Financial Rights LEGAL CENTRE

Submission by the

Financial Rights Legal Centre

Royal Commission

Royal Commission into National Natural Disaster Arrangements, March 2020

28 April 2020

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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.

Our Insurance Expertise

We have operated the Insurance Law Service since 2007 which provides advice nationally to consumers about insurance claims and debts to insurance companies. Since 2007 the service has taken over 60,000 calls or emails for advice and finalised over 1300 case work files. We have developed extensive expertise assisting consumers with insurance disputes after natural disasters including floods, hail storms, cyclones and bushfires. We have used this expertise to lobby for changes to law and industry practice for the benefit of consumers. We also have developed extensive web-based resources, and provided training to hundreds of caseworkers on insurance issues.

For Financial Rights Legal Centre submissions and publications go to
www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

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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 for the Financial Rights Legal Centre (**Financial Rights**) to comment on Australia's preparedness for, and response to, natural disasters drawing on what many Australians experienced during the 2019-20 bushfire season.

Financial Rights has so far assisted over 60 Australians across the various affected states who were directly affected by bushfires between November 2019 and April 2020 – people who needed legal support regarding financial hardship or an insurance dispute. We continue to receive calls about bushfire insurance disputes as in our experience these types of legal disputes can continue or even manifest up to 18 months, or even 2 years, after the initial disaster event.

The recent bushfire crisis may have been unprecedented, but the plight of many affected people who find themselves uninsured or underinsured after a natural disaster is not. Financial Rights' Insurance Law Service has for decades advised consumers on a large number of bushfire-related financial services disputes in past bushfire seasons. These include:

- the 2009 Victorian Black Saturday Bushfires;
- the 2013 Tasmanian Bushfires;
- the 2014 Greater Blue Mountains fires,
- the 2015 WA Bushfires; and the
- the 2018 Tathra bushfires.

We have also provided support for consumers on the insurance impacts of other natural disasters including:

- floods including in Brisbane and South-East Queensland in 2011;
- hail storms including the 2016 Broken Hill and 2020 ACT Hail Storms; and
- the various cyclones across Northern Australia.

Every time we have a significant catastrophe we discover that people have been left exposed to significant losses above and beyond their level of insurance, and ongoing claims disputes. The same is the case with the 2019-20 Black Summer of bushfires.

Many of the problems remain the same. The issues relate to disputes over temporary accommodation; whether an excess should be paid; the scope of works and cash settlement offers; or underinsurance borne of an incorrect sum insured for their property. We have spoken to numerous others who don't have cover for their outbuildings, tanks, or feed for their animals (but who are not primary producers and therefore not eligible for government assistance). Then there are the people who are facing financial hardship and debt collection as a result of the disaster – many of which have no insurance at all, or are unable to obtain insurance moving forward.

There have been a large number of royal commissions and inquiries investigating the critical issues thrown up by natural disasters and their impact on Australian's ability to insure against these ongoing and increasing risks. Including the

- 2009 Victorian Bushfires Royal Commission;
- 2011 National Disaster Insurance Review;
- 2012 Queensland Floods Commission of Inquiry;
- 2014 Productivity Commission's Natural Disaster Funding Inquiry;
- 2014 Federal Government inquiry addressing the high cost of home and strata title insurance in North Queensland.';
- 2015 Northern Australia Insurance Premiums Taskforce;
- 2017 Victorian Department of Health and Human Services Inquiry into non-insurance and underinsurance for emergencies in Victoria; and the
- 2017 ACCC Northern Australia Insurance Inquiry

Many of the problems investigated in these inquiries are of the same order as those this current Royal Commission will be taking a close look at. Many of the solutions proposed by these previous inquiries were not acted on, only acted on in part, or governments decided to take minimal measures.

This Royal Commission must examine the issues that are consistent across these previous inquiries and build on their work. The issues are well known, as are many of the solutions:

Firstly, measures need to be taken to improve the ability of Australians to obtain suitable insurance to protect themselves against the risk of bushfires and other natural disasters. This requires:

- the introduction of an effective standard cover regime;
- the establishment of adequate standard definitions;
- an overhaul of sum insured information;
- the introduction of a component pricing regime; and
- reforms to claims handling and cash settlement processes.

Secondly, the government needs to intervene to ensure that insurance for Australians in areas subject to bushfire and other natural hazards is affordable. Reform is required to remove stamp duties, taxes and emergency services levies from insurance. The government must confront the problems of mitigation work head on, invest significantly and consider grants and subsidies for such work.

And finally, there must be greater national coordination in relation to disaster prevention, resilience, natural hazard data tracking, gathering and sharing with flow on improvements for insurers and consumers A National Disaster Resilience Agency should be established to co-ordinate, drive and monitor the effectiveness all aspects of disaster preparedness and recovery, including: prevention and mitigation work nationally; the impact of any mitigation work on the price and availability of insurance; the design, application and funding of any subsidies; and the resulting take-up of suitable and affordable insurance cover. This agency should include the functions of both an independent resilience assessor and an insurance price monitor. Alternatively an independent price monitor could be established separately. As disaster events intensify as a result of climate change, the community's ability to absorb the enormous personal and economic costs of these events will only deteriorate. We need to start investing upfront in prevention, mitigation and disaster preparedness, rather than throwing enormous resources at the aftermath of each subsequent event.

