



**Submission by the  
Financial Rights Legal Centre**

NSW Independent Bushfire Inquiry

February 2020

---

17 April 2020

## About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Financial Rights took over 22,000 calls for advice or assistance during the 2018/2019 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to [www.financialrights.org.au/submission/](http://www.financialrights.org.au/submission/) or [www.financialrights.org.au/publication/](http://www.financialrights.org.au/publication/)

Or sign up to our E-flyer at [www.financialrights.org.au](http://www.financialrights.org.au)

National Debt Helpline 1800 007 007  
Credit and Debt Legal Advice 1800 844 949  
Insurance Law Service 1300 663 464  
Mob Strong Debt Help 1800 808 488

Monday – Friday 9.30am-4.30pm

## Introduction

---

Thank you for the opportunity to comment on New South Wales's preparedness for, and response to, natural disasters drawing on what many Australians experienced during the 2019-20 bushfire season. Financial Rights Legal Centre (Financial Rights) is a specialist community legal centre which operates the Insurance Law Service, a free service for individuals with insurance available across Australia, and one of the answer points for the National Debt Helpline. The service has advised dozens of NSW residents who were directly affected by bushfires between November 2019 and February 2020 and needed legal support regarding financial hardship or an insurance dispute. 85% of our national bushfire insurance services were based in NSW. We continue to get calls about bushfire insurance disputes in NSW as these types of legal problems can take months to develop.

Our service has also advised NSW consumers on bushfire-related financial services disputes in past bushfire seasons (2013 Warrumbungle National Park, 2014 Greater Blue Mountains), and the systemic issues that we will comment on below flow from years of experience dealing with these types of disputes.

This submission will focus primarily on personal insurance. Adequate personal insurance coverage for NSW residents will be critical for adapting to future bushfire risks and building resilience in our communities. This includes motor vehicle insurance as well as home and contents insurance. Adequate insurance means that insurance products need to be affordable as well as have suitable coverage for bushfire risks.

Our submissions address the following Terms of Reference:

TOR 7: Appropriate action to adapt to future bushfire risks to communities and ecosystems.

TOR 8: Emergency responses to bushfires, including overall human and capital resourcing; and

TOR 9: Coordination and collaboration by the NSW Government with the Australian Government, other state and territory governments and local governments.

## Summary of Recommendations

---

1. The NSW Government should support and advocate for reform to Commonwealth law to overhaul the standard cover regime and introduce standard definitions for insurance
2. The NSW Government should open up access to data sources to insurers and consumers to improve risk assessment and enhance the accuracy of rebuilding estimates.
3. The NSW Government should help develop up-to-date and independently reviewed insurance calculators for home, contents and motor vehicle sum insured estimates.

4. The NSW Government should require insurers in NSW to estimate an updated sum insured at renewal time, taking into account any known natural peril data and building code changes
5. NSW should require insurers selling home and contents policies to its residents to provide consumers more information and control over how home building claims are settled.
6. The Financial Rights Legal Centre recommends the NSW Government abolishes all taxes, stamp duties and emergency levies on home insurance premiums.
7. Alternatively, if stamp duties are maintained, the NSW Government should reduce their burden on consumers in higher risk areas by levying stamp duties for home and contents insurance with reference to the sum insured value rather than the premium level.
8. The NSW Government should remove the emergency services levy from insurance premiums and collect it via a property based model as has been done interstate and reinstate the ESL Monitor
9. The NSW Government should support changes to the Insurance Contracts Regulations to require that insurers clearly disclose the types of costs that will count towards the sum insured amount for buildings (such as demolition, debris removal or professional fees).
10. The NSW Government should implement measures to prompt consumers to investigate insurance costs when they are considering purchasing real estate.
11. The NSW government should fund an independent home resilience assessor which could sit within Resilience NSW.
12. The NSW government should work with Insurers to identify specific bushfire public mitigations works that could be undertaken and insurers should provide estimates of the premium reductions they anticipate should the works proceed.
13. NSW should implement a state-wide programme of grants and subsidies for individual mitigation works that can increase bushfire resilience for homes.
14. The NSW Government should assist in whatever way possible to ensure national regulators are able to collect data on:
  - a) Fire coverage opting out in bushfire prone areas (watch for a trend similar to flood opt-out rates in Northern Australia and in the Hawkesbury region);
  - b) Home and Contents insurance price hikes in bushfire prone areas (anything over 20% increase in one year);
  - c) Premium lapse rates over next few years – where are the hot spots indicating affordability problems; and
  - d) Cash settlement rates after bushfire events (this can be an indicator of underinsurance).
15. The NSW government should consider the role of insurance subsidies and planning laws in its long term disaster preparedness strategy.
16. One agency should be tasked with monitoring disaster preparedness and recovery, including monitoring:
  - a) the impact of any mitigation work on the price of insurance;
  - b) the impact of any changes in law or subsidies; and
  - c) the resulting availability and take up of suitable and affordable insurance cover.

17. There should be better co-ordination and communication with the public in relation to clean up and debris removal
18. State and local government data sets should be made available to insurers (and consumers) to enable more automated data collection and disclosure.
19. NSW should support and advocate for an effective component regime, or introduce such a measure in NSW.
20. The NSW Government should provide urgent and ongoing funding assistance to the Insurance Law Service at Financial Rights Legal Centre.
21. The NSW Government should provide urgent funding to community legal centres providing advice and assistance to NSW bushfire victims.
22. The NSW Government should coordinate with the Federal Government to provide predictable and stable funding for legal assistance providers who specialise in financial services work, such as credit, debt and insurance.

## TOR 7: Appropriate action to adapt to future bushfire risks to communities and ecosystems.

---

### **Suitability of insurance products**

Ensuring the NSW residents have adequate personal insurance in the next bushfire season means that insurance products need to be suitable. Insurance products that do not cover bushfire damage adequately, that exclude certain types of bushfire damage or exclude parts of a consumer's property will cause homeowners to be underinsured, even if they could have afforded adequate insurance.

Below we will discuss the following major reforms to insurance that we believe would help ensure that NSW residents in bushfire prone areas have access to suitable insurance cover:

- Introducing effective standard cover in insurance;
- Introducing standard definitions for fire coverage;
- Ensuring NSW residents have better access to sum insured information; and
- Requiring insurers in NSW to give consumers more information and control over how home building claims are settled.

### ***Standard Cover***

The *Insurance Contracts Act 1984* sets out standard cover for some general insurance products including home and contents insurance. The original vision for standard cover was one in which insurers could be free to market policies that offered less than standard cover provided that insurers would have to draw the insured's attention to that fact. The problem with the

implementation of this is that the *Insurance Contracts Act 1984* includes a “get out of gaol” clause stating that the standard cover regime:

*does not have effect where the insurer proves that, before the contract was entered into, the insurer clearly informed the insured in writing (whether by providing the insured with a document containing the provisions, or the relevant provisions, of the proposed contract or otherwise).*<sup>1</sup>

Sections 35 (and 37) of Division 1 of Part V of the *Insurance Contracts Act 1984* allow insurers to contract out of standard provisions so long as they merely provide a PDS. In other words, insurers don’t have to “draw the insured’s attention” to the fact that they are providing less than standard cover – they just describe the actual cover in the PDS and contract. In practice all insurers contract out of the provisions, rendering them pointless and consumers don’t know what is standard and what is not. Insurers therefore meet the letter but not the spirit of the regime. Very few people use a PDS in their pre-purchase decision making: the Insurance Council of Australia (“ICA”) reports only 2 in 10 people.<sup>2</sup>

Insurer advertisements also tend to obfuscate and rarely comprehensively capture the nuances of policies, presenting an image of insurance that is at best manipulative and at worst misleading. Consumers are consequently often left frustrated, angry and disappointed when their claims experience fails to live up to expectations.

The standard cover regime must be reformed to institute a more effective regime that ensures that consumers can more easily compare insurance products and decrease the possibility that consumers will end up with an unsuitable product.

In 2019, the Minister for Revenue and Financial Services tasked Treasury with developing proposals to improve consumers’ understanding and access to information through better transparency and enhanced disclosure practices in the general insurance sector –including consideration of the standard cover regime and the potential role of standard definitions.<sup>3</sup>

Financial Rights contributed to this consultation and put forward the following model for a genuine standard cover regime should include the following characteristics:

- a minimum set of core, default standards that meet community expectations below which insurers cannot fall;
- a complete set of standard definitions for every standard risk inclusion, exclusion and commonly used term;

---

<sup>1</sup> *Insurance Contracts Act 1984, Section 35*

<sup>2</sup> ICA, *Consumer Research on General Insurance Product Disclosures: Research findings report*, February, 2017, at page 18.

