



# Exposed: Insurance problems after extreme weather events



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# AT A GLANCE

Financial Rights provided 1064 extreme weather event-related services to 706 clients during the reporting period (18 months from November 2019 and April 2021)



Australia experienced eight extreme weather events during the reporting period with the Black Summer fires in November 2019 until Cyclone Seroja in April 2021



Storm-related matters made up 42% of clients, hail 23%, bushfire 20% and flood 13%



70.2% of clients affected by extreme weather events enquired about home building and/or contents insurance



45.3% of clients affected by hail events enquired about motor vehicle insurance



Poor claims handling was the number one issue raised by clients affected by extreme weather events (20.4%)



Cash settlement (15.7%), defect clauses (8.8%), underinsurance (7.9%) and maintenance issues (6.7%) were other top issues



Underinsurance was the most common issue by proportion for people affected by bushfires with 18.3% of bushfire clients affected



Debris removal was another key concern for 10.6% of clients affected by bushfires



Issues with defect clauses, maintenance and assessors were of particular concern to clients affected by storms and hail



# RECOMMENDATIONS

How insurance claims management and processes could be improved

## CLAIMS HANDLING

Insurers must communicate with consumers in a transparent manner, clearly informing them how their extreme weather event claim will be assessed and how their claim is progressing



Insurers need to take a proactive approach to progressing delayed claims, and identifying vulnerable customers for appropriate care



The Australian Securities and Investments Commission (ASIC) must take a proactive approach to its new claims handling oversight powers, providing robust guidance, active supervision and enforcement



## CASH SETTLEMENTS

People affected by extreme weather events should be given the right to choose whether their claim is settled through a cash settlement or with a repair or rebuild managed by the insurer. They should also be supported with appropriate information to inform this decision



Insurers should be required to base their cash settlement offers on genuine repair quotes, premised on the likely cost to the consumer, not the insurer



The right to review cash settlements should be expanded to include settlements accepted more than one month after an extreme weather event



Cash settlement rates and the reasons for cash settlement rather than rebuild or repair should be tracked and analysed



Insurers should carefully consider their obligations under the General Insurance Code of Practice when considering whether to offer cash settlements to vulnerable consumers



Insurers should innovate product offerings, to assist consumers who do not want to rebuild in high risk areas to relocate, for example, rebuilding elsewhere for the same sum insured



## DEFECT, MAINTENANCE AND WEAR AND TEAR

Insurers should be required to put details concerning any lack of maintenance allegation in writing as well as details of what difference the maintenance would have made to the outcome



Insurers should not rely on defect, maintenance and wear and tear clauses to deny claims where there is compelling evidence the damage would have been caused irrespective of any reasonable efforts on the part of the property owner



Insurers should apply a fairness lens to defect, maintenance and wear and tear claims particularly for long-term or vulnerable customers



Reform is required to ensure insurers cannot unreasonably avoid liability for damage caused by insured events because of defects consumers were not aware of, and could not reasonably have been aware despite appropriate due diligence on their part



People affected by extreme weather events should be provided greater support and community education to ensure they understand defect, maintenance and wear and tear clauses



Insurers should be more proactive in raising issues concerning defects, maintenance, and wear and tear with their customers. Insurers should also implement initiatives to assist consumers to carry out maintenance where they have neither the resources nor the physical capacity to do it themselves





## UNDERINSURANCE

The Australian Government should accept and implement all the recommendations of the Australian Competition and Consumer (ACCC) Northern Insurance Inquiry



Insurers should be required to provide an estimate of an updated sum insured for home insurance consumers. This should be prominently displayed on a consumer's renewal notice along with the previous year's sum insured and the reason for any change



Debris removal and a architectural fees should not be included in the sum insured but should be provided as benefits over and above the sum insured



Home insurance policies in high risk areas should include a 25% buffer for total loss extreme weather events



An effective standard cover regime with standard definitions that are more in line with community expectations should be urgently introduced



Australian states should make local government data sets open and accessible to insurers and consumers to enable more automated data collection and to encourage disclosure of risks and facilitate better mitigation strategies



There should be better communication of the risks and costs of insurance to prospective property buyers



The Australian Government should develop a national data collection program on underinsurance



Australian governments should determine how much risk individual homeowners should be asked to bear or whether society should share these costs more equitably



Direct premium subsidies to vulnerable residents in high risk areas should be implemented as the best way to assist citizens who face disproportionate risks because of their location



Australian governments should take more decisive action to address climate change and reduce greenhouse gas emissions



## THE IMPORTANCE OF LEGAL ASSISTANCE

Stable and increased funding for legal assistance services should be provided to support people affected by extreme weather events across Australia as part of our national resilience strategy



## Introduction

The number and severity of extreme weather events experienced across Australia during the 18-month reporting period between November 2019 and April 2021 was extraordinary on almost any metric.

This is mirrored in the increased demand for services provided by Financial Rights Legal Centre (**Financial Rights**) to people affected by these events.

The reporting period begins in November 2019 with the unprecedented “Black Summer bushfires” in NSW, Queensland, South Australia and Victoria and ends in March 2021 following Cyclone Seroja, with multiple extreme weather events in between.