Recommendations

1. **An effective standard cover regime for insurance with appropriate standard definitions must be introduced.**
2. **Up-to-date and independently reviewed insurance calculators for home, contents and motor vehicle sum insured estimates should be mandated.**
3. **Insurers should be required to estimate an updated sum insured at renewal time, taking into account any known natural peril data and building code changes.**
4. **An effective component pricing regime for insurance should be established.**
5. **Insurers selling home and contents policies to Australians should be required to provide a comprehensive, consumer tested Statement of Claim Settlement Options. ASIC should develop guidance on the content of this statement.**
6. **When making or providing the opportunity to cash settle a claim, insurers must act fairly; and ensure that the policyholder is indemnified against the loss insured (as, for example, by being able to complete all necessary repairs). The *Insurance Contracts Act 1984* should stipulate that any cash settlement offer should cover the insured's likely reasonable costs of rebuilding or repairing rather than the likely cost to the insurer.**
7. **The *Insurance Contracts Act 1984* should be amended to provide consumers with the right to choose whether their home building insurance claim is settled through a cash settlement or with a repair/rebuild managed by the insurer. The insurer must inform the consumer they have this choice at the time a consumer lodges a claim, or where the insurer is proposing a cash settlement as the resolution of a dispute.**
8. **All taxes, stamp duties and emergency levies on home insurance premiums should be removed.**
9. **Alternatively, if stamp duties are maintained, governments 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.**
10. **The *Insurance Contracts Regulations 2017* should be amended 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).**
11. **Measures should be implemented to prompt consumers to investigate insurance costs when they are considering purchasing real estate, or to mandate the cost of insuring a property as part of the disclosures required in a real estate transaction.**
12. **Establish a permanent National Disaster Resilience Agency should be established to co-ordinate, drive and monitor the effectiveness all aspects of disaster preparedness and recovery, including:**

- prevention and mitigation work nationally;
- the impact of any mitigation work on the price and availability of insurance;
- the design, application and funding of any subsidies;
- the resulting take-up of suitable and affordable insurance cover.

This agency could include the functions of both an independent resilience assessor and an insurance price monitor. Alternatively, a price monitor could be separately established.

13. There should be government investment in large-scale mitigation projects. Governments should coordinate and 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.
14. Grants and subsidy programmes for individual mitigation works should be established to increase bushfire resilience for homes.
15. Consideration should be given to the role of carefully designed insurance premium subsidies linked to long term mitigation measures and planning law changes, as part of the long term disaster preparedness strategy.
16. Governments should assisting with clean up and debris removal after major disaster events and should consider funding accommodation for construction workers who are rebuilding homes in rural areas, and funding and coordinating deliveries of bushfire resilient building materials for home rebuilds.
17. There should be better co-ordination and communication with the public in relation to clean up and debris removal, including timing and the interaction with people's rights under their insurance policies where applicable.
18. Public and government data sets should be made available to insurers (and consumers in an accessible form) to enable more automated data collection and disclosure.
19. Ongoing, adequate & stable funding should be provided to the Insurance Law Service at Financial Rights.
20. Community legal centres providing advice and assistance to bushfire victims should be appropriately funded to meet these increasing demands.
21. The Government should respond to, and act on the Royal Commissioner's comments and the Sylvan Review's recommendations to provide predictable and stable funding for legal assistance providers who specialise in financial services work, such as credit, debt and insurance.

Term of Reference B

Australia's arrangements for improving resilience and adapting to changing climatic conditions, what actions should be taken to mitigate the impacts of natural disasters, and whether accountability for natural disaster risk management, preparedness, resilience and recovery should be enhanced, including through a nationally consistent accountability and reporting framework and national standards.

Suitability of insurance products

Adequate insurance coverage for Australians will be critical for adapting to future bushfire risks and building resilience in our communities. This includes other general insurance products such as home building and contents insurance as well as motor vehicle insurance. Adequate insurance means that insurance products need to be affordable as well as have suitable coverage for bushfire risks.

Our experience arising from this bushfire season and other prior natural disaster events is that many Australians do not hold suitable insurance products to cover the natural risks to which they are exposed.

Choosing insurance is a fraught task at the best of times. People are supposed to be able to effectively evaluate a range of market offerings with a myriad of seemingly minor differences which could turn out to be crucially important at the time of a claim. Recent research by Monash University commissioned by Financial Rights[1] found that, even with simplified 20 page policy documents, and/or a Key Fact Sheet (**KFS**) provided, a significant number of participants still chose the worst policy on offer. In the real world policy documents are 80 pages or more, laid out completely differently depending on the insurer and brand, define terms differently, and sometimes comprise a range of documents including supplementary Product Disclosure Statement's (**PDS's**), Guides, Excess booklets, and so on which need to be cross referenced to fully understand the limits of cover. [2]

In the context of catastrophic weather events, people are also expected to understand the risks they are exposed to - something behavioural economists tell us the majority of people do poorly. They then need to work out how much insurance they will need to rebuild (including clean up and temporary accommodation). They have to factor in inflated rebuild costs because of the possible need to comply with new building codes, and a potential scarcity of supplies and skilled labour depending on how many households are affected. They also need to be able to afford the

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[1] Monash Professors Justin Malbon and Harmen Oppewal, *(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance.* (2018) https://financialrights.org.au/wp-content/uploads/2018/09/InEffectiveDisclosure-final_embargoed-until-17-Sep.pdf

[2] *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

resulting premium, something that cannot be taken for granted as people negotiate many changing circumstances throughout their lives.

People are expected to manage all of the above with no particular expertise, amongst the demands of caring for children, managing their jobs, farms or businesses, dealing with their own health problems and perhaps those of dependents or elderly parents and life's many other demands.

It is more of a surprise that we sometimes get this right at all.