<sup>3</sup> Treasury, *Disclosure in General Insurance: Improving Consumer Understanding*, Discussion Paper, January 2019 <https://treasury.gov.au/consultation/c2019-t354736>

- a limited number of clearly defined levels of cover above basic, default standard cover which insurers can compete on, for example: basic default cover, premium cover and deluxe cover;
- an ability to cover specific risks in addition to that included in basic, premium or deluxe standards to ensure unique individual risks are insurable, if not available under standard cover;
- minimum amounts for some types of cover (for example public liability);
- a limit to the number of excesses able to be imposed;
- applied to all forms of general insurance including home buildings insurance and home contents insurance;
- legislated in accessible, plain English.<sup>4</sup>

Introducing an effective standard cover regime is not a panacea for underinsurance but it would:

- improve competition by allowing consumers to focus on value for money, rather than having to try to distinguish between a confusing array of different policies, and motivating insurers to compete on price and claims handling rather than cover; and
- ensure that all homeowners have suitable coverage for bushfire damage, and all of the associated types of damage (smoke, scorching, melting, etc.).

Homeowners should not be able to opt out of this coverage. Fire is a standard risk faced by all property owners and bushfire is only a sub-set of that risk.

This Inquiry should support these broader reforms to Federal law to assist NSW policyholders to obtain more suitable cover.

### **Standard definitions**

When introduced in 1984 the standard cover regime did not provide standard definitions. As outlined by Treasury the problems with this is that:

*Insurance contracts that are required to include the same terms and conditions may still deliver variable levels of coverage, if the terms of the contract do not rely on a standard definition. Inconsistent definitions between policies risk misleading consumers into thinking they have cover for certain events when they do not.*<sup>5</sup>

The Federal Government has introduced only one standard definition in insurance: flood. The circumstances leading to the development of a standard definition of flood is a good example of what occurs when there is a variation below the commonly understood definition of a term.

---

<sup>4</sup> Financial Rights submission to Treasury, Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, January 2019 [https://financialrights.org.au/wp-content/uploads/2019/03/190308\\_DisclosureReview\\_Submission\\_FINAL.pdf](https://financialrights.org.au/wp-content/uploads/2019/03/190308_DisclosureReview_Submission_FINAL.pdf)

<sup>5</sup> Page 16, Treasury, Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, January 2019 <https://treasury.gov.au/consultation/c2019-t354736>

The government was forced to intervene in the insurance market following the floods of 2011 and subsequent lack of coverage for many home owner policyholders. Flood cover is now included in home and contents insurance policies, with a common definition, but consumers have the choice to “opt out”.

Inconsistent definitions risk misleading consumers into thinking they have cover for certain events when in fact they do not. Nuanced differences in each and every term have material impacts upon their coverage. PDSs are long, complex and confusing documents and it is almost impossible for a consumer to appreciate these nuances and their impact and take them into consideration in their purchase decision. Consumer can subsequently find themselves paying for illusory insurance – insurance they believe they have when in reality they do not have it. Even when these differences do not turn out to be material, their existence simply adds to the general confusion which overwhelms people and makes them less likely to understand or engage with their policy documents in any meaningful way.

#### **For example, Fire and Explosions**

Taking a look at 28 definitions, while there may be some superficial similarities there are a large number of nuances (subtle or otherwise) that would all become material in a claim and/or dispute. To demonstrate the variety:

- One insurer refers to the presence of “mineral spirits”: Woolworth
- Three refer to the use of “irons”: Only Coles, QBE and Woolworths
- Seven refer to exclusions arising from the use of heaters: Apia, ANZ, Coles, QBE, RAA, Suncorp and Woolworths
- Five refer to “arcing”: Apia, ANZ, Coles, QBE, RAA, Suncorp and Woolworths
- Four refer to “grassfires”: Allianz, Budget Direct, CGU and ING
- Twelve insurers refer variously to cigarettes and/or cigars: AAMI, Allianz, Apia, Budget Direct, GIO, ING, RAA, RACT, Suncorp, Virgin Money, Woolworths.
- While underwritten by the same insurer (IAG) and having substantially the same terms, NRMA states that the policyholder is not covered for: “loss or damage which results from scorching or melting where there was no flame” while SGIO and SGIC state that the policyholder is not covered for “damage which results from scorching or melting when your home or contents did not catch fire.” Both of these seem on the surface to end up at the same result but have arguably different applications if deemed material at claims time.



*Source: Financial Rights Publication – Overwhelmed: An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making, September 2018*<sup>6</sup>

Most people would believe that if a fire occurs in a home that it would ordinarily be covered. But inconsistent definitions ensure that insurers are able to develop nuanced exclusions. A fire arising out of say the use of a heater will therefore be covered for some people and not others. This is a game of chance that randomly and unfairly impacts consumers who believe they are simply covered for a fire.

Inconsistent definitions also make comparison and evaluation at the time of purchase almost impossible.

#### Case study – Misha's story

In late 2019 Misha left the house with her six month old daughter and she left several bottles sterilising on the stove. When she returned home there was so much smoke she had to stay outside and two fire trucks came. When she lodged her claim the repair estimate was \$30,000. Many items would need to be replaced because Misha's daughter has health problems that could be exacerbated by the smoke. When the insurer realized how high the cost would be they got a second builder to do a report and then they called her to say they were rejecting her claim. The insurer's second report said the damage was caused only by smoke and there had been no flame, so Misha was not covered.

Misha had to organise a report herself from the fire crews that attended on the scene. The firemen's report stated that although they couldn't say they saw a flame it was beyond reasonable doubt that there had to be ignition at some point, simply based on their knowledge of the mechanics of fire. Misha also had to get a special report from her pediatrician about her daughter's medical condition and the need for items to be replaced not restored. After 3-4 months and advice from the Financial Rights Legal Centre Misha's claim was finally successful.

*Source: (C194449)*

In February 2020 Choice released a report called "How does your insurer define a fire?"<sup>7</sup> The Choice report found that "Fire cover" is a standard inclusion in home and contents insurance,

---

<sup>6</sup> Overwhelmed: An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making, September 2018. Financial Rights publication.  
[https://financialrights.org.au/wp-content/uploads/2018/09/180904\\_Overwhelmed\\_FINAL.pdf](https://financialrights.org.au/wp-content/uploads/2018/09/180904_Overwhelmed_FINAL.pdf)

<sup>7</sup> Andy Kollmorgen, *How does your insurer define a fire?* Choice.com.au. 6 February 2020. Available at: <https://www.choice.com.au/money/insurance/home-and-contents/articles/fire-definitions-by-insurers>

but what a consumer is covered for is defined in many different ways. A consumer might think they have a valid insurance claim from the Black Summer bushfires, but it will depend what policy they have whether they are covered for damage on property that was directly affected by bushfire or indirectly affected. Were there flames on the property? Was the damaged property just scorched, but not burnt to the ground? Did the consumer only suffer smoke damage? Was the home only partially burnt or were there valuable items that melted? This lack of standardised terms among insurers means claims can be open to interpretation, and can be very confusing to consumers.

As the ALRC stated in 1982:<sup>8</sup>

*No insured could possibly be expected to be aware of variations in the definitions of 'buildings' and contents' between different policies with different insurers, let alone different policies with the same insurer. The possible results of the interaction between such policies is a matter for legal interpretation. It is not a responsibility which can be cast on the insuring public.*

Despite the introduction of the standard cover regime, little has changed. Inconsistent definitions empower insurers to deviate from standard cover, community expectations and normative notions of how insurance products should respond to the risks people face. In other words, the ability to use inconsistent definitions is at the heart and centre of the confusopoly of the insurance market. This is essentially gaming the system and subtly subverting common sense concepts to benefit their bottom line through reduced claims payouts. This does not serve the interests of consumer or the community as a whole. Insurers should be required to set the limits of their risk appetite in ways that are clear and easily understood by their customers, rather than via a myriad of exceptions and incomprehensible distinctions.

Inconsistent definitions exacerbate the information asymmetry between the consumer and the insurer. The insurer, their actuaries and lawyers understand the nuances of a slightly different definitions of, for example, "fire and explosion", however consumers do not. Full disclosure with definitions spread across 100s of PDS pages only serves to confuse and prevent genuine understanding. Expecting consumers to read the multitude of PDSs, note, understand and compare each and every definition is at best unrealistic and at worst, the entire point of the business model.

The 2017 Senate Economic References report into General quoted consumer journalist John Rolfe in relation to the complexities involved in figuring out which is an appropriate product. He stated:

*If you are in any doubt [of] the need for change, try finding the best-value insurance for your own car. It will sap you of the will to live. It shouldn't be that way.<sup>9</sup>*

The quote led to the title of the Report: *Sapping the Will to Compare*.

---

<sup>8</sup> Para 59, ALRC Report 20, Insurance Contracts p.xxvi <http://www.alrc.gov.au/report-20>

<sup>9</sup> Senate Economics Reference Committee, Australia's general insurance industry: sapping consumers of the will to compare, 10 August 2017 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Generalinsurance/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/Report)

Taken as a whole, inconsistent definitions actively undermine the risk mitigation partnership between the consumer and the insurer and hand over all the power to the insurer.