The Insurance Law Service at Financial Rights is regularly over-subscribed with 50% or more of daily calls unanswered because of a lack of capacity. The Insurance Law Service determined in early 2020, that calls about extreme weather events should be prioritised to ensure they were not lost in a sea of enquiries concerning other matters such as motor vehicle accidents.

In response, Financial Rights established a priority routing system for people affected by extreme weather events and/or family violence. People are also able to contact the Insurance Law Service via a web-enquiry form. This service has proved vital in areas where the internet was working, but there was no phone connectivity.

Date	Catastrophe
Nov-19	2019/20 Black Summer Bushfires (NSW, QLD, SA, VIC)
Nov-19	South East Queensland Hailstorm (QLD)
Jan-20	January Hailstorms (ACT, NSW, VIC, QLD)
Feb-20	East Coast Storms and Flooding (NSW, QLD)
Nov-20	South East Queensland Hailstorms (QLD)
Feb-21	Perth Hills Bushfire (WA)
Mar-21	Storms and flooding (NSW & QLD)
Apr-21	Cyclone Seroja (WA)

When catastrophe strikes, people need help - both in the immediate aftermath and in the long term, as they grapple with trauma, struggle with finances, pursue insurance claims and piece their lives back together. People often require advice and assistance to deal with insurers and financial service providers. Some disputes are inevitable.

Financial Rights’ specialist national Insurance Law Service and NSW arm of the National Debt Helpline received more than 700 extreme weather event-related requests for assistance during the reporting period. The number of requests for assistance is small compared to the number of claims relating to these catastrophic events. However, it is large enough to draw some useful insights about insurance claims handling, management and recovery and how experiences and processes can be improved.

A specialist community legal centre, Financial Rights services range from short interactions where people are provided with relevant information, to more detailed legal advice and financial counselling. Task assistance is also provided and may involve drafting a letter to an insurer on behalf of a client, or assisting a client to lodge a dispute with the Australian Financial Complaints Authority (**AFCA**). Financial Rights represents a small percentage of clients until a suitable resolution is reached or a determination by AFCA is made. The organisation also represents a small number of clients in court when necessary, although this has not yet occurred in the context of an extreme weather event.

Financial Rights engages regularly with regulators, including by lodging complaints with code compliance committees and reporting poor conduct to bodies such as Australian Securities and Investments Commission (**ASIC**).



Financial Rights' clients are provided advice, and submissions and complaints are often made on their behalf, or drafted for them. In many cases, Financial Rights staff are able to point to breaches of law, including the duty of utmost good faith, the General Insurance Code of Conduct, and departures from good practice. Financial Rights staff are also able to give guidance to clients concerning appropriate evidence to collect and to explain how the claims and complaints processes work. Financial Rights' often does not know the ultimate outcome for the clients we assist and therefore does not always provide the outcome in the examples presented in this report. In some cases we are aware of the outcome because we represented the client throughout the dispute. In some cases clients contacted the service again to inform us they have been successful.

This report shares data collected during the 18-month reporting period as well as insights regarding experiences with extreme weather events and insurance. Further details are provided concerning key issues of concern to clients including underinsurance, cash settlements, delay, poor claims handling practices and insurers' reliance on defect, maintenance and wear and tear clauses. The report explains why these problems occur and how they could be reduced in future or more effectively resolved.

Importantly, the report reveals real stories from Financial Rights clients about their experiences making extreme weather event-related insurance claims. These case studies do not convey the vast number and variety of questions, challenges and disputes clients confront, nor the depth of work involved in providing quality advice and representation. While the majority of claims have been dealt with in an efficient, timely and sensitive manner, the compounding effect on pre-existing trauma when they are not, is often devastating.

As specialist lawyers and financial counsellors, Financial Rights' experts are able to spot systemic problems in how insurance is regulated and how it works in practice. Real life case studies are an optimum foundation upon which recommendations for reform to the insurance industry are made.

Financial Rights services are vital to putting people in good stead to rebuild their lives. However, they are supported by a patchwork of temporary funding. It is critical that governments invest properly in community legal services as part of building a path to greater resilience in the face of increasing extreme weather events.