Ensuring that Australians 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 Australians in bushfire prone areas have access to suitable insurance cover:

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

Standard cover

The insurance market appears essentially designed to confuse and overwhelm. Consumers are faced with an almost soul crushing amount of information and choice when choosing an insurance product that will cover their risks (including natural hazards). This glut of choice is counterproductive, leads many to be unable to make a genuinely informed comparison and choice, reduces market transparency, and ultimately leads to poor consumer outcomes at claims time.

When there are too many choices, with too many potential outcomes and risks that may arise from making the wrong choice – risks that have huge consequences in the case of insurance – people become overwhelmed.[3] Throw information overload (from 100 page documents say) on top of choice overload and people can become bewildered, stressed and even experience a form of decision-making paralysis.

Most people find short cuts to deal with the stress. Some, for example, take the recommendation of a friend, colleague or family member. Others rely on the comfortingly simplistic and at times misleading messages presented in advertising or branding. Others end up subject to inertia and

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[3] There is extensive research into this phenomenon. Two recent books on the issue of choice overload are: Barry Schwartz, The Paradox of Choice, 2004, Sheena Iyengar, *The Art of Choosing*, 2011

stick with the same company they always have. Most end up relying on price, to their peril, given its often direct relationship to lower levels of cover.

This is not the result of a competitive general insurance market. This is a market and a consumer population being manipulated by cut price, low coverage insurers taking advantage of the confusion and complexity brought about by the lack of standard products and definitions.

But even when consumers are provided with the ideal conditions to make a rational or optimal choice across a range of choice conditions in purchasing an insurance product based on PDSs and KFS, we have found that there is no simple and consistent effect of disclosure – i.e. there is no clear pattern of understanding where people were provided more or less disclosure information using currently mandated disclosure documents.[4]

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).*[5]

Sections 35 (and 37) of Division 1 of Part V of the *Insurance Contracts Act 1984* have been interpreted to allow insurers to contract out of standard provisions so long as they merely provide a PDS. In other words, insurers in practice don't have to "draw the insured's attention" to the fact that they are providing less than standard cover, they don't have to expressly flag "this is less than standard" – rather they just describe the actual cover in the PDS and contract. In practice all insurers routinely contract out of the provisions, rendering them almost pointless as 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 do.[6]

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

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[4] See **Appendix B**: Professor Justin Malbon, Professor Harmen Oppewal, *(In)effective Disclosure: An experimental study of consumers purchasing home contents insurance*, September 2018 at https://australiancentre.com.au/publication/ineffectivedisclosure

[5] *Insurance Contracts Act 1984, Section 35*

[6] ICA, *Consumer Research on General Insurance Product Disclosures: Research findings report*, February, 2017, at page 18.

experience fails to live up to expectations. This is the case after every natural disaster and it is the case with many clients that we have spoken during this current bushfire season.

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.[7]

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;
- 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.[8]

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.

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[7] Treasury, Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, January 2019 https://treasury.gov.au/consultation/c2019-t354736

[8] 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

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 Royal Commission should support these broader reforms to Federal law to assist policyholders to obtain more suitable cover.

Standard definitions

When introduced in 1984 the standard cover regime did not provide standard definitions. 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.*[9]

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.

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[10]

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

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[9] Page 16, Treasury, Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, January 2019 https://treasury.gov.au/consultation/c2019-t354736

[10] *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

- 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.

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 or arising from a bushfire 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 1 –Misha’s story

In 2019 Misha left the house with her infant 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. The insurer argued that the damage was solely by smoke and there was no flame and sought to exclude the claim.

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 Misha's claim was finally successful.

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In February 2020, off the back of our 2018 Report, CHOICE released a report called "How does your insurer define a fire?"[11] The CHOICE report found that "Fire cover" is a standard inclusion in home and contents insurance, 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 Australian Law Reform Committee (**ALRC**) stated in 1982:[12]

> *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.*

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.

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[11] 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

[12] Para 59, ALRC Report 20, Insurance Contracts p.xxvi http://www.alrc.gov.au/report-20

The 2017 Senate Economic References report into General Insurance 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.*[13]

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

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 Royal Commission 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.

Improved sum insured information

The 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. Nominating an accurate sum insured is key to whether a victim of the bushfires is adequately insured or ultimately under-insured.

Accurate sum insured calculators rely on many sources of data that the government can help collect and share. States should open up local government data sets to insurers (and consumers)

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[13] 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

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 government could engage with the Australian Securities and Investments Commission (**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.[14] The Government 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.*[15]

The following case studies demonstrate the key issues Australians have faced with respect to sum insured levels and underinsurance.

All case study names have been changed.

Case study 2 –Angelo's story

Angelo lost his home to a bushfire in November 2019 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

[14] 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

[15] 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

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.

C197393, NSW

Case study 3 –Richard's story

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 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.

C201209, NSW

Case study 4–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 has 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.

C201169, NSW

Case study 5 - 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.

C201208, NSW

Component pricing

Consumers currently have limited access to natural hazard data in easily digestible formats and very little motivation to seek it out and use it. This is a serious problem since many consumers remain in the dark about the natural hazard risks including bushfire risks that apply to their homes and are thus prevented from making informed decisions about the insurance coverage they require, the policies that would best meet their needs and potential mitigation they could or should undertake.

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 in accessible ways on natural hazards that impact upon them. The key way to do this is to price and/or risk signal, particularly with respect to controllable risks as opposed to uncontrollable risks. In other words, risks that are within the individual's control to mitigate and will benefit society are risks that ought to be transparently priced. For example, rewarding those who undertake flood or fire mitigation projects on their property.