Standardising definitions will:

- reduce consumer confusion regarding what is and what is not included in their insurance coverage;
- promote a shared understanding of each key element of coverage and improve financial literacy;
- decrease the chances of disappointment and poor outcomes for insureds at claims time;
- reduce the lottery that occurs at claims time, where a similar event can impact upon a group of similarly placed Australians – e.g. a neighbourhood subject to actions of the sea where only some are covered for an event they believed they would be covered for and others are not; and
- remove many of the difficulties faced by consumers in comparing and evaluating insurance products and making purchase decisions based on that work. If all definitions for key events are the same across all the products and they meet basic community expectations for that event, then there is little reason for the consumer to need to go through the thousands of pages of documents they would need to in order to compare product coverage.

This Inquiry should support national reform to introduce standard definitions in relation to all key risks covered by general insurance with home, contents and motor vehicle insurance as a priority.

### ***Sum insured information***

The NSW Government can also help ensure that consumers are nominating the right sum insured on their policies (home, contents and motor vehicles) by developing up-to-date and independently reviewed insurance calculators. Accurate sum insured calculators rely on many sources of data that the state government can help collect and share. NSW should open up local government data sets to insurers (and consumers) to enable more automated data collection and disclosure (for example: flood mapping, height, renovation data, vehicle salvage data, smash repair data, building code changes, etc). Ensuring that consumers take out the right amount of insurance will be critical to community resilience after a bushfire.

More work also needs to be done to understand the nature and type of information that insurers can give to consumers within the meaning of providing general financial advice (eg rebuilding costs, building valuations, natural peril data). The NSW Government could engage with ASIC to gain a clearer understanding about the nature and type of information insurers can give to consumers. This would ensure that insurers are not refraining from providing general information about rebuilding costs and building valuations. In July 2019 the NSW ESL Monitor started requiring insurers in NSW to disclose the previous year's insurance premium on all

renewal notices.<sup>10</sup> NSW could now go even further and require insurers to estimate an updated sum insured at renewal time, taking into account any known natural peril data and building code changes. This is one of the recommendations that the Australian Competition and Consumer Commission (ACCC) has made in its Northern Australia Insurance Inquiry. The ACCC explains:

*“The estimate should note when the information used by the insurer to form the estimate was last updated by the consumer, and direct the consumer to contact the insurer if renovations/alterations to their home have occurred since then. Where the sum insured estimate is materially higher than provided for under the policy, the renewal notice should also include a warning to the customer about the dangers of their property being underinsured.”<sup>11</sup>*

**All case study names have been changed.**

#### Case study – Angelo’s story

Angelo lost his home to a bushfire in November and he has found out he is underinsured by over \$300,000. Angelo selected the sum insured himself and concedes the insurer did not misrepresent his level of cover he would need, but he did not understand how underinsured he would be if the whole house was destroyed.

At the time Angelo called the Insurance Law Service he had just been told by his insurer that while he has debris removal cover, the cost of this will be taken out of his sum insured, leaving him even more underinsured when it comes to rebuilding. While the government later announced that it was working with insurer’s to cover the clean-up we don’t know whether this came too late for Angelo.

Source: (C197393)

#### Case study – Richard’s story

Our client Richard and his wife Emily’s home and all infrastructure on the property was destroyed in a firestorm in January 2020. They managed to get out of the house five minutes before the fire hit, and had previously been evacuated from their property five times. They are concerned that they are underinsured, and that a rebuild would be too

---

<sup>10</sup> Media Release: *Win for consumers as NSW Regulator requires insurers to display previous year’s premium on all renewal notices*, 26 June 2019.

[https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/Final\\_MR\\_YOY\\_June2019.pdf](https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/Final_MR_YOY_June2019.pdf)

<sup>11</sup> ACCC, Northern Australia Insurance Inquiry, Second Updated Report. July 2019. Recommendation 16. Available at:

<https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20Second%20Update%20Report.pdf>

expensive, and they want the option of taking a cash settlement that would allow them to move to another area. The assessor that the insurer sent estimated that because they live in a bushfire-prone area, it would cost at least \$200,000 more than they were insured for to rebuild to the same standard and meet current fire safety regulations.

*Source: (C201209)*

### Case study – Shiva’s story

Shiva’s house was destroyed in a bushfire and needs to be completely rebuilt, but her insurer is telling her that she is over-insured, and even though she has been paying what the insurer’s calculator recommended they are not going to spend that much on the rebuild. She been paying inflated premiums for years based on her insurer’s calculator and is very dissatisfied that they plan to rebuild for less than her sum insured.

*Source: (C201169)*

### Case study – Tony’s story

Tony’s house burned down on 31 December 2019 and he has received a cash payout, but he is underinsured by over \$200,000 and won’t be able to rebuild. He was never offered the option by his insurer to upgrade his policy, which would include a safety net of 25% additional cover, and he wants to raise a dispute with his insurer about whether he should be able to upgrade his policy retrospectively.

*Source: (C201208)*

---

## Recommendations

---

1. The NSW Government should support and advocate for reform to Commonwealth law to overhaul the standard cover regime and introduce standard definitions for insurance
2. The NSW Government should open up access to data sources to insurers and consumers to improve risk assessment and enhance the accuracy of rebuilding estimates.
3. The NSW Government should help develop up-to-date and independently reviewed insurance calculators for home, contents and motor vehicle sum insured estimates.

4. The NSW Government should require insurers in NSW to estimate an updated sum insured at renewal time, taking into account any known natural peril data and building code changes.
- 

### **Claims handling and cash settlements**

Financial Rights recommends that insurers be required to give consumers more information and control over how home building claims are settled. In its Northern Australia Insurance Inquiry the ACCC recommended that insurers provide a plain English document setting out matters the consumer should consider to help them make an informed decision about cash settling their insurance claim, information about talking to their mortgage lender about the implications of cash settling, and an explanation that the insurer is able to obtain lower rebuilding costs than consumer is able to achieve and consumer should obtain independent quotes for rebuilding before making a decision.

We note that the Federal Government is currently working to introduce a requirement that aligns with this recommendation. Under the Exposure Draft for the *Financial Sector Reform (Hayne Royal 4 Commission Response—Protecting 5 Consumers (2020 Measures)) Bill 2020: claims handling*, item 12, introduces sections 948B to 948D to require claims handlers and settlers to give a Statement of Claim Settlement Options at the time an offer to cash settle all or part of an insurance claim, instead of repairing or replacing the insured item.

The reasons that a Statement of Claim Settlement Options needs to be provided in general insurance claims are well established:

- Cash settlements offered to consumers are too low: Cash settlements are being offered by insurers for the amount that the insurer could engage a builder to repair the property not the amount that a consumer is able to engage a builder undertake repairs to a property. There is no recognition of the commercial bargaining power advantage of the insurer for cash settlement amounts being paid by insurers.
- Consumers underestimate the impact increased demand, for builder and other trade services subsequent to a natural disaster, has on the prices quoted and charged as well as the difficulties in engaging qualified repairers quickly after a natural disaster;
- Consumers are asking for cash settlements without understanding critical issues such as that the repairs will not have the same insurer guarantees concerning the quality of the repairs;
- Consumers can lose the benefit of lifetime repair guarantees offered by insurers when they agree to a cash settlement;
- There is a perception in the community that insurers are using cash settlements as a means of getting rid of more difficult complaints when there is a dispute over the scope of works;
- Cash settlements are a problem where the consumer has a mortgage on the property. Where there is a mortgage on the property, the mortgagee is entitled to receive the insurance payout and then approve any repairs done on the property. Where the lender

does not consider the customer has the capacity to repay the loan, they may not release the funds;

- Consumers find an insurers' IDR process difficult to deal with and will consider cash settlements purely so that they do not have to continue what they view as the battle with their insurer;
- Consumers find it difficult to project manage complex repair projects following a cash settlement or underestimate the time and complexity and do not take into consideration the cost of hiring a building manager;
- Consumers do not always obtain their own quotes before accepting cash settlements. The problem with this is that they have no conception of whether the amount being offered by the insurer is appropriate; and
- Consumers who accept cash settlements are at risk of spending the money on other debts and expenses rather than rebuilding, with possible negative effects on their personal financial resilience, and that of the rural communities in which they live (or previously lived).

Problems with cash settlement practices have also been well documented in the TAL and AAI case studies in Module 6 during the Financial Services Royal Commission as well as the ACCC Northern Australia Insurance Inquiry.

**All case study names have been changed.**

#### Case study – Wade's story

Wade lost his home to a bushfire on 31 December 2019 and his insurer has offered him a cash settlement. Wade is happy with the settlement amount but he is worried about signing a release. He called Financial Rights because he needs some legal advice and the insurer won't give him much information.

*Source: (C200121)*

#### Case study – Randell's story

Randell lost his home in a bushfire but he does not want to rebuild. He would rather move back closer to his family, but his insurer wants to rebuild. The insurer says it will cost less than his sum insured to rebuild so they are not going to cash settle. Randell doesn't know what his rights are to negotiate.