**Karen Cox**

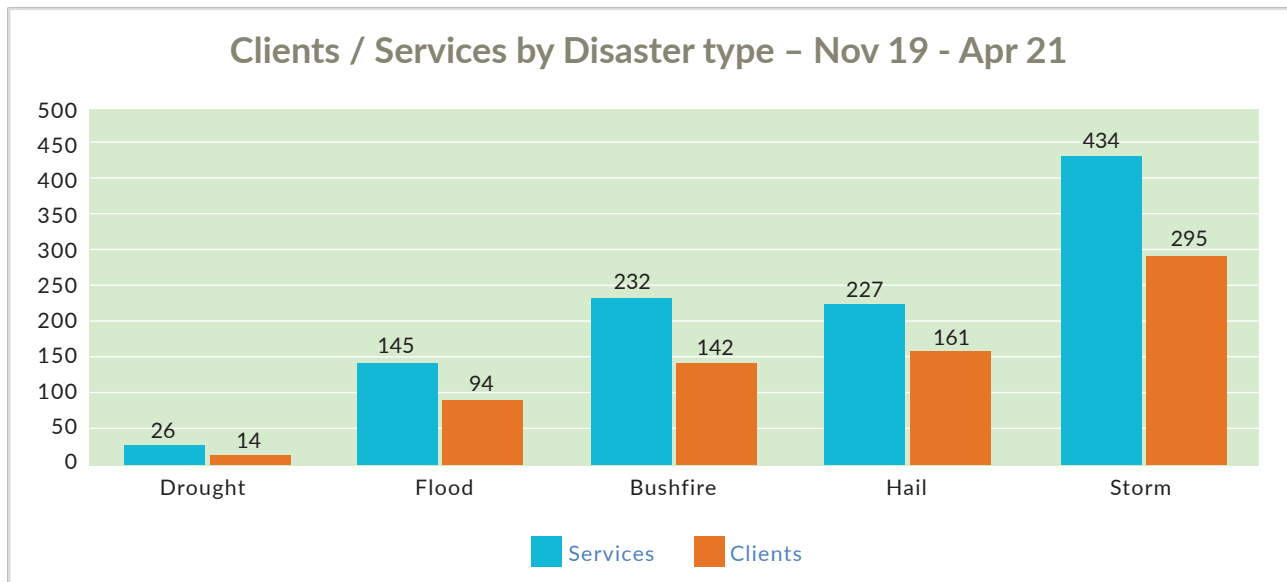
Chief Executive Officer  
Financial Rights Legal Centre

The Financial Rights Legal Centre is an independent not-for-profit community legal centre that provides financial counselling and legal advice and assistance to consumers relating to financial services. A key service is the Insurance Law Service which delivers specialist legal advice to people nationally concerning problems relating to consumer insurance and more recently to small businesses and farmers affected by extreme weather events.

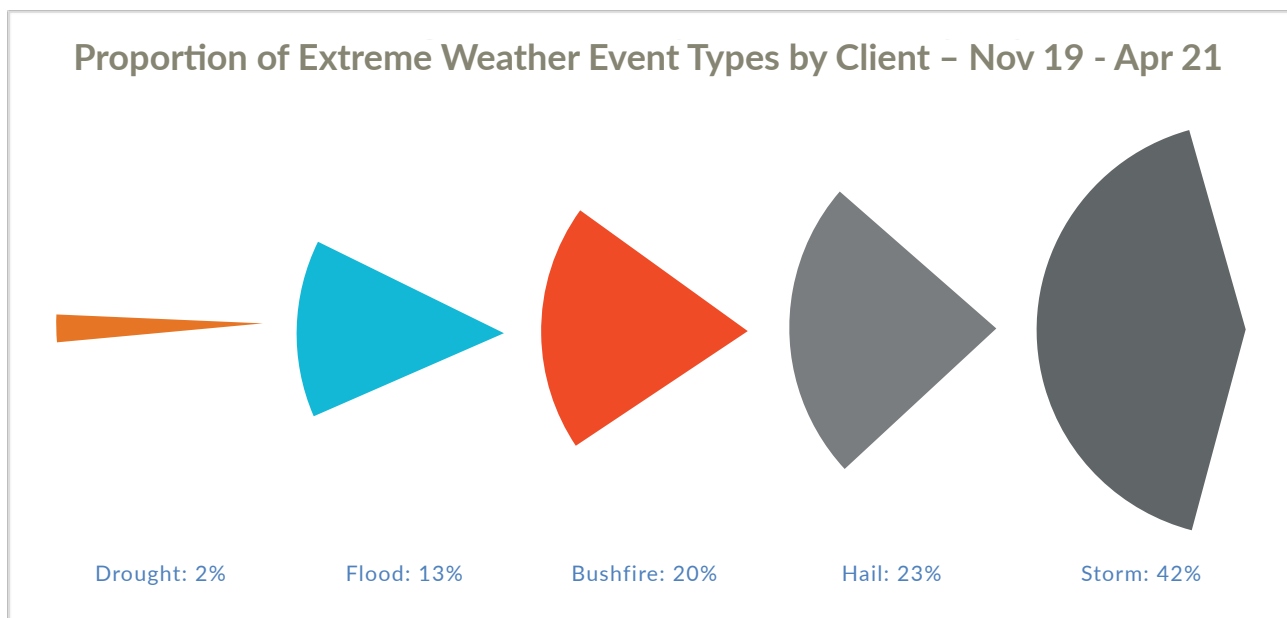
## Overview: Reviewing a year of extreme weather event advice

Data is presented as a proportion of both clients and services.<sup>1</sup> Some clients received multiple services over time as their situation progressed.

Financial Rights provided a total of 1,064 extreme weather event-related services to 706 clients during the reporting period.



Storm and hail-related insurance matters made up the highest proportion of Financial Rights' clients. Around 42% of clients, or 295 people, enquired about storm-related matters. This led to the provision of 434 services. Around 23% of clients, or 161 people, enquired about hail leading to the provision of 277 services.