Financial Rights has long argued for the need to provide consumers with the full components of an insurance product's price. Component pricing would provide a healthy 'signal to consumers of the risk factors taken into account when premiums are set.' This 'risk signal' would be particularly helpful in parts of Australia that face severe weather risks. Knowing that a huge portion of your insurance's base premium is made up of fire, flood or storm risk, is incredibly valuable information to a homeowner and can lead to positive consumer and societal outcomes through say risk mitigation.

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.

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[16] and ICA's Building Resilience Rating Tool[17] It is however unclear the extent to which these tools are currently used by, or even promoted to, consumers. It is clear though that 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 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[18] 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.

> *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.*

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[16] saferhomes.nrma.com.au

[17] https://www.resilient.property/

[18] Productivity Commission, *Natural Disaster Funding Arrangements—Inquiry Report*, Vol. 2,December 2014, p. 434.

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.[19]

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.

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.[20]

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

[19] https://financialrights.org.au/wp-content/uploads/2019/03/190308_DisclosureReview_Submission_FINAL.pdf

[20] Recommendation 26 ACCC, *Northern Australia Insurance Inquiry Second Interim Report* 2019 https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20second%20interim%20report%202019_0.PDF

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 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. Consumers who find an insurers' Internal Dispute Resolution(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;
- 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 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.

Contents of a "Statement of Claim Settlement Options"

As we understand it, ASIC may develop guidance on the contents for a Statement of Claim Settlement Options but that this is some time away - likely third and fourth quarter 2020.

We note that under the new General Insurance Code of Practice developed by the ICA, general insurers have committed to providing:

> *information to help you understand how they work and how decisions are made on cash settlements.*

This commitment is limited to home building policies. It is our further understanding that the ICA will be developing this information sheet during 2020. We commend the ICA for taking these steps.

It is our recommendation though that ASIC develop a guidance for the development of Statement of Claim Settlement Options and that they consult widely with industry and consumer representatives to ensure that all relevant issues are raised.

It is our view that the ASIC guidance for the contents of the Statement of Claim Settlement Options for general insurers should address the following issues:

- Insurers have a commercial bargaining power advantage to be able to engage builders to repair properties at lower rates – rates far lower than a consumer is able to obtain from a builder. Cash settlements subsequently reflect this lower amount;
- After a natural disaster there is increased demand for building and other trade services. This both increases the prices quoted and charged as well as leads to delays and difficulties in engaging qualified repairers quickly;
- Repairs obtained by the consumer with their cash settlement will not have the same insurer guarantees regarding quality, cost or timeliness of any works or repairs;
- Consumers can lose the benefit of lifetime repair guarantees offered by insurers when they agree to a cash settlement;
- Consumers should seek advice from their mortgage lender about any implications of accepting a cash settlement for their mortgage including the fact that the mortgagee is entitled to receive the insurance payout and then approve any repairs done on the property;
- Project managing repairs or a rebuild is complex and difficult, and hiring a building manager could be a big additional expense; and
- Consumers should obtain their own quotes before accepting cash settlements in order to figure out whether the amount being offered by the insurer is appropriate.

Many of the above align with the ACCC's views in its Northern Australia Insurance Inquiry, which has also recommended the provision of a one-page document written in plain English setting out matters the consumer should consider to help them make an informed decision.

Any Statements of Claim Settlement Options must be consumer tested before being finalised.

Importance of control or contestability

Once the information asymmetry between the consumer and the insurer is addressed by the provision of the information, the next issue that needs to be addressed is the asymmetry in the power between the insurer and the insured.

Most policies are worded to enable the insurer to elect as to how they decide to pay under the insurance contract.

For example, it may state:

We will choose to settle your claim for loss or damage to your home and any 'other benefits' in one of the following ways:

1. *Arrange for repairers, builders or suppliers to repair or rebuild your home*

   …

2. *Pay you the reasonable cost to repair or rebuild your home*

   …

3. *Pay you the Buildings sum insured*

   …

4. *Pay for other benefits*[21]

Some policies introduce a concept of "choice", others are worded so it is the insurer's sole election about how the claim is determined.

As the case studies below show, in our experience we see:

a) Insured's wanting to be cash settled and the insurer refusing;

b) Insurers paying cash settlements directly into insured's bank accounts in circumstances where the amount is disputed;

c) Insurers refusing to repair and insisting on cash settlement.

With the introduction of unfair contract terms in insurance, and claims handling becoming a financial service, it should be incumbent on insurers to ensure that consumers are adequately informed of the pros and cons of how an insurance claim is paid and then *take the consumers preference or choice into account* in the decision making process - rather then, adopting a unilateral approach.

The ACCC Northern Australia Insurance Inquiry has recommended that:

> The Insurance Contracts Act should be amended to provide consumers with the right to choose whether their home building insurance claim is settled through a cash settlement or with a repair/rebuild managed by the insurer. The insurer must inform the consumer they have this choice at the time a consumer lodges a claim. [22]

We strongly support this recommendation. Placing the choice to cash settle or repair/re-build is a positive one as long as consumer are informed of the risks and benefits of both options, which is further addressed by the ACCC's recommendation, which states that the insurer should be required to:

> *provide the consumer with a one page document written in plain English setting out matters the consumer should consider to help them make an informed decision*

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[21] nrma.com.au/sites/nrma/files/nrma/policy_booklets/home_pds_0219_nsw_act_tas.pdfNRMA Home Insurance page 78 some wording removed.

[22] Recommendation 26 ACCC, *Northern Australia Insurance Inquiry Second Interim Report* 2019 https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20second%20interim%20report%202019_0.PDF

a recommendation that has been taken up by the Government as outlined above.