*Source: (C200237)*

### Case study – Lucia’s story

Lucia’s home burned down in January and she is not sure what type of policy she has or whether it includes a safety net amount. She did not have her policy documents and her insurer offered her a cash settlement amount. Lucia has no record of whether they had a regular policy or a more comprehensive policy which included safety net coverage. Lucia is also worried about debris removal as her home has asbestos. The insurer is not giving her any advice.

*Source: (C200194)*

### Case study – Shayna’s story

Shayna’s house burned down in the recent bushfires. Her insurer wants to offer her a cash settlement, but she has lots of questions first. She’s worried about being pressured into a making a rushed decision that she’s not sure about. Why can’t they rebuild her house? Why does the cost of a temporary fence around her property have to come out of her sum insured? Will she need to go to the NSW Government directly to get her debris removed or will the insurer organise it? Can her insurer just put the money in her account before she has given them permission?

*Source: (C200689)*

---

## Recommendations

---

5. NSW should require insurers selling home and contents policies to its residents to provide consumers more information and control over how home building claims are settled.
- 

### Affordability of insurance products

Insurance affordability will be key for NSW community resilience and there are critical actions that NSW can take to ensure it adapts to future bushfire risks to communities. If homeowners cannot afford to rebuild then they will be forced to leave the community. Financial Rights has spoken with consumers that will be unable to rebuild their homes after the 2019-2020 bushfires both because they did not have any insurance, and because they were underinsured. Australian



insurance markets are currently very hard, and underinsurance will likely increase as markets adjust to the Black Summer events. Insurance brokers looking at the 2020 insurance market predict:

*“property risks in the high hazard category will in the short term continue to face double digit increases in the main, excesses increased over the past two years will not be reduced and expect nominated peril excesses such as Fire to experience a further increase.”<sup>12</sup>*

**All case study names have been changed.**

#### Case study –Nabila’s story

In January 2020 Nabila called Financial Rights because she was surrounded by bushland with fires all around her. She is currently struggling with about \$100,000 in various debts and has no insurance on her property. Both of her children have special needs. She is trying to get access to her superannuation to deal with her debts and purchase home insurance.

Source: (C199139)

#### Case study –Kaleb’s story

Kaleb is uninsured and lost almost everything in a bushfire, he was unable to get insurance to cover the businesses assets due to premium prices and the nature of the goods. Kaleb is a single dad of six kids under 15 and shares custody with his ex-partner. Now his debts are overwhelming him, threatening his home. He needs help getting some breathing space to get his business up and running again but he already has a creditor pressuring him to wind things up.

Source: (C199637)

#### Case study –Jenny’s story

Jenny needs advice on getting access to emergency funds to pay for repairs to her property after a bushfire. She was uninsured and needs to fix her dams, pumps and feed her animals. Jenny was trying to get early access to her super to pay for some urgent

---

<sup>12</sup> The Insurance Market 2020: <https://scottwinton.com.au/the-insurance-market-2020/>

repairs to her property after a bushfire, and to help her pay for animal feed, but she has been denied early access because she is working and not eligible. Jenny is not a farmer or primary producer so she is not entitled to any drought relief. Jenny is behind on her energy bills and has been threatened with disconnection.

*Source: (C199650)*

#### **Case study –Kate and Warren’s story**

Kate and Warren are in financial hardship after droughts, bushfires and then floods all affected their property within the space of a few months. They have just defaulted on their home loan and need urgent help quickly. They have insurance for some fire damage to their fences but they cannot afford to pay the excess.

*Source: (C201334)*

#### **Taxes, Levies and Stamp Duty**

The first thing the NSW government could do to address affordability of personal insurance is remove NSW taxes/stamp duty on home insurance or re-base it to sum insured amounts instead of premium levels.

The NSW Government initially move to shift the funding of NSW's emergency services from an insurance-based model to a property-based model by 1 July 2017. However, this reform was deferred and the insurance-based funding scheme transitioned back to an insurance based model in 2019. The NSW Emergency Services Levy Monitor’s office will cease on 30 June 2020 when the Emergency Services Levy Insurance Monitor Act is repealed.

The government has put forward the following reasons for this deferral:

*This has been done to ensure property owners - especially small to medium businesses - do not face an unreasonable burden in their contribution to the State’s fire and emergency services.*

*In the majority of cases across NSW, fully insured people would be better off under the new system.*

*However it had become clear that some fully insured businesses were facing unintended consequences. The Government has listened to the concerns of the community and will take the time to get this reform right.<sup>13</sup>*

---

<sup>13</sup> <https://www.treasury.nsw.gov.au/projects-initiatives/fire-and-emergency-services-levy>

Financial Rights continues to support the moving of the funding of NSW's emergency services from an insurance-based model to a property-based model. We continue to do so for the same clear reasons put forward by Gladys Berejiklian and the NSW Government in 2015:

*"Fire does not discriminate and the community rightly expects that firefighting and SES services will be available to everyone in their time of need. It is also fair to expect all property owners to pay their share for these vital services....This fairer model for funding fire and emergency services will reduce the cost of insurance and encourage more people to insure their properties."*<sup>14</sup>

The ACCC has also recommended governments abolish stamp duty on home, contents and strata insurance products as a means of addressing affordability issues in its ongoing Northern Australia Insurance Inquiry. The ACCC states that:

*it has been widely acknowledged that stamp duties on insurance contracts are an inefficient form of taxation."*<sup>15</sup>

Other previous reviews have also advocated for the abolishment of stamp duty on insurance contracts. For example, the Review of Australia's Future Tax System (also known as the 'Henry review') said:

*'all specific taxes on insurance products, including the fire services levy, should be abolished.'*<sup>16</sup>

As an alternative to removing stamp duties and levies on insurance, the ACCC recommends reducing the burden of these levies on consumers in higher risk areas by levying stamp duties for home, contents and strata insurance with reference to the sum insured value, rather than the premium level. Calculating the stamp duty by reference to the premium rather than the property value means that people in higher risk areas are charged a higher amount for insurance to reflect the extra risk, and they pay an inflated stamp duty amount on that premium as a result. This is a windfall gain for the state government. The ACCC also recommends that governments should direct a portion of revenue from stamp duties on insurance products towards measures to improve affordability for low income consumers or to fund mitigation works.<sup>17</sup>

While the ACCC recommendations were made in the context of increasing insurance premiums in Northern Australia due to flood and cyclone risk, these issues are now clearly pertinent

---

<sup>14</sup> Media Release - Minister for Emergency Services, *NSW moves to a fairer system for funding fire and emergency services*, 10 December 2015, <https://www.eslinsurancemonitor.nsw.gov.au/nsw-moves-fairer-system-funding-fire-and-emergency-services>

<sup>15</sup> ACCC, Northern Australia Insurance Inquiry, First interim report. November 2018. Recommendation 1. Available at: <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

<sup>16</sup> Australia's future tax system: Final Report, Part 2: Detailed analysis, Chapter E: Enhancing social and market outcomes, 2 May 2010, p. 474.

<sup>17</sup> ACCC, Northern Australia Insurance Inquiry, First interim report. November 2018. Recommendation 2. Available at: <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

Australia wide as the impacts of climate change bring catastrophic fire and storm conditions across the entire country. The NSW government should not receive a windfall gain from the growth of insurance premiums in high risk areas after the Black Summer bushfires. Any recouping of costs to cover emergency services should be shared by the community fairly via a direct levy on property as mentioned above, rather than by unnecessarily inflating the costs of purchasing adequate insurance.

### ***Additional affordability measures***

The ACCC has also recommended additional measures that the NSW Government could enact which would assist with underinsurance problems after major bushfire disasters. The first is to ensure that insurance providers disclose costs that count towards 'sum insured' – like debris-removal, demolition or professional fees where these are not provided for through a separate allowance under the policy. This will help consumers make more informed decisions about their nominated sum insured. This information should also be listed on any quotes for new policies, renewal notices and on their certificates of insurance.

Another measure that NSW could take is to prompt consumers to consider likely insurance costs before purchasing real estate. Consumers should be prompted to obtain an insurance estimate as part of their due diligence, which would help to dissuade homebuyers from purchasing properties where they will not be able to afford adequate annual insurance. This applies to insurance coverage for all kinds of natural disasters, not just bushfire. If home insurance policies are better standardised than the estimated insurance cost could be listed in a statutory information disclosure for a real estate transaction. NSW would need to take steps to ensure that vendors are unable to receive payment for the inclusion of an insurance quote in the disclosure documents.

### ***All case study names have been changed.***

#### **Case study – Tom's story**

Tom's house flooded in the heavy rains in Sydney in early February 2020. Water from a nearby river overflowed and came in from under the house went up 1.8m high. Tom's insurer has refused his claim on basis he's not covered for flood damage. Tom knows he doesn't have flood coverage, he removed it from his policy last year to reduce his premiums. Flood coverage was going to be \$8000. Tom's big problem is that several trees on the street fell and brought down electricity wires onto his street. Tom spoke to Ausgrid and they said it's not their responsibility. A tree also fell in his backyard knocking down his fence which his insurer has also refused to fix.