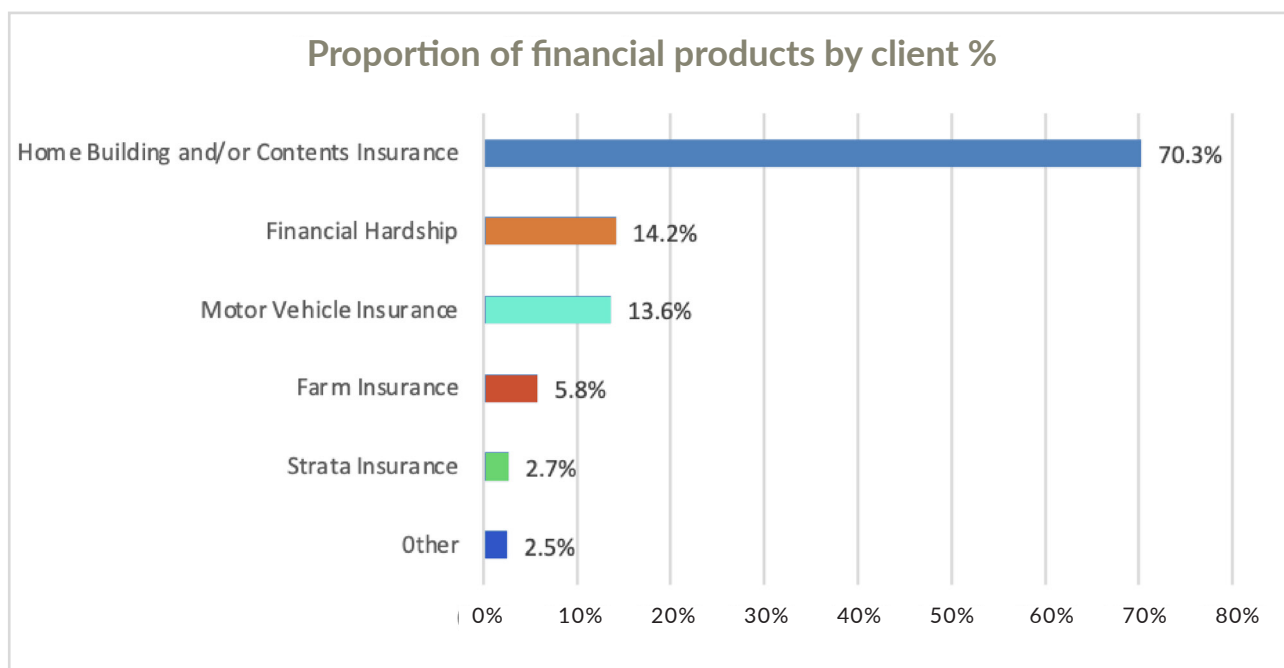
There were 142 clients affected by bushfires, who made up 20% of the total, with 232 services delivered.

This was followed by 94 flood-related clients who comprised 13% of the total with 145 services delivered and 14 drought-related clients who made up 2% and were provided 26 services.<sup>2</sup>

## Financial products

Around 70.2% of clients and 71.8% services delivered concerned home building and/or contents insurance. In contrast, the most common product clients sought advice about relating to non-extreme weather events, was motor vehicle insurance.

Extreme weather event-related services provided to clients ranged from total losses experienced by bushfire ravaged communities and damage caused to roofs by hail or wind, to all manner of water ingress associated with storms and floods. As the biggest, most expensive asset most people have, it is unsurprising that home building and contents insurance is the most common financial product that people seek advice on. Some clients were also tenants enquiring in relation to their contents insurance.



*Note: Some clients call with multiple issues; "Other" includes landlord, pleasure craft, caravan and business insurances.*

Around 13.6% of extreme weather event clients enquired about motor vehicle insurance. These enquiries comprised 11.6% of services delivered. More than 45.3% of clients enquired about motor vehicle insurance claims relating to hail events, most notably hail storms in Canberra in March 2020 and the hail storms in South East Queensland in November 2020.

Of all extreme weather event clients 5.8% enquired about farm insurance matters. Around 5.5% services were delivered in relation to these enquiries. Other clients contacted Financial Rights seeking advice and support concerning strata insurance (2.7%, landlord insurance (1.4%, boat insurance (0.4%, business insurances (0.4%, and caravan insurance (0.3%).<sup>3</sup>

Significantly, around 14.6% of extreme weather event clients sought advice and support with respect to financial hardship issues, rather than insurance. This comprised 15.3% of services delivered. Many clients were unable to meet commitments under loans or other household bills. This was particularly so in regional and remote areas where disaster events sometimes had profound impacts on the local economy.

## Key issues identified

The key insurance issues consumers face in the aftermath of an extreme weather event vary in accordance with the type of event.

Poor claims handling complaints, including, most prominently, delays and poor communication but also bullying, errors and incompetence were the most common issues raised by one in five, or 20.4% of extreme weather event clients.

### Top 5 issues faced by clients affected by extreme weather event

Total Issues	Client %
1. Poor claims handling	20.4%
2. Cash Settlement	15.7%
3. Defect Clause	8.8%
4. Underinsurance	7.9%
5. Maintenance	6.7%

It was also the number one issue raised by clients affected by flood (21.3%), storm (21.7%) and hail (23.6%).