The following recent case studies point to issues regarding cash settlements continuing to arise during the recent Black Summer of bushfires.

All case study names have been changed.

Case study 6–Wade's story

Wade lost his home to a bushfire in 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.

C200121, NSW

Case study 7–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.

C200237, NSW

Case study 8–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 insurer offered 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 information.

C200194, NSW

Case study 9–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?

C200689, NSW

Recommendations

1. **An effective standard cover regime for insurance with appropriate standard definitions for must be introduced.**
2. **Up-to-date and independently reviewed insurance calculators for home, contents and motor vehicle sum insured estimates should be mandated.**
3. **Insurers should be required to estimate an updated sum insured at renewal time, taking into account any known natural peril data and building code changes.**
4. **An effective component pricing regime for insurance should be established.**
5. **Insurers selling home and contents policies to Australians should be required to provide a comprehensive, consumer tested Statement of Claim Settlement Options. ASIC should develop guidance on the content of this statement.**
6. **When making or providing the opportunity to cash settle a claim, insurers must act fairly; and ensure that the policyholder is indemnified against the loss insured (as, for example, by being able to complete all necessary repairs). The *Insurance Contracts Act 1984* should stipulate that any cash settlement offer should cover the insured's likely reasonable costs of rebuilding or repairing rather than the likely cost to the insurer.**
7. **The** *Insurance Contracts Act 1984* **should be amended to provide consumers with the right to choose whether their home building insurance claim is settled through a cash settlement or with a repair/rebuild managed by the insurer. The insurer must inform the consumer they have this choice at the time a consumer lodges a claim, or where the insurer is proposing a cash settlement as the resolution of a dispute.**

Affordability

Insurance affordability will be key for community resilience and there are critical actions that the federal government 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 who 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 difficult for Australians in high risk natural hazard areas, 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.*[23]

The following case studies demonstrate the problem that is likely to increase over time moving forward.

All case study names have been changed.

Case study 10 –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.

C199139 NSW

Case study 11–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.

C199637 NSW

[23] The Insurance Market 2020: https://scottwinton.com.au/the-insurance-market-2020/

Case study 12–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 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.

C199650 NSW

Case study 13 –Kate and Alex's story

Kate and Alex 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.

C201334 NSW

Case study 14 –Kirra and Warrin's story

Kirra and Warrin are Aboriginal. Their home burned down in December 2019 and they are really struggling. They thought they had insurance but now it appears they were uninsured and they don't know what happened to their policy. They are illiterate and have hearing difficulties and have a caseworker who is helping them get some legal advice. They had solar panels under finance which were destroyed and now they are being chased for that debt. They have also received a council bill of $25,000 for debris clean-up on their property because there was asbestos. Kirra thinks there is a another bill demanding payment. Kirra is not coping, she has had a turn and has now been diagnosed with a heart condition. Warrin is a casual truck driver but they are not making ends meet.

C202990 QLD

Taxes, levies and stamp duty

The first thing that some state governments still need to do to address affordability of personal insurance is remove taxes/stamp duty on home insurance or re-base it to sum insured amounts instead of premium levels. This is particularly true for NSW's fire services levy.

The NSW Government initially moved 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 **ESL** Monitor's office will cease on 30 June 2020 when the ESL *Insurance Monitor Act* is repealed. NSW is now the only mainland state that has not moved the funding of its emergency services from an insurance-based model to a property-based model.

Financial Rights continues to supports NSW making this change because the burden of funding these services should not fall only on those with property insurance but all landowners. As Gladys Berejiklian said 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.*[24]

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.*[25]

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.*[26]

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 because people in higher risk areas are charged a higher amount for insurance to reflect the extra risk, they also 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

[24] 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

[25] ACCC, Northern Australia Insurance Inquiry, First interim report. November 2018. Recommendation 1 https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF

[26] *Australia's future tax system: Final Report*, Part 2: Detailed analysis, Chapter E: Enhancing social and market outcomes, 2 May 2010, p. 474.

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.[27]

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 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.

Disclosure of costs counting towards the sum insured

The ACCC has also recommended additional measures that the Federal Government along with its state counterparts could enact which would assist with underinsurance problems after major bushfire disasters.[28] 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.

Disclosing the cost of insurance as part of real estate transactions

Another measure that states could take is to prompt consumers to consider likely insurance costs before purchasing real estate.[29] 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 (see information above about standard cover) than the estimated insurance cost (or range) could be listed in a statutory information disclosure for a real estate transaction. ACCC warns that states would need to take steps to ensure that

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[27] 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

[28] Recommendation 9: Disclose costs that count towards 'sum insured' 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

[29] Recommendation 22: Consider likely insurance costs before purchasing real estate 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

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 15–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. He knew it was flood prone, but not the cost to insure against it, Flood coverage was going to be $8000.
>
> *C201658, NSW*

Recommendations

8. **All taxes, stamp duties and emergency levies on home insurance premiums should be removed.**
9. **Alternatively, if stamp duties are maintained, governments 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.**
10. **The *Insurance Contracts Regulations 2017* should be amended 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).**
11. **Measures should be implemented to prompt consumers to investigate insurance costs when they are considering purchasing real estate, or to mandate the cost of insuring a property as part of the disclosures required in a real estate transaction.**

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 to many previous inquiries.[30]

[30] *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;*

Insurance availability and affordability in Australia is being dramatically affected by the increasing prevalence and financial impact of natural disasters. The price of insurance tends to reflect the level of risk. 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.*[31]

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 arguably come down, although we suggest a range of additional measures rather than simply trusting the market to do this.