*Source: (C201658)*

---

## Recommendations

---

6. The Financial Rights Legal Centre recommends the NSW Government abolishes all taxes, stamp duties and emergency levies on home insurance premiums.
  7. Alternatively, if stamp duties are maintained, the NSW Government should reduce their burden on consumers in higher risk areas by levying stamp duties for home and contents insurance with reference to the sum insured value rather than the premium level.
  8. The NSW Government should remove the emergency services levy from insurance premiums and collect it via a property based model as has been done interstate and reinstate the ESL Monitor
  9. The NSW Government should support changes to the Insurance Contracts Regulations to require that insurers clearly disclose the types of costs that will count towards the sum insured amount for buildings (such as demolition, debris removal or professional fees).
  10. The NSW Government should implement measures to prompt consumers to investigate insurance costs when they are considering purchasing real estate.
- 

## Mitigation and adaptation

Financial Rights has supported mitigation and adaptation strategies as a means of addressing insurance affordability by reducing risk for many years. We submitted evidence-based recommendations and policy proposals regarding mitigation works in all of the following inquiries:

- 2014 Treasury consultation into Addressing the high cost of home and strata title insurance in North Queensland;
- 2014 reviewed and commented on a draft form of the North Queensland Home Insurance website;
- 2015 Inquiry conducted by the Northern Australia Insurance Premiums Taskforce; and
- 2017 ACCC Northern Australia Insurance Inquiry (multiple submissions).

Insurance availability and affordability in Australia is being dramatically affected by the increasing prevalence and financial impact of natural disasters. In its 2019 submission to the ACCC Northern Australia Insurance inquiry, the Australian Prudential Regulatory Authority (APRA) succinctly explained:

*To remain prudentially sound and financially viable, insurers need to set premiums that accurately reflect the risk and recoup costs over time. Pressure to reduce premiums, without a commensurate reduction in the underlying risk, will weaken the prudential strength of insurers and may see insurers choose not to offer insurance in high-risk areas or ultimately exit the market.*

*Improvements in data and technology enable insurers to price premiums to more accurately reflect risk. Such risk segmentation sends better price signals to policyholders but also exacerbates affordability challenges for higher risk policyholders. Measures which assist consumers to understand their risk exposure will provide better incentives for actions to lower their risk exposure and should thereby enable reduced premiums.<sup>18</sup>*

If consumers are encouraged to undertake individual mitigation works and local and state governments undertake larger community-wide mitigation works, then the cost of insurance products should come down.

Financial Rights submits that the following risk mitigation actions will be critical for NSW to adapt to future bushfire risks to communities:

- Create and fund an independent resilience assessor;
- Invest in large-scale mitigation projects;
- Develop a program of grants and subsidies for household mitigation projects;
- Investigate carefully designed subsidies, linked to long term mitigation measures and planning law changes; and
- Monitor insurance pricing, suitability, affordability and take-up.

#### ***Independent resilience assessor***

One of the biggest problems Financial Rights hears about from consumers considering whether or not to make alterations to their homes in order to reduce the risk of natural disaster damage is that there is no guarantee that their insurance premiums will come down.

There is currently has no mechanism to review the accuracy of premium calculations, which is of significant detriment to consumers. This failure means there is no guarantee that any household mitigation strategies or idiosyncratic household conditions are taken into account when determining premiums. Consequently, premium prices cannot be said to be an “accurate” signaling of risk as there is no contestability or transparency in their calculation.

If an independent resilience assessor or a robust dispute mechanism was in place creating greater transparency and contestability of premium pricing, Financial Rights expects the following benefits to arise:

- a) consumers may be persuaded they are at risk, and decide to incur the cost to insure;
- b) consumers may undertake personal mitigation strategies; or
- c) consumers may band together to lobby local government for local mitigation strategies.

---

<sup>18</sup> Australian Prudential Regulatory Authority, SUBMISSION – NORTHERN AUSTRALIA INSURANCE INQUIRY SECOND UPDATE REPORT, September 2019. Available at: [https://www.apra.gov.au/sites/default/files/submission\\_-\\_northern\\_australia\\_insurance\\_inquiry\\_second\\_update\\_report\\_september\\_2019.pdf](https://www.apra.gov.au/sites/default/files/submission_-_northern_australia_insurance_inquiry_second_update_report_september_2019.pdf)

Homeowners will only be incentivised to undertake mitigation projects on their own properties if there is a corresponding reduction in premiums. Insurers may also want verification of the efficacy of mitigation works before reducing premiums. This could be resolved by having post-mitigation premiums be subject to some independent review. Currently there is no independent or regulatory mechanism for homeowners to contest post-mitigation premiums. NSW needs an independent inspection process to determine the vulnerability of a property to bushfires and other natural disaster damage, give information to consumers about what mitigation action they might undertake, and provide verification to insurers and local councils of all mitigation action that a property owner has completed. If an insurer refuses to recognise mitigation strategies undertaken by a homeowner by lowering premium, or does not lower premiums enough there should be a way for that homeowner to lodge an independent dispute.

The NSW government should fund an independent home resilience assessor (Resilience Assessor). The NSW Resilience Assessor should be able to assess properties that need bushfire-resistance upgrades, provide independent advice about possible mitigation works to the homeowner and produce independent post-mitigation reports that homeowners can give to insurers to lock in premium reductions.

A good example of an independent organisation doing this type of work around bushfire resilience is the Bushfire Building Council of Australia (BBCA).<sup>[1]</sup> The BBCCA is a national, independent, not-for-profit organisation that strives to improve community resilience through innovative building solutions and community-wide resilience projects. They are a network of; bushfire scientists, fire safety engineers, bushfire architects, community risk management specialists, bushfire behaviour experts, materials chemists and policy and regulatory experts. The BBCCA provides community risk assessments and resilience solutions.

A NSW-funded Resilience Assessor could sit within the newly announced Resilience NSW agency and conduct similar assessments to the BBCCA. A Resilience Assessor could also produce formal independent reports for homeowners which could be used to dispute an inflated premium calculation or could provide suggestions to homeowners on resilience solutions.

Resilience NSW should use the Resilience Assessor to help coordinate all aspects of disaster preparedness and recovery, including monitoring:

- the impact of any mitigation work on the price of insurance;
- the impact of any changes in law or subsidies; and
- the resulting availability and take up of suitable and affordable insurance cover.

All this should be done with a view to changing policy settings that prove ineffective.

### ***NSW Emergency Services Levy Monitor***

NSW should also consider reinstating the NSW Emergency Services Levy Monitor (**ESL Monitor**). Financial Rights strongly supports the work of the ESL Monitor and its published reports into insurance pricing in NSW. The ability for the ESL Monitor to collect and analyse

---

<sup>[1]</sup> <https://www.bbca.org.au/>

pricing data has been vital work to ensure that there is no serious consumer harm arising out of pricing practices and potential exploitation. It is disappointing that such critical regulatory examination only took place within the context of the removal (and subsequent reinstatement of) the Emergency Services Levy, and that the ESL Monitor has now been disbanded.

From 2016-2019 the ELS Monitor's work and the Industry's positive engagement has served to improve transparency, increase financial literacy and potentially improve consumer outcomes. Not only do we continue to support the removal of the ESL from home insurance and the reinstatement of the ESL Monitor, but there are strong grounds for the Monitor's remit to be extended beyond the monitoring of the ultimate removal of the levy. Ideally the monitor's functions should be a permanent fixture of the NSW regulatory landscape, be it in as an ongoing stand-alone insurance pricing monitor or a clearly identified role within the Department of Fair Trading. Alternatively, ongoing examination of insurance pricing practices should be taken up at a national level by the ACCC, ASIC or APRA.

Insurers should welcome greater scrutiny with respect to pricing practices. Such scrutiny will lead to improvements in competition, transparency and reputation to an industry whose current image has been severely tarnished by poor behavior and ongoing scandals, as recently highlighted by the 2018 Royal Commission into Financial Services.

### ***Large-scale mitigation projects***

Financial Rights also supports major NSW investment in large-scale resilience, mitigation and adaptation projects. Large scale mitigation works can bring risk down at the suburb level, benefiting a wider community than just an individual homeowner. The NSW government should work with Insurers to identify specific bushfire public mitigations works that could be undertaken and insurers should provide estimates of the premium reductions they anticipate should the works proceed.

An independent NSW Resilience Assessor could also make recommendations to the NSW government and local councils on large-scale mitigation opportunities to reduce bushfire risk.

### ***Grants and subsidies for mitigation works***

NSW should implement a state-wide programme of grants and subsidies for individual mitigation works that can increase bushfire resilience for homes, including non-combustible roofing, decking, window-framing materials.

The majority of properties in bushfire prone regions in Australia were built prior to bushfire building standards introduced in 1991. Homes built to bushfire construction standards can have fatal flaws, such as combustible fuels within 10m, including on neighbouring properties; non-compliance with building standards and poor maintenance.<sup>19</sup> These properties need urgent upgrades and resilience improvements, but it is unlikely that homeowners will be able to afford to undertake such works without government assistance.