Delays were a key issue for 77% of clients who complained about the claims handling process, not surprisingly given the significant impact this has on the living conditions of people affected by floods and hail. Delays accounted for two out of three storm-related claims handling complaints (68.7%) and 90% of flood and hail-related claims handling complaints.

Poor claims handling was also the second top issue for people affected by bushfires (15.5% of clients). Many people were understandably stressed and required urgent assistance.

Cash settlement was the second most common issue raised by clients affected by extreme weather events (15.7%). This often related to underinsurance issues. Many clients were faced with low cash settlement offers; both lower than they expected and lower than they needed to rebuild. Some clients sought advice on how to obtain a cash settlement when the insurer opted to rebuild. Many understandably wished to leave the bushfire area of their residence because of the trauma of their experience and sought a cash settlement to facilitate this. Others did not understand the claims process or their rights with respect to cash settlement offers versus rebuilding.

### Top 5 issues faced by people affected by floods

Flood Issues	Client %
1. Poor claims handling	21.3%
2. Cash Settlement	17.0%
3. Underinsurance	10.6%
4. Defect Clause	6.4%
5. Vulnerability	4.3%

Cash settlement was the second most common issue raised by people affected by floods (17%). Cash settlement was also in the top 5 issues for clients affected by storms (14.9%), people affected by bushfires (13.4%) and clients affected by hail (19.9%).

#### Top 5 issues faced by people affected by storms

Storm Issues	Client %
1. Poor claims handling	21.7%
2. Defect Clause	15.6%
3. Cash Settlement	14.9%
4. Maintenance	11.9%
=5. Legal Liability	8.1%
=5. Assessment/Assessor	8.1%

*Note: Legal Liability refers to issues regarding responsibility for damage from, for e.g. a fallen tree*

**Defect clauses** were the third most common extreme weather event issue raised overall and the second most common issue raised by 15.6% of people affected by storms.

**Maintenance** was an issue for 11.9% of storm clients. Defect clauses were also raised by a number of people affected by floods (6.4%).

Significantly, storm claims were more likely than bushfires to involve disputes regarding the state of the roof or property prior to the storm or hail event. In many cases the insurer's assessors asserted the existence of a defect in the building, pre-existing damage, a lack of maintenance or that wear and tear had contributed to the damage.

#### Top 5 issues faced by people affected by hail

Hail Issues	Client %
1. Poor claims handling	23.6%
2. Cash Settlement	19.9%
3. Written Off Vehicle Register	15.5%
4. Quality of repairs	10.6%
5. Assessment/Assessor	6.2%

Hail has a disproportionate impact on motor vehicles. Many clients expressed concern and confusion about their vehicle being written off and added to the state government written off vehicle register (15.5% of clients) and were dissatisfied with the quality of repairs (11% of clients). Concerns about delays were raised by almost one in five clients, and in 90% of client complaints concerning poor claims handling. One in five clients affected by hail sought assistance with respect to cash settlements.

**Underinsurance** was the fourth most common issue for all extreme weather event client and the most common issue for 18.3% of clients affected by bushfires. This ranged from tragic cases, where people were completely uninsured because of unaffordable premiums or because they were unable to obtain insurance in the area they reside (7.7% of clients) to clients whose sum insured was insufficient to rebuild.

## Top 5 issues faced by people affected by bushfires

Bushfire Issues	Client %
1. Underinsurance	18.3%
2. Poor claims handling	15.5%
3. Cash Settlement	13.4%
4. Debris removal	10.6%
5. Sum Insured	9.2%

Underinsurance is likely to be significantly higher in the relevant communities than reportable data suggests. People with no insurance at all, or who have consciously underinsured due to an inability to afford the premiums for adequate insurance, are less likely to ring Financial Rights for assistance because they do not identify as having an insurance dispute. Underinsurance was also the third most common complaint for people affected by floods where many people opted out of flood cover because of unaffordability.

**Debris removal** was a key issue too for 10.6% of clients affected by bushfires. Many people were confused as to who is responsible for clearing debris and who pays: the insurer, the state government (where state sponsored clean up programs were initiated) or the property owner. There are disparities in how different insurers cover debris removal. Some policies include debris removal as part of the sum insured, while others include it as an additional benefit over and above the sum insured. This leads to different outcomes for people in the same or similar circumstances. Despite the stated intention by the Insurance Council of Australia that government sponsored programs would allow insurers to pass savings on to policyholders,<sup>4</sup> this did not happen in many cases.

Taking a look at the most common issues Financial Rights provided services on – as opposed to the number of clients – the Top 10 issues detailed below lead with poor claims handling, followed by cash settlement issues, denials due to defect clauses, lack of maintenance and underinsurance issues.

