriate time, now if you would like me to, to the effect that whatever you've currently got we should have so that we can at least start working on it because, given the time frame, it looks inevitable we will be looking into the matter over the weekend.

20

COMMISSIONER: All right. Well, I speak from a position of total ignorance but I expect we can look at it and just ask the relevant Commission staff to see if it's feasible or not.

30

MR DUNNING: All right, thank you, Commissioner

COMMISSIONER: We will adjourn - how long do you think all-up, Ms Mellifont? I'm just a bit worried about what we've got on tomorrow-----

40

MS MELLIFONT: Yes, yes.

COMMISSIONER: -----and whether that's going to push that out.

MS MELLIFONT: I would really like to say 20 minutes, but say half an hour.

COMMISSIONER: Mr Doyle, what do you think?

MR DOYLE: An hour and a half.

50

COMMISSIONER: An hour and a half?

MR DOYLE: Yes. I originally estimated a shorter time but-----

COMMISSIONER: Look, I think we will finish Ms Mellifont's examination this afternoon and we will start early tomorrow morning-----

1

MR DOYLE: Thank you.

COMMISSIONER: -----at that rate so, Ms Mellifont, if you continue.

MS MELLIFONT: Thank you. Excuse me one second. Now, can I take you, please, to Exhibit 32, which is - okay. So this document shows us that the hydrologist's response was provided to the customer's lawyers with the response to the submission. You'd agree with that?-- Yes.

10

Okay. So just looking, please, on the second page at paragraph 3, there is the notation, "We note that your clients have not sought to rely upon hydrological evidence." Was the fact that the - sorry, can I ask you this: did many customers do so? That is, at this stage of the process did many customers provide to RACQ their own hydrological evidence in support of their claim?-- Look, I think legal firms like Legal Aid and Caxton and others and what have you might have provided hydrological evidence or observations or stuff like that. I think it was - and some non-legally represented customers might have done so as well but I don't think it was commonplace amongst the non-legally represented customers.

20

And can we take it - can we take it that RACQ would have taken into account a customer's hydrological report if one had been provided?-- Yes.

30

And you'd accept, wouldn't you, that such a hydrological report would have been more meaningful to RACQ if it responded directly to your hydrological report? Let me put it another way?-- Yes, please.

If you a get a hydrological report from a client-----?-- Yep.

-----who hasn't seen your hydrological report-----?--
Mmm-hmm.

40

-----and the hydrological report from the client may not hit the buttons that the hydrological report you had hit, wouldn't it be more helpful if the customer knew precisely what the hydrological report said so that when you got the hydrological information from the customer you could compare quite readily-----?-- I'm not quite sure that-----

-----the two reports?-- -----like anyone else I would have thought the hydrologists are independent experts, you know, in their field of what they do and so therefore I'm not quite sure of the appropriateness of showing one hydrology report to another hydrologist in order for them to draw their own conclusions as to what happened at that property.

50

Was it something you didn't give consideration to at the time?-- Yeah, that would be fair to say.

Can I take you, please - sorry. You've already made reference today to the fact that when the process was with the Financial Ombudsman Service at first rather than providing hydrology reports RACQ provided statements which relayed the information relating to that property, the property that was under consideration; is that correct?-- Yeah, except that we provided the hydrology reports to the FOS - sorry, to the Financial Ombudsman Service in bulk and even now when responding to a dispute we still provide - sorry, Water Technology still provide a statement in relation to that.

1

10

Yes. Sorry, I'll make my question more specific. Prior to the hydrology reports themselves actually being handed over were you doing statements for FOS which relayed the hydrological information?-- Water Technology was, okay.

20

30

40

50

Still, at that stage RACQ didn't consider it simpler and faster just to hand over the hydrology report?-- Still at that stage we believe that - the advice I had was the reports were subject to legal professional privilege.

Can I take you, please, to the second affidavit, exhibit 27? Page 17. Page 448 of the exhibits?-- Sorry, you said exhibit 27, did you?

10

Yes, exhibit 27. I am sorry, it is page 448. So we've got here a letter which sets out RACQ's initial position on the nondisclosure of hydrology reports. Do you see that?-- Yes.

All right. Come down, please, to the paragraph which reads, "Further, when the Queensland floods occurred, it was apparent that a large number of insureds' claims would not fall within the terms of their policy."?-- Sorry, which page-----

I will just get it for you. Just give me a second. 448. 449, sorry. Stop there. Yes, thank you. Do you see that paragraph? You said, "With the likelihood of a high number of claims being denied, it was and is likely that many of those decisions will be challenged and, therefore, subject to litigation. Indeed there have, from an early stage, been various reports of possible class actions against insurers. In that environment, there was and is clearly a real prospect of litigation regarding the subject matter of the reports." Now, that was one of the reasons you gave to the Financial Ombudsman Service as to why legal professional privilege was attaching to the documents - the hydrology reports, correct?-- Yes.

20

30

Now, can I take you to Exhibit 40 of your second affidavit? I am going to take you to a letter dated 27th of January 2011, page 610. Now, these are the instructions to Water Technology - or the commissioning letter to Water Technology for a report for the Toowoomba and Lockyer Valley region?-- Yes.

Can I take you, please, to the third page at paragraph 17. You will see, "The report is being sought for the purpose of enabling us to provide legal advice in relation to contemplated litigation." Can you tell me what information you had as at 27 January 2011 that there was litigation contemplated for the Toowoomba and Lockyer Valley region?-- I think you will find that - sorry, I shouldn't express it that way. That paragraph that's in there - probably, if I looked across all of the letters of appointment, it is probably in all of them. So I doubt that it is specific to - it was intended to be or is specific to Toowoomba and Lockyer Valley.

40

50

So are you saying that that paragraph being included within this Commissioning letter, which was the first Commissioning letter to Water Technology, was included in error?-- No, I didn't write it, so I can't say that it was included in error or-----

Right. Okay, well, did you have information as at 27 January

that litigation was contemplated for those regions?-- Not for those - not for those regions specifically, but there were mentions, et cetera, of class action at a higher level.

1

Mentions in the media?-- Yes. And - and - yes.

In respect of which regions?-- That's what I'm saying. I don't believe that they were specific to regions; it was more about there was the possibility of class action or class actions being taken at a - you know, across the board.

10

And that was - that was the entirety of-----?-- May or may not have applied to Toowoomba and -----upper Lockyer Valley specifically.

And were those generalised media reports your entire basis for contemplating litigation?-- No, I think - I think - I don't think - the reality is when you've got a large volume of claims and it is likely that you are not going to be able to pay a large number of those claims, that that increases the possibility of an action like that being pursued.

20

All right. So the media - the media reports plus the prospect that someone, or more than one person at some time might sue if you knock them back?-- Yes.

Nothing else?-- No.

Nothing further, thank you.

30

COMMISSIONER: Thanks. Well, I think we'll adjourn now. I didn't get estimates from Mr Dunning and-----

MR DUNNING: I think about 20 to 30 minutes.

MS O'GORMAN: 10 to 15 minutes, Commissioner.

COMMISSIONER: Ms Brasch, are you likely-----

MS BRASCH: No. At this stage I have nothing.

40

COMMISSIONER: Does it suit everyone to start at 9.30 just to give us a bit of time ahead?

MR DOYLE: Certainly.

COMMISSIONER: That's what we'll do then.

50

THE COMMISSION ADJOURNED AT 4.43 P.M. TILL 9.30 A.M. THE FOLLOWING DAY