---

<sup>19</sup> Bushfire Building Council of Australia; <https://www.bbca.org.au/property/>



According to APRA Executive Board Member Geoff Summerhayes, in Australia

*“Hundreds of millions of dollars each year are spent on disaster funding but about 97 per cent goes towards clean-up and recovery, with only 3 per cent directed to mitigation and prevention. Addressing this imbalance will save money in the long-term by reducing the physical loss and economic disruption caused by storms, floods, cyclones and bushfires.”<sup>20</sup>*

NSW should take immediate action to address the imbalance of money spent on bushfire clean-up and recovery vs money spent on mitigation efforts and building resilience in communities before the next bushfire season.

### ***Insurance Premium Subsidies and Planning Laws***

The ACCC Northern Australia Insurance Inquiry, which is due to continue for another year, has so far not backed any form of subsidisation of insurance premiums in high-risk areas or a government-backed reinsurance pool which would have a similar effect. The inquiry argues that these measures would only mask risk, rather than incentivise real action to address those risks. In other words, if we mitigate the risks of extreme events, and change planning laws to stop people living in the highest risk locations, insurance premiums should automatically reduce and people will be able to afford suitable insurance. This is also the line taken by most insurers, but it is one that needs to be re-examined in the light of the recent back-to-back run of extreme weather events affecting large swathes of the most populated areas of the country.

Of course risk mitigation is essential, including addressing the root causes of climate change. However, is it realistic to mitigate all risk and is it fair to make individual property owners bear the cost of decades of unsustainable development? Are the goals of retreating from higher risk locations consistent with other public policy objectives like facilitating thriving cultural and economic hubs outside our major and increasingly crowded cities? How do we balance pricing (and therefore signalling) risk accurately with pooling risk, so that the cost is shared more fairly across the population? And perhaps most pertinent, do we want to continue to spend billions of public and private dollars after an extreme weather event to fill the gaps left by un-insurance and under-insurance, when we could probably spend those dollars more fruitfully pursuing sensible policies to both mitigate risk and improve our resilience when those risks become our lived experience?

This inquiry should be prepared to re-open these questions and consider whether carefully designed subsidies, linked to long term mitigation measures and planning law changes, might still be preferable to wide scale underinsurance or an exodus of our population from some of our regional areas.

---

<sup>20</sup> APRA Executive Board Member Geoff Summerhayes, Media Release: *APRA urges greater investment in mitigation to improve insurance affordability in northern Australia*, 24 September 2019. Available at: <https://www.apra.gov.au/news-and-publications/apra-urges-greater-investment-mitigation-to-improve-insurance-affordability>

### **Monitoring insurance pricing, suitability, affordability and take-up**

Insurers have much to offer policy makers in terms of risk assessment, disaster preparedness planning, climate change modelling and adaptation. This input should be welcomed and heeded. It does not follow that this is enough, or that we should accept on faith that if governments pour dollars into mitigation, lower premiums will automatically follow, and people will develop an overnight awareness of the amount of the cover they need, and the ability and willingness to pay for it.

Regulators will need to play an important role in tracking home and contents insurance rates after the Black Summer. NSW must assume that areas hit hard by recent bushfires will be subject to an adjustment of reinsurance rates and a subsequent increase in insurance premiums for homeowners. Regulators will need to closely track:

- Fire coverage opting out in bushfire prone areas (watch for a trend similar to flood opt-out rates in Northern Australia and in the Hawkesbury region);
- Home and Contents insurance price hikes in bushfire prone areas (anything over 20% increase in one year);
- Premium lapse rates over next few years – where are the hot spots indicating affordability problems; and
- Cash settlement rates after bushfire events (this can be an indicator of underinsurance).

These datasets will be good indicators of bushfire insurance hotspots where there may be communities with high rates of underinsurance or uninsurable homes. If large parts of a NSW community are underinsured or uninsurable this will dramatically affect a community's ability to bounce back after another fire.

The NSW ESL Monitor has the expertise that would assist in this process and should be reinstated with an expanded remit to examine and monitor the above issues, or their role could form part of another agency as suggested below. They should work with Federal regulators such as APRA and ASIC on collecting the data required.

We are not aware of insurer's allowing customers to opt out of fire cover (or bushfire cover in particular). If they were to do so, NSW should consider whether to prohibit an insurer's ability to allow consumers to opt-out of bushfire coverage. Allowing a consumer to opt out of a certain category of risk can make a home policy much more affordable, but it also leaves them terribly exposed to a risk that we now know is increasing in likelihood and severity. It also inevitably shifts the costs of rebuilding and recovery back onto the government and community.

**All case study names have been changed.**

#### **Case study –Gerard's story**

Gerard is trying to renew his home insurance but his new quote has gone up 50%. Gerard's insurer says this is because he is in a bushfire danger area, but the closest

bushfire over the summer was 40km away. When Gerard inquires with other insurers their premiums are even higher. His insurer says he can increase his excess from \$1000 to \$5000 and it might reduce his premiums by \$100-\$200 but even that is not guaranteed. What can he do? It feels like insurers are just taking advantage of the bushfires to rob their customers.

*Source: (C203201)*

### Case study – Trevor’s story

Our client Trevor was referred to us by Service NSW and is building a house in a bushfire-prone area and finding it difficult to get someone to insure him. He is in the middle of building his home and his current owner/builder insurance expires in a few weeks. Trevor has been trying to find alternative insurance – he’s tried the Insurance Council and brokers – but has been told there is an embargo on insurance for his area because it’s bushfire-prone, and also been told he can’t get insurance due to how long his build is taking.

*Source: (C201155)*

---

## Recommendations

---

11. The NSW government should fund an independent home resilience assessor which could sit within Resilience NSW.
12. The NSW government should work with Insurers to identify specific bushfire public mitigations works that could be undertaken and insurers should provide estimates of the premium reductions they anticipate should the works proceed.
13. NSW should implement a state-wide programme of grants and subsidies for individual mitigation works that can increase bushfire resilience for homes.
14. The NSW Government should assist in whatever way possible to ensure national regulators are able to collect data on:
  - (a) Fire coverage opting out in bushfire prone areas (watch for a trend similar to flood opt-out rates in Northern Australia and in the Hawkesbury region);
  - (b) Home and Contents insurance price hikes in bushfire prone areas (anything over 20% increase in one year);
  - (c) Premium lapse rates over next few years – where are the hot spots indicating affordability problems; and

- (d) Cash settlement rates after bushfire events (this can be an indicator of underinsurance).
15. The NSW government should consider the role of insurance subsidies and planning laws in its long term disaster preparedness strategy.
  16. One agency should be tasked with monitoring disaster preparedness and recovery, including monitoring:
    - the impact of any mitigation work on the price of insurance;
    - the impact of any changes in law or subsidies; and
    - the resulting availability and take up of suitable and affordable insurance cover.

---

## TOR 9: Coordination and collaboration by the NSW Government with the Australian Government, other state and territory governments and local governments.

---

### Government clean up and recovery assistance

The NSW Government should be commended for coordinating the clean-up of residential and commercial properties destroyed by bush fires in the Black Summer bushfire season, at no cost to homeowners. This coordinated effort has been really critical in trying to help homeowners with underinsurance. Not all insurance policies include debris removal as an extra benefit, many simply require the homeowner to deduct the cost (upwards of \$50,000) from their sum insured.

However, communication about the plans and timing for debris-removal have been poor for some of our clients. We have heard from bushfire victims whose insurers are delaying repairs because they are waiting on Government clean-up crews. Information to homeowners about who is responsible for this clean-up or what the timeframes are have been poor. It has also been unclear if insurers are allowed to refuse to pay for individual debris-removal even if it is an entitlement under the policy and consumer opts to not wait for the NSW Government clean-up.

*All case study names have been changed.*

#### Case study – Frank’s story

Frank’s house burned down in a bushfire. His home insurance policy included an entitlement to debris clean-up on top of his sum insured but he is getting a lot of confusing messages about clean-up. The Government has agreed to pay for debris clean-up but his insurer is not passing on the savings to him. He has asked his insurer if he is going to get the value of the clean-up added back into his sum insured but he was told no.

*Source: (C202389)*

### Case study – Pam’s story

Several sheds and outbuildings on Pam’s property were damaged in recent bushfires, but she has not made a total loss claim since the main house was saved. Pam has also made a significant contents claim due to smoke damage. Pam’s insurer that will not be doing the debris removal even though her policy says she is covered for it. Her insurer has asked her to sign up with service NSW for removal. Pam’s insurer is saying that it will not pass the government clean-up money on to her.