Top 10 issues by service	Services %
1. Poor claims handling	17.2%
2. Cash Settlement	11.5%
3. Defect Clause	6.7%
4. Maintenance	5.7%
5. Underinsurance	5.7%
6. Quality of repairs	4.7%
7. Assessment/Assessor	3.9%
8. Scope of Works	3.8%
9. Wear and Tear	3.1%
10. Debris removal	2.9%

The following sections will take a closer look at the top insurance issues experienced by those impacted by weather events:

1. Poor claims handling/delays;
2. Cash Settlement;
3. Defect clause/maintenance;
4. Underinsurance.

These sections detail real life (de-identified) client stories from the reporting period to demonstrate a need for reform. In some instances reforms are already in the pipeline but may not go far enough to address the issues identified.





## Poor claims handling, including delay

Poor claims handling was the most common reason why consumers contacted Financial Rights for advice or assistance after an extreme weather event. Almost one in five clients affected by extreme weather events raised claims handling as a key issue.

While “poor claims handling” can be a bit of a catchall phrase for many different specific concerns that consumers have, it almost always boils down to insurers failing to handle claims in a manner consistent with their duty of utmost good faith. Recent Federal Court interpretation of the insurers’ duty of utmost good faith is that claims should be handled in a manner characterised by ‘full and frank disclosure, clarity, candour and timeliness’.<sup>5</sup>

Financial Rights advises and assists many extremely vulnerable clients including the elderly, disabled, people caring for children with disabilities, and people with mental illness. Many of these consumers require considerable extra care. The following case demonstrates a litany of problems for an elderly client, even after the insurer sought to address their earlier errors.

### Grace’s story – NSW – C206167

Grace is elderly, physically disabled and lives alone. English is not her first language. Her property was damaged in a storm in January 2020 and she made a claim on her home building insurance. The insurer put tarpaulins on the roof but water continued to leak in. Grace suffered terribly from the cold and damp and a local charity stepped in to assist by covering the roof more effectively. Her insurer offered a small cash payout to fix the roof. They said it could take up to a year for them to fix the roof, so Grace may as well arrange to get it done herself. Grace accepted the payout. She employed a repairer she found in the newspaper who started the work and then told her it would cost twice the amount she had been paid by the insurer to complete.

Grace found it very difficult to manage the repair process herself. Not only was she frail and spoke English as a second language, the insurer experienced difficulty securing adequate resources to complete the works in a timely manner, despite their professional contacts. After Financial Rights intervened the insurer agreed to pay the full repair bill and to send out an assessor to check the repairs had been completed to an appropriate standard. Unfortunately the insurer deposited the funds into Grace’s bank account instead of the repairer’s account as agreed. This caused Grace to have to have to arrange transport to the bank with the repairer to withdraw the funds. The insurer sent a long letter to Grace directly, knowing she was represented, telling her that the repairs were not adequate as the builder was not skilled in roof repairs and that in fact the entire roof was failing, internally and externally, due to wear and tear.

Then another storm hit and water leaked into Grace’s kitchen causing further damage and electrical system failure. Ultimately the insurer fixed everything and paid for Grace’s temporary accommodation, but the whole process was stressful and drawn out. Financial Rights had to lodge a complaint with the AFCA to keep things moving. The insurer also paid Grace compensation for financial loss and non-financial loss on top of the claim. The insurer admitted breaches of the General Insurance Code regarding its conduct throughout the cash settlement negotiations, in light of her multiple vulnerabilities.

Types of complaints about claims handling that Financial Rights assists clients with include:

- Insurers not providing clear information about the claims process, what the consumer is covered for, or what they will repair. Some also demonstrate a lack of flexibility and understanding in communicating with consumers;
- Consumers feeling pressured or bullied by claims managers, assessors or builders;
- Insurers using third parties to communicate with consumers and dictating how the claim is progressing;
- Consumers being drip fed information requests including demands for fully itemised lists of contents destroyed in total loss situations;
- Insurers refusing to acknowledge errors as well as being inconsistent, back-tracking or reneging on earlier commitments to consumers about a claim;
- Insurers refusing to take responsibility for damage caused by their own third party assessors or builders or damaged caused by the insurer's delay;
- Claims subject to unnecessary and unreasonable delays.

### **Kathy's Story – NSW – C201480**

Kathy and her partner live on a hobby farm. They had two dwellings and at the time of the bushfires. The contents of one of the dwellings had been moved to a shed so that renovations could be done. The fire destroyed the shed and one of the dwellings and damaged the other. They claimed on their farm insurance.

The insurer wanted Kathy to itemise every item in the shed, down to every bit of crockery and cutlery. Kathy was aware of the new General Insurance Code of Practice and that insurers should not unreasonably require lengthy lists of itemised contents where there is a total loss and everything has clearly been destroyed unless there is some good reason to doubt the ownership or value of those goods. Financial Rights assisted her to raise concerns.

Once she raised her concern over itemisation (which they accepted), the insurer then objected on the grounds that the contents were in the shed and not the dwelling. Kathy had learnt the importance of checking the PDS from her discussions with a Financial Rights solicitor. She pushed back against the insurer's argument and they agreed to pay her in full.

Many Financial Rights clients raise concerns that their insurance claim is taking too long. This is a common complaint by both people who are affected by extreme weather events and those who are not. Perceptions of timeliness and delay vary vastly from person to person. Some clients contact Financial Rights the day after a claim has been made, others only begin to seek assistance 14 months down the track.