Financial Rights submits that the following risk mitigation actions will be critical for Australia 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; and
- Investigate carefully designed subsidies, linked to long term mitigation measures and planning law changes
- Create a national insurance monitor, or preferably, create a national Resilience Agency with responsibility for all aspects of disaster preparedness, including but not limited to the functions of both an independent resilience assessor and an insurance price monitor.

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 because of the mitigation work.

2015 Inquiry conducted by the Northern Australia Insurance Premiums Taskforce; and 2017 ACCC Northern Australia Insurance Inquiry (multiple submissions). See: https://financialrights.org.au/submission/

[31] 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

There is also currently 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:

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

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. Australia 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 government should fund an independent home resilience assessor (**Resilience Assessor**). The 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**).[1] The BBCA 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 BBCA provides community risk assessments and resilience solutions.

A national or state-based Resilience Assessor could conduct similar assessments to the BBCA for all forms of natural hazard risks. 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.

[1] https://www.bbca.org.au/

Large-scale mitigation projects

Financial Rights supports major 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. Local and state governments 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 Resilience Assessor could also provide state and local governments with ideas on large-scale mitigation opportunities to reduce bushfire risk.

Grants and subsidies for mitigation works

States should implement a programmes 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 neighbouring property, non-compliance with building standards and poor maintenance.[32] 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.

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*.[33]

Local, state and Federal governments should take immediate action to address the imbalance of money spent on bushfire clean-up and recovery versus money spent on mitigation efforts and building resilience in communities before the next bushfire season.

Insurance premiums subsidies and planning laws

The ACCC Northern Australia Insurance Inquiry, which is due to continue for until the end of the year, has so far not recommended 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 notes 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

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[32] Bushfire Building Council of Australia; https://www.bbca.org.au/property/

[33] 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

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?

The ACCC's Second Interim Report says that government intervention to improve affordability could possibly be justified on equity or strategic grounds, noting that levels of insurance cover appear to be declining in Northern Australia, a strategically important part of the country.[34] They conclude that "a targeted subsidy, including both premium level and income eligibility requirements, could provide targeted premium relief to some consumers at lower cost, and more effectively than other measures", such as reinsurance pools and government insurers. Also, targeted subsidies could help lower levels of non-insurance, and may cost less than providing post disaster relief to those who were uninsured.[35] These arguments are equally applicable to under-insurance, of which we have observed a significant amount in the wake for the recent bushfires events.

In the wake of the 2011 Queensland floods, the National Disaster Insurance Review[36] recommended, among other things, the establishment of a national agency to coordinate flood risk information and management.[37] The agency would operate a system of premium discounts and a reinsurance facility guaranteed by government to existing dwellings, with a view to phasing out these measures over time. This was intended to have three main impacts:

- to drive better investment in flood risk mitigation by governments in order to reduce their exposure under the reinsurance scheme;

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[34] ACCC National Australian Insurance Inquiry, Second interim report, November 2019, p71.

[35] Ibid p59

[36] https://treasury.gov.au/review/natural-disaster-insurance-review

[37] Recommendation 25: 'That a national agency sponsored by the Commonwealth Government be established to undertake national coordination of flood risk management and to operate the system of premium discounts and the flood risk reinsurance facility.' See: *Natural Disaster Insurance Review: Inquiry into flood insurance and related matters — Executive Summary and Recommendations* (September 2011).

- to signal to homeowners their actual risk of flooding by assessing the premium according to the actual risk before applying the discount thereby promoting private investment in risk mitigation at the property level or relocation; and
- finally, to alleviate some of the cost to households of the transition to realistically priced flood cover via the discounts, while providing adequate insurance cover.

The government failed to implement this recommendation. Instead, they opted to implement the lighter touch recommendations of standardising the definition of flood, and requiring insurers to publish a KFS to make it clearer what is and is not covered under an insurance policy. As a result, people are less likely to be caught unawares by a lack of flood cover, but in our experience many people have simply opted out of cover because it is unaffordable (see Tom's story above) or because of their own assessment (right or wrong) that their risk of flooding is low. The issues arising with flood are equally analogous to other perils such as bushfire.

While accurate risk signalling through premium pricing can play a valuable role, it is only useful to the extent that the potential insured can respond to that signal. Once any practicable mitigation has already been undertaken, then the only possible response to unaffordable insurance is to move or bear the risk. Where there is a sufficient public interest in maintaining populations in areas where there are such residual risks governments should be prepared to subsidise insurance premiums. Time limited subsidies could also be considered for areas where mitigation is planned but is yet to be undertaken.

Planning laws also need to better reflect environmental risks, including those posed by climate change. However it needs to be recognised that many people have already bought houses and established businesses in areas that are now exposed to unacceptable risks, or will be increasingly expensive to purchase insurance for. Again the government needs to develop appropriate and fair mitigation or exit strategies and should consider insurance subsidies in the transition period.

Any subsidy program should carefully note the risks of such measures identified by the ACCC, and be designed to minimise those impacts as far as practicable.

This Royal Commission 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 be preferable to wide scale non-insurance and underinsurance or an exodus of our population from some of our regional areas. Financial Rights submits that there are both strategic and equity reasons for doing so.

Price monitoring

Regulators will need to play an important role in tracking home and contents insurance rates after the Black Summer. The Government 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 (if permitted) in bushfire prone areas (watch for a trend similar to flood opt-out rates in Northern Australia and in the Northern Rivers and Hawkesbury region) or an upward trend in uninsured properties;
- 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 an Australian community are underinsured or uninsurable this will dramatically affect a community's ability to bounce back after another fire.