*Source: (C202530)*

Financial Rights submits that there are likely other forms of coordinated NSW and local government assistance that could help with underinsurance. These types of assistance could include, for example, government-funded accommodation for construction workers who are rebuilding homes in rural areas, and government-funded and coordinated deliveries of bushfire resilient building materials for home rebuilds. When the NSW government steps in and funds common rebuilding costs this takes the pressure off homeowners that might be underinsured. Even if a homeowner has insured for a reasonable sum insured level for events affecting their home only, costs rise considerably after a natural disaster affecting many properties and a homeowner might find themselves underinsured anyway.

### Information and data tracking

General insurance (including home and contents insurance) has always relied on public and private data to identify and measure risk. Insurance is essentially the transfer of a risk, for a price (the premium), from a consumer to an insurer. That risk transfer must be based on an understanding and costing of the risk being insured. That involves information and data – information on say the type of materials used in a house, the position of the house in relation to a flood plain, or to bushfire prone areas. With the influx and availability of more and more data, insurers are now able to calculate risk at a finer granularity based on personal characteristics of policyholders, locale, attributes of their home and other information

The Productivity Commission, in its report on natural disaster management in 2014<sup>21</sup> highlighted the importance of data for mitigating the impacts of natural disasters. This report noted that detailed data on natural hazards is an essential element of improving land use planning and better managing the risks of natural disasters, and that such data could also help households to make better decisions about where to build.

---

<sup>21</sup> Productivity Commission Inquiry Report, Natural Disaster Funding Arrangements No. 74, 17 December 2014 <https://www.pc.gov.au/inquiries/completed/disaster-funding/report/disaster-funding-volume1.pdf>

The Productivity Commission referenced Deloitte Access Economics in identifying three broad categories of natural hazard information: foundational data (Asset location, Population, Topography, Rainfall), hazard data (eg bushfire mapping) and impact data (Insured losses, Fatalities and injuries, Economic cost, Value of assets at risk). The Productivity Commission then went on to describe three key problems with the data:

- data gaps – hazard information is available for some areas but not for others
- a lack of accessibility
  - data consistency and reliability: users of information are unsure about the quality of some of the data available to them
  - data sharing by governments and private providers – unwillingness to disclose data due to ownership and licensing issues, litigation risks and concerns about misuse of data
  - natural hazard data are not centralised in one place and can be held by multiple organisations
- ineffective or inadequate communication of natural disaster risk to communities.<sup>22</sup>

The PC found that

- there is scope for greater coordination and prioritisation of natural hazard research activities across governments and research institutions.<sup>23</sup>
- governments at all levels should make new and currently held natural hazard data publicly available in accordance with open public sector information principles. When collecting new natural hazard data or undertaking modelling, all levels of government should make information publicly available unless it would not be in the public interest to do so
  - use private-sector providers where cost effective, and use licencing arrangements that allow for public dissemination.<sup>24</sup>
- State and territory governments, local governments and insurers should explore opportunities for collaboration and partnerships.<sup>25</sup>

While some of these have been acted on in part – particularly following the Productivity<sup>26</sup> Commission Data Use and Availability report – most of these issues have not been resolved. There remains no central repository of natural hazard data, for example. Opening up access to this data for insurers (and subsequently consumers) should be a high priority for Government.

---

<sup>22</sup> Pages 183-4

<sup>23</sup> Page 187

<sup>24</sup> Page 192

<sup>25</sup> Page 192

<sup>26</sup> <https://www.icadataglobe.com/>

The Insurance Council of Australia (ICA) does collect natural hazard data in its Affordability project which includes its Dataglobe. The ICA DataGlobe provides visualisations of collected hazard data (Earthquake, Bushfire, Flood, Cyclone, Hail, Storm etc) that can be used to provide insight into natural perils, risk-based insurance premiums and the mitigation measures that may reduce the impacts of disaster in specific locations. It is also a mechanism for insurance companies to access the raw hazard data collected by the ICA on their behalf. This is however largely used by insurers only – not consumers.

The ICA also runs a *Property Resilience & Exposure Program*. The program:

*enables councils and shires to engage with the insurance industry on the issue of insurance affordability, where the primary drivers may be poor-quality hazard data, or a lack of information on development controls and existing buildings. PREP seeks to improve the alignment between the data and hazard mapping relied upon by insurers to price risk, and the information local governments harness for development control and town planning purposes.*

While things have improved, the ICA continues to call for more data to be made available:

*Local and state governments can help constituents, by providing access to the most up-to-date hazard mapping that they hold for emergency response and development control purposes. This mapping can help insurers to fine-tune premiums for individual policyholders.*

*If you control hazard data that you believe the insurance industry is not taking into account, please consider participating in the ICA's Property Resilience & Exposure Program.*

## **Consumers and natural hazard data**

Consumers however currently have little to no access to natural hazard data. This is a serious problem since consumers remain in the dark about the natural hazard risks that apply to their homes and are thus prevented from making informed decisions about the insurance coverage they require and the policies that would best meet their needs.

Consumers do not have the information that a local government or their insurer has, to take appropriate steps to mitigate the natural hazard risks to which they are exposed. This is particularly the case for those in bushfire zones (and other natural hazard hotspots like flood plains).

Financial Rights supports consumers being empowered to purchase insurance products on the basis of a genuine risk mitigation partnership with insurers. This involves providing more information and data on natural hazards that impact upon them in accessible ways.

Developing an effective component pricing regime will:

- remove significant information asymmetries between insured and insurer;
- provide consumers with increased understanding about what effect mitigation strategies may have on reducing insurance premiums or what behaviours or conditions might increase premiums;
- potentially alert consumers to changes in the insurer's perception of their risk;

- increase the possibility for a genuine risk mitigation partnership between the insured and the insurer;
- benefit society as a whole from increased risk mitigation and decreased risk taking; and
- allow consumers opportunities to correct errors or misperceptions impacting on their premiums.

Insurance consumers are currently told very little if anything at all about the risks that they are insuring against. There are some risk mapping services available, for example the NRMA's Safer Homes initiative<sup>27</sup> and Insurance Council of Australia's Building Resilience Rating Tool<sup>28</sup> It is however unclear the extent to which these tools are currently used by consumers. Insurance companies are not currently required to make this information available to consumers even when it applies directly to their premium price. It is also not clear how accurate and independent these services are and whether the results can be contested if the rating doesn't take into account individual mitigation and resilience factor. Even if they are used, consumers are left in the dark with respect to how those risks identified impact upon the actual premium price they are charged. They are also largely not made aware of what actions they should or could take to lower these risks.

The Productivity Commission<sup>29</sup> identified two forms of information asymmetry that impact upon a consumer's ability to make efficient and appropriate choices to their insurance. These were where:

- consumers have access to relevant information, but it is not in a usable format (e.g. it is too complex) or;
- consumers cannot access the information they need (e.g. insurers not providing information).

The former arguably applies to the provision of the risk mapping services that are currently in the marketplace, PDSs and other material provided by insurers.

The latter however relates directly to the issues at the heart of our component pricing ideas, that is, consumers are not provided with the information that insurers know about the specific (and general) risks the policyholder or a prospective policyholder faces.

The Actuaries Institute (**AI**) put forward the following definition for a fair premium:

*A premium that reflects all that is known about a risk, together with an appropriate amount for costs and profit, can be said to be a "fair" premium.*

The AI then ask whether this is in fact desirable since some will be paying higher or lower premiums because of increased information known about them. They ultimately argue that a premium may be considered fair if it reflects controllable risks and uncontrollable risks.

---

<sup>27</sup> [saferhomes.nrma.com.au](http://saferhomes.nrma.com.au)

<sup>28</sup> <https://www.resilient.property/>

<sup>29</sup> Productivity Commission, *Natural Disaster Funding Arrangements—Inquiry Report*, Vol. 2, December 2014, p. 434.



*Some risks are controllable and premiums can be reduced or cover provided if appropriate mitigation action is taken. A reckless driver can take more care and reduce speeding; a sedentary office worker can exercise more often. If the customer responds appropriately to the right risk signals they can reduce risk and premiums. For controllable risks, there is a benefit for all of society from understanding big data trends and pricing at the individual level. Customers benefit from what they are learning from the insurers. Community benefits from less risky behaviour of these individuals could include fewer road accidents and lower health and welfare costs.*

If society is therefore to benefit from the mitigation of controllable risks, consumers must know what those risks are to be able to act on them. Consumers are generally not made aware.

Ideally, component pricing will therefore identify and highlight those risks that can be controlled and mitigated and encourage consumers to act accordingly.

Component pricing is currently being examined by Treasury in its Disclosure in General Insurance consultation. Financial Rights has argued strongly for the need for a component pricing regime be introduced.<sup>30</sup>

It is essential that greater coordination of information and data take place between local, state, federal governments and the insurance industry to ensure that this information flow through to consumers to support their own risk mitigation behaviour.

This will involve:

- improved coordination and sharing of public natural hazard data with insurers and consumers;
- implementation of component pricing to ensure decrease information asymmetry between the insurer and consumers and bolster the risk mitigation partnership.