If considered separate to poor claims handling, delay would have been the second most common reason for clients to contact Financial Rights across all different extreme weather events with 15.7% of clients raising it as a key issue. Delay was particularly prevalent among people claiming in relation to storms, hail and floods. It was also an issue people affected by bushfires.

It is important to acknowledge that in many cases, delays are unavoidable and not necessarily the fault of the insurer. This was particularly the case in 2020 when there was an unusually high number of extreme weather events which affected many claimants during a short period. COVID-19 compounded difficulties for insurers with

lockdowns and other COVID-19-related restrictions such as state border closures and international supply line disruptions adding further complications and delays. Insurers struggled to engage builders and assessors in the timely way they might have otherwise done. There is much evidence that insurers have settled the vast majority of extreme weather event claims this year in a timely manner.<sup>6</sup>

Despite the overall good record for most insurers, there are many clients who experienced extremely poor insurer practices.

Delays in insurance claims handling are particularly important for victims of extreme weather events whose lives have been destroyed or turned upside down.<sup>7</sup>

Delays in repairs to one's home can move someone from a vulnerable situation into a situation that is intolerable and damaging to their health. In storm or flood claims, delays in repairs often lead to problems with mould and associated serious health problems.

### **Briony's story – NSW – C127232**

When Briony called us she was very distressed and in tears. Briony's home and contents were damaged by floods. She made a claim for damaged goods and her insurer asked her to make a list of every item that was damaged. It has now been three months and Briony has made many calls to her insurer, including seeking permission to dispose of items that were developing mould. She has missed days of work waiting for the insurer's tradies to come who have cancelled repeatedly. Their assessor has had to come out three times.

She got a call from someone in "customer relations" whom she had never spoken to before, who told her the insurer would only be paying about half of her claim with no explanation or breakdown. Briony felt bullied by this woman, who told her if she did not accept the offer it would be her own fault that the claim continued to be delayed. Briony has had to take time off work, and her GP has referred back to psychiatrist because she is not sleeping or eating properly. She's not coping.

The time between an extreme weather event and a claims assessment is critical. Consumers do not have much visibility as to how their claim is triaged. This period is like a ticking clock for them. People often have no clue what is happening with their claim, how long it will take and how it compares to the rest of their insurer's consumer base or what challenges the insurer may be facing in relation to a particular event.

Some insurers manage communication and transparency better than others. Financial Rights understands that one insurer texts consumers with regular updates, while others leave their consumers in the dark.

The problem of transparency and communication has been identified by ASIC in its recent open letter to insurers.<sup>8</sup> According to ASIC's research one consumer said:

*'A month between an incident and payout is not that bad - but a month between incident and payout when you don't know the next step and when you will be contacted is much worse than a month when you know 'this is the process, the next step is we will get back to you ...' <sup>9</sup>*

An additional contributor to claim delays is caused when multiple assessments of a property are needed. Sometimes this leads to a back and forth assessment between a consumer's independent assessor and that of the insurer but delays can also be caused by an insurer's dissatisfaction with an initial assessment or scope of works and seeking a second or third quote for repairs.

## **Gemma's Story – Victoria – C91001**

Gemma is the landlord for a rental property in Queensland, but she lives in Victoria. The property was damaged in a storm in early 2020 and she was notified by the real estate agent. Gemma made a claim on her landlord's insurance in late February but the claim was denied because the assessor said that there were structural defects in the roof due to renovation works carried out in the last five years. Gemma raised a dispute because there have been no renovations and she has a report from four years ago when she purchased the property stating there were no structural defects.

The insurer offered her a cash settlement of about \$6000 which Gemma was not happy about. The insurer sent a second assessor in late April whose report said the damage was consistent with storm damage. Gemma followed up with the insurer in May asking for their decision in light of the new report. She followed up again at the end of May and again in early June, but she has received no answer. Gemma also didn't want a cash settlement as organising repairs herself from Victoria while the state borders were closed would have been very difficult.

Complaints about insurer delays often lead to a long tail of complaints to our service, that is, Financial Rights hears from insured people still struggling with claims years down the track. Amongst the many enquiries about recent extreme weather events were people still struggling with unresolved claims or inadequate repairs from events that happened several years ago. For example, Financial Rights provided eight services to five people still dealing with issues from Cyclone Debbie (2017) in the reporting period.

## **Leigh's story – NSW – C211593**

Leigh's home and farm was damaged in a hail storm two years ago. She claimed on her farm policy. It took a year for her insurer to start repairs. The repairs were due to take 2 weeks, but Leigh has been living in temporary accommodation for nearly a year now. There have been many issues with the quality of work. She rang for advice about a number of issues, including how the value of her temporary accommodation benefit should be calculated; whether the insurer could refuse to insure her next year if she lodged a dispute with AFCA; and whether the guarantee on the items the insurer had replaced would continue if she chose to change insurers.