An agency tasked with price monitoring could have the expertise that would assist in this process and could be empowered with the ability to examine and monitor the above issues. They should work with 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 the Government should consider whether to prohibit an insurer's ability to allow consumers to opt-out of fire 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 16 –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.

C203201 NSW

Case study 17 –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 ICA 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.

C201155 NSW

Financial Rights strongly supports the work of the NSW ESL Monitor and the previous Fire Services Levy Monitor in Victoria. The NSW ESL Monitor has published invaluable reports into insurance pricing in NSW, as did its Victorian predecessor. It is disappointing that such critical regulatory examination only took place within the context of the removal (and in NSW the subsequent reinstatement of) the Emergency Services Levy, and that the Victorian monitor is disbanded and the NSW monitor is about to cease operations.

From 2016-2019 the NSW ESL Monitor's work and the industry's positive engagement has served to improve transparency, increase financial literacy and potentially improve consumer outcomes. There are strong grounds for the ESL 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 Australian regulatory landscape, be it in as a national ongoing stand-alone insurance pricing monitor or a clearly identified role for an independent Resilience Agency.

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.

A permanent Disaster Resilience & Recovery Agency

The government should establish an independent agency to co-ordinate, drive and monitor the effectiveness all aspects of disaster preparedness and recovery, including:

- prevention and mitigation work nationally;
- the impact of any mitigation work on the price and availability of insurance;
- the design, application and funding of any subsidies;
- the resulting take- up of suitable and affordable insurance cover.

All this should be done with a view to changing policy settings that prove ineffective. The desired result should be maximising our resilience to climate related disasters, through an appropriate mix of prevention, mitigation, planning and affordable insurance. Waiting until the next bushfire or other climate related disaster to identify the effectiveness of measures introduced in response the last one is too late.

This agency could contain the functions of both the Resilience Assessor and the Price Monitors as described above.

Recommendations

12. Establish a permanent National Disaster Resilience Agency should be established to co-ordinate, drive and monitor the effectiveness all aspects of disaster preparedness and recovery, including:

    - prevention and mitigation work nationally;
    - the impact of any mitigation work on the price and availability of insurance;
    - the design, application and funding of any subsidies;
    - the resulting take-up of suitable and affordable insurance cover.

    This agency could include the functions of both an independent resilience assessor and an insurance price monitor. Alternatively, a price monitor could be separately established.

13. There should be government investment in large-scale mitigation projects. Governments should coordinate and 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.

14. Grants and subsidy programmes for individual mitigation works should be established to increase bushfire resilience for homes.

15. Consideration should be given to the role of carefully designed insurance premium subsidies linked to long term mitigation measures and planning law changes, as part of the long term disaster preparedness strategy.

Term of Reference F

Ways in which Australia could achieve greater national coordination and accountability — through common national standards, rule-making, reporting and data-sharing — with respect to key preparedness and resilience responsibilities.

Government clean up and recovery assistance

The NSW and Victorian governments should be commended for coordinating and funding 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 Government clean-up.

All case study names have been changed.

Case study 18 –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.

C202389, NSW

Case study 19 –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.

C202530, NSW

Case study 20 –Lynn's story

Lynn's house was completely destroyed by fire in the December 2019 fires. She is having a dispute with her insurer because they are refusing to organise debris clean-up or commit to reimbursing any debris-removal costs Lynn incurs even though Lynn's policy includes removal of debris. Her insurer says that Lynn needs to apply for the free bushfire clean up services provided by the Victorian government. The insurer has told her that they will not refund her clean-up cost since she will not suffer any loss since the government services is free. Lynn is frustrated about the delay and just wants what she is entitled to under her policy.

C201214, Victoria

Financial Rights submits that there are other forms of coordinated national, state and local government assistance that could help with underinsurance. These types of assistance could include 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 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, costs rise considerably after a natural disaster 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 (whether the information is correct or not).

The Productivity Commission, in its report on natural disaster management in 2014[38] 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.

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

[38] 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

- o – 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.[39]

The Productivity Commission found that:

- there is scope for greater coordination and prioritisation of natural hazard research activities across governments and research institutions.[40]
- 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
    - o use private-sector providers where cost effective, and use licencing arrangements that allow for public dissemination. [41]
- state and territory governments, local governments and insurers should explore opportunities for collaboration and partnerships.[42]

While some of these have been acted on in part – particularly following the Productivity Commission Data Use and Availability report[43] – 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.

The 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:

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[39] Productivity Commission Inquiry Report, 2014, Pages 183-4

[40] Productivity Commission Inquiry Report, 2014, Page 187

[41] Productivity Commission Inquiry Report, 2014, Page 192

[42] Productivity Commission Inquiry Report, 2014, Page 192

[43] https://www.icadataglobe.com/

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.