---

## Recommendations

---

17. There should be better co-ordination and communication with the public in relation to clean up and debris removal
  18. State and local government data sets should be made available to insurers (and consumers) to enable more automated data collection and disclosure.
  19. NSW should support and advocate for an effective component regime, or introduce such a measure in NSW.
- 

---

<sup>30</sup> [https://financialrights.org.au/wp-content/uploads/2019/03/190308\\_DisclosureReview\\_Submission\\_FINAL.pdf](https://financialrights.org.au/wp-content/uploads/2019/03/190308_DisclosureReview_Submission_FINAL.pdf)

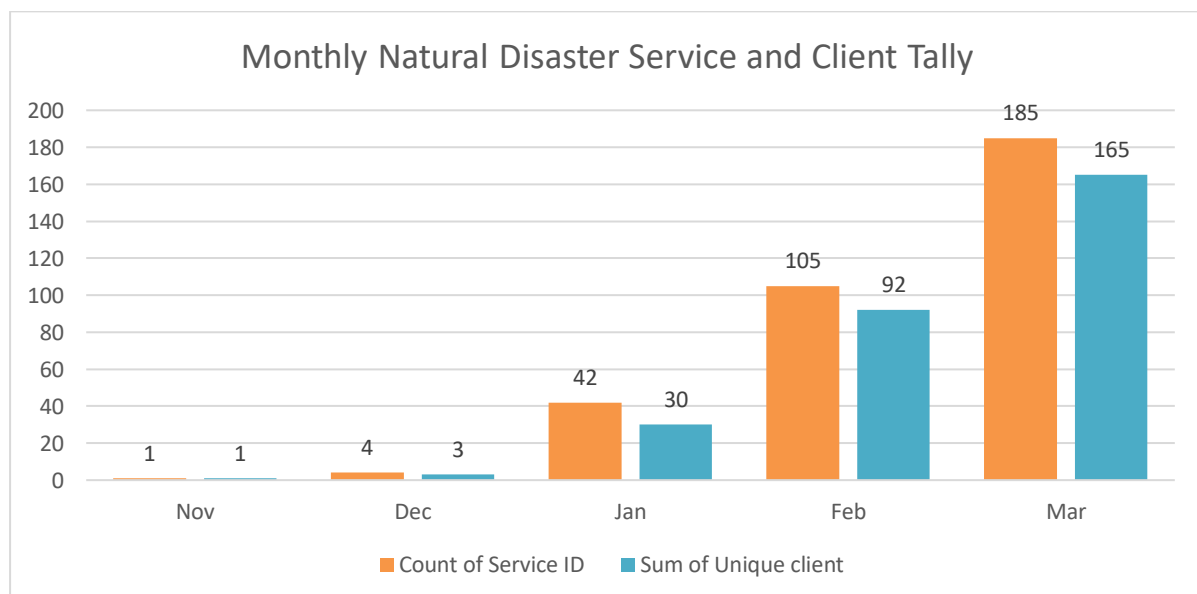
## TOR 8: Emergency responses to bushfires, including overall human and capital resourcing.

---

### Funding for legal assistance services

While the bushfire season may be over for now, Financial Rights knows from experience that consumers will continue to need legal assistance and support regarding their insurance and financial hardship disputes for a long time going forward. As other emergency services and recovery centres close down, our telephone and email-based advice services will remain available to consumers Australia-wide. In the last four months we have provided over 85 legal and financial counselling services to bushfire victims, and new calls for assistance with legal disputes continue to come through. We have also provided training to over 135 community workers, largely financial counsellors, in relation to bushfires and insurance.

After seven official insurance catastrophes in five months we have had to introduce systems to prioritise disaster calls because we are already struggling to keep up with business as usual demand for insurance advice. Since the summer began we have provided over 450 services to consumers dealing with all kinds of natural disaster-related insurance disputes including bushfires, hail, flood, storms and now, the pandemic<sup>31</sup>. Given the long tail on insurance disputes following disasters we expect those numbers to continue steadily and possible even grow over the coming months and they will continue for up to two years or more (even if there are no further extreme weather events, which seems unlikely).



---

<sup>31</sup> Pandemic calls have been taken by our credit and debt services, such as the National Debt Helpline, in addition to the Insurance Law Service.

Unfortunately at the same time that our services are urgently in need, our funding is running out. Our Insurance Law Service funding was essentially doubled a few years ago by one-off funds from ASIC enforceable undertakings. Those funds will run out over the next year, and within a few months we will start losing our solicitors. By June next year our insurance specialist service will be operating at fifty percent of its current capacity. Already cannot answer more than 40-60% of the calls coming in on any given day.

Commissioner Hayne in his Final Report of the Financial Services Royal Commission<sup>32</sup> commented that there was a need for predictable and stable funding for the legal assistance sector, rather than reliance on one-off funds from enforceable undertakings. The Sylvan report into financial counselling funding<sup>33</sup> also recommended the government consider the impact on the provision of legal assistance that will flow from significantly increased provision of financial counselling. To our knowledge, their recommendations have not been progressed.

Over 85% of the bushfire services we have provided in the last three months have been to NSW residents but our Insurance Law Service does not receive any direct support from NSW. Its only funding source at the moment is the Federal Attorney General's Department, and the Commonwealth component of the National Partnership Agreement funds, and this is not enough funding to maintain the service.

Below are several examples of NSW bushfire victims whose legal disputes have been resolved in large part because of our timely and accessible advice and assistance.

***Most case study names below have been changed unless our clients otherwise consented.***

#### Case study – Sally's story

Sally's home was badly damaged by a bushfire and it is going to take 12 months to rebuild. Her insurer had organised temporary accommodation, but the cost was so high that her sum insured for temporary accommodation was going to run out in 3 months.

The insurer had booked several weeks of accommodation for Sally and her family through Airbnb. They notified Sally about the accommodation but did not consult with her beforehand. Sally found a much cheaper long-term accommodation where her family could stay but her insurer has already paid a significant amount upfront at the expensive option and they refused to cancel it. Sally needed help negotiating with her insurer.

Financial Rights got involved and raised a dispute with Sally's insurer's internal dispute resolution department about how the insurer handled Sally's temporary accommodation

---

<sup>32</sup> Commissioner K M Hayne, Final Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Volume 1, February 2019, pp 490-493

<sup>33</sup> Sylva, L Am FAICD, The Countervailing Power: Review of the coordination and funding for financial counselling services across Australia, March 2019, pvi

entitlement. The insurer has now refunded Sally the entire value of the prepaid accommodation, including the week she actually used.

*Source: (C197979)*

**Case study – Else and Andrew’ story** *(actual names: these clients have consented to being named and have appeared in national media with this story)*

Else and Andrew were trapped on their property. Bushfires initially burnt the access culvert to their property and the subsequent January floods washed the damaged culvert away completely, cutting off the only access road to their home. Their insurer was arguing they are not covered. Rebuilding the access point will cost \$80,000 which they cannot afford.

After getting some initial advice from Financial Rights about the bushfire damage to the culvert, Else and Andrew’s problems escalated with the floods. Andrew has asthma and Else is concerned about his need for medical assistance. The bushfires had left them with no internet or landline in their home. They had limited emails and phone service on their mobile on some parts of their property, which they used to stay in contact with Financial Rights during their crisis.

Financial Rights provided Else and Andrew with specialist insurance advice and we assisted them to raise a dispute with their insurer. Finally their insurer agreed to cover the full cost of repairing the culverts.

*Source: (C199531)*

*See Also: Else & Andrew appear in this ABC story: <https://mobile.abc.net.au/news/2020-02-29/insurance-law-service-loses-funding-takes-on-fewer-disputes/11985376?pfmredir=sm>*

**Case study – Sheree’s story**

Sheree’s small business was hit hard by drought, a storm surge and then bushfires. While her business did not burn, it was hard hit by the evacuation of the town and then the sharp decrease in the tourist trade. One of her suppliers is now aggressively trying to bankrupt her while she tries to get back on her feet. Her business interruption insurance paid the storm surge claim for the disruption, and says she needs a new claim for the fires. They told her that the monthly payments would be slow due to the increase in insurance claim volumes.

Financial Rights took on Sheree's case and was able to get her a five week adjournment on the bankruptcy proceedings so that negotiations could continue. She was eventually able to pay the creditor from part of a bushfire grant. Financial Rights is also helping Sheree with her entitlements under her insurance policies.

*Source: (C199922)*

---

## Recommendations

---

20. The NSW Government should provide urgent and ongoing funding assistance to the Insurance Law Service at Financial Rights Legal Centre.
  21. The NSW Government should provide urgent funding to community legal centres providing advice and assistance to NSW bushfire victims.
  22. The NSW Government should coordinate with the Federal Government to provide predictable and stable funding for legal assistance providers who specialise in financial services work, such as credit, debt and insurance.
- 

## Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox  
Chief Executive Officer  
Financial Rights Legal Centre  
Direct: (02) 8204 1340  
E-mail: [Karen.Cox@financialrights.org.au](mailto:Karen.Cox@financialrights.org.au)