Recommendations

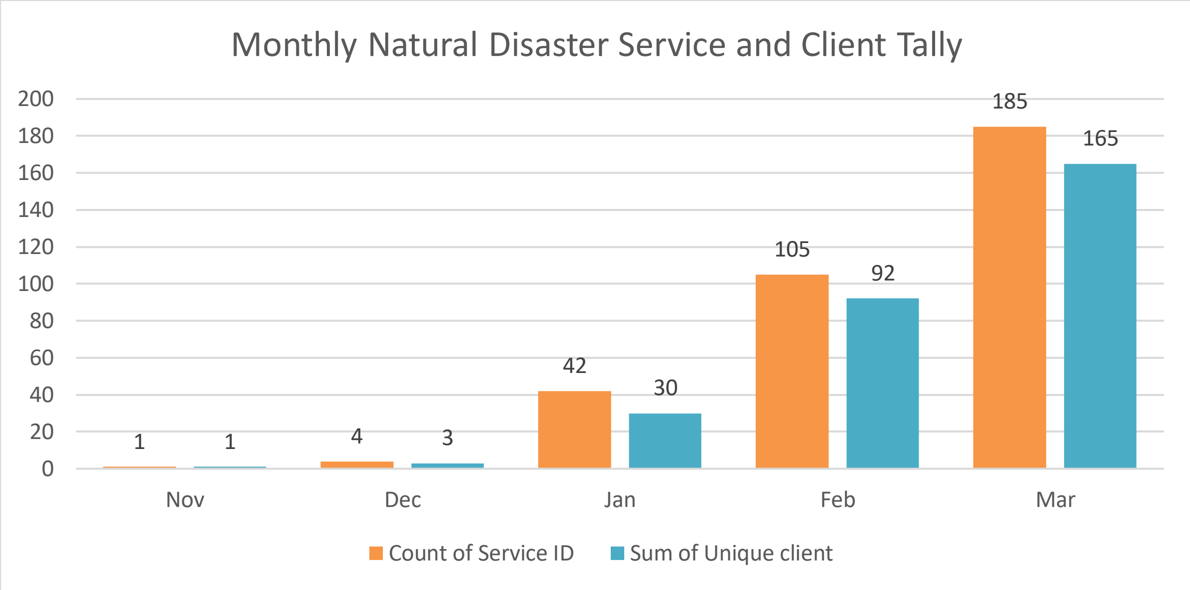
16. **Governments should assisting with clean up and debris removal after major disaster events and should consider funding accommodation for construction workers who are rebuilding homes in rural areas, and funding and coordinating deliveries of bushfire resilient building materials for home rebuilds.**
17. **There should be better co-ordination and communication with the public in relation to clean up and debris removal, including timing and the interaction with people's rights under their insurance policies where applicable.**
18. **Public and government data sets should be made available to insurers (and consumers in an accessible form) to enable more automated data collection and disclosure.**

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 90 legal and financial counselling services to over 60 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[44]. 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).

[44] 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 not secure. Our Insurance Law Service funding was essentially doubled a few years ago by one-off funds from ASIC enforceable undertakings. Attracting and retaining experienced staff is difficult without the security of ongoing funding and, where we are reliant on one-off Community Benefit payments we risk losing solicitors, due to the uncertainty. Even with this additional funding we only take between 40-50% of incoming calls on any given day. If confined to our core recurrent funding we could only answer 20-25%, which is not a viable proposition.

The Insurance Law Service is not only an extremely efficient national service, but an important repository of expertise about responding to disaster events and running insurance disputes. Since the establishment of the service in 2007 we have provided over 2000 natural disaster related services, from advice to full representation in disputes, and assisted people in many thousands of non-disaster related insurance disputes. Between November 19 and February 2020, our online *Bushfire Insurance Guide* was viewed 9331 times, 5,565 times in January 2020 alone, our fact sheet *When a tree falls in a storm, who pays?* was viewed 8,174 times, our *Your vehicle has been written off* fact sheet has been viewed 10,774 times, peaking after the ACT hail storms. The experiences of clients of the service, as conveyed in submissions like this, also play an important role in national debate and responding to government inquiries in relation to insurance. Stable funding for the Insurance Law Service at Financial Rights Legal Centre should be a key part of a co-ordinated response to disaster events.

Commissioner Hayne in his Final Report of the Financial Services Royal Commission[45] 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[46] also recommended the government consider the impact on

[45] 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

[46] Sylva, L Am FAICD, The Countervailing Power: Review of the coordination and funding for financial counselling services across Australia, March 2019, pvi

the provision of legal assistance that will flow from significantly increased provision of financial counselling. To our knowledge, these recommendations have not been progressed.

Below are several examples of 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 21 –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 entitlement. The insurer has now refunded Sally the entire value of the prepaid accommodation, including the week she actually used.

C197979, NSW

Case study 22 – Else and Andrew' 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 wasarguing 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. *C199531, NSW*

Actual names: these clients have consented to being named and have appeared in national media with this story 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 23 –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 an adjournment on the bankruptcy proceedings so that negotiations could continue. She was eventually able to pay the creditor from a bushfire grant. Financial Rights is also helping Sheree with her entitlements under her insurance policies which include an underinsurance clause which has substantially reduced her entitlement.

C199922, NSW

Recommendations

19. **Ongoing, adequate & stable funding should be provided to the Insurance Law Service at Financial Rights.**
20. **Community legal centres providing advice and assistance to bushfire victims should be appropriately funded to meet these increasing demands.**
21. **The Government should respond to, and act on the Royal Commissioner's comments and the Sylvan Review's recommendations to provide predictable and stable funding for legal assistance providers who specialise in financial services work, such as credit, debt and insurance.**

Term of Reference I

The need to establish appropriate arrangements for information-sharing in relation to any other inquiries or reviews, in order to support concurrent inquiries or reviews as well as your own, in ways consistent with relevant obligations, and in ways that avoid unnecessary duplication, improve efficiency and avoid unnecessary trauma to witnesses.

Financial Rights has making a submission to the NSW Bushfire Inquiry. Many of the same de-identified case studies in this submission have been used in the NSW Submission.[47] If the Commission would like to contact those clients or request that they appear as witnesses we would appreciate if the two inquiries coordinate to avoid unnecessary trauma to witnesses.

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 Julia Davis, Financial Rights' Policy and Communications Officer at julia.davis@financialrights.org.au

Kind Regards,

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[47] https://financialrights.org.au/submission/