## **Lessons learned**

Insurers should always prioritise people affected by extreme weather event - both in the immediate aftermath of the event and in an ongoing manner. However some consumers are more vulnerable than others and have pre-existing issues that make it harder for them to manage the recovery process. This includes the frail aged, some people with disabilities, those with cognitive problems or mental illness. Others are more profoundly affected by the event itself, having had a terrifying near death experience or suffered severe losses, or because of the death or serious injury of a loved one. Insurers should make an effort to identify those consumers and respond with added care, as now required by the General Insurance Code of Practice.

ASIC recommended that insurers proactively and effectively communicate with consumers in a transparent manner, by clearly informing them how their claim will be assessed and how their claim is progressing.<sup>10</sup> For extreme weather event claims, this should ideally be more often than the minimum timeframe required under the General Insurance Code of Practice of 20 business days. Insurers should inform consumers about what will happen next,

and any reason for delays in the process. They should also hold their contractors to high standards to maximise consumer outcomes, including by keeping careful, accessible records of consumers preferred communication methods and complying with their preferences and other reasonable needs. A mechanism should exist to identify “stuck” claims which are not progressing within expected timeframes to ensure they are escalated for proactive, creative management.

In response to the Financial Services Royal Commission, the Australian Government recently gave ASIC the power to oversee systemic failures in insurers handling claims “efficiently, honestly and fairly”. ASIC expects “compliance in a way that meaningfully improves outcomes for consumers”. This is a positive reform and Financial Rights expects ASIC to be active in this space, providing robust guidance, active supervision and enforcement.





## Cash settlements

Concerns about cash settlements were common for people affected by all extreme weather events and across all insurance brands. It was the second most prevalent issue for clients across all services in all categories combined and second highest reason clients contacted Financial Rights for both flood and hail events. It was the third most common issue for clients affected by bushfire and storm.

Cash settlements can be fraught for people in many circumstances, especially after a traumatic extreme weather event.<sup>11</sup>

### **Alisa and Travis' story – NSW – C208660**

Alice and Travis' property was destroyed in the Black Summer bushfires and their insurer declared the property a total loss.

Five months later their insurer gave them a scope of works with numerous errors that did not reflect all the damage. Alisa complained and requested that a second scope of works be provided that accurately reflected all of the damage. Alisa and Travis were told a new scope of works would be ready two months later, but three months later the couple still had not received anything. Alisa contacted her insurer to check on the scope of works and to convey that they would need some time to consider it before deciding how to proceed. Alisa told her insurer that after losing their property in the bushfires she and her husband have both experienced depression and anxiety. Further because Alisa and Travis live in a remote township in NSW and it may take some time for them to find their own builder to independently review the scope of works before deciding to approve the works or cash settle.

The insurer showed little compassion over the phone. Alisa was told she would have two weeks to make a decision about whether she wanted to cash settle or have the insurer rebuild. If she did not make a decision within this time, they would automatically proceed with a cash settlement. Alisa complained that the insurer has had eight months to provide them with an accurate scope of works and the insurer's representative responded that Alisa and Travis have had eight months to think about what they wanted to do. Alisa feels intimidated by the insurer now and not sure how to proceed.

In the wake of a catastrophic event, many people are offered a cash settlement. Deciding whether to accept a cash settlement is not easy. In many circumstances it may not be the best option for the insured, although it may seem like the best resolution at the time. For people with building or architectural skills and qualifications, or access to such skills, a cash settlement may suit very well.

A cash settlement is often the only option for people who are underinsured and do not have enough money to rebuild their home, or for people who decide they want to relocate, either because of the trauma of the event itself, or because they do not want to live in an area prone to extreme weather event risks any longer.

Cash settlements, however, have many downsides for consumers. Consumers regularly underestimate increased demand for relevant trades subsequent to an extreme weather event, the impact this has on the prices charged and the ease with which they may be able to hire appropriate tradespeople. Consumers also need to factor in changes to relevant building codes, which can be very expensive, particularly in extreme weather event prone areas.

## **Evan's story – NSW – C210280**

In a storm in July 2020, a branch fell from a tree onto Evan's deck causing damage. Evan, an Aged Pensioner, made a claim on his home building insurance and obtained a quote to replace the deck using timber, which was assessed at \$10,000. Evan then accepted \$12,000 cash settlement offered by his insurer. However, Evan has now been told by the council that he cannot replace his deck with timber as the relevant building code has changed. It will now cost \$20,000 to get the deck replaced using the compliant material. Evan is frustrated because he accepted the payout on the basis of the quote for repairs to be done in timber. It was only after he accepted it that the council informed him that timber was not compliant. Evan thinks that his insurer's assessor should have told him that any repairs would need to be made out of compliant material. Evan's policy covers additional costs incurred by building regulations and the insurer should have taken this into account.

Very few consumers would have any idea what is a fair price for major repairs to their property. They need time to obtain independent quotes and to check if building codes or standards have changed and will affect the scope of works.

Many people find it difficult to project manage complex repair projects following a cash settlement or underestimate the time and complexity involved. They are unlikely to take into consideration the cost of hiring a building manager when they accept a cash settlement. Some people are particularly vulnerable and are highly unlikely to easily manage the repair process themselves: see Grace's story above.

Consumers also lose the benefit of lifetime repair guarantees offered by insurers when they agree to a cash settlement.

Discrepancies in the reports of assessors and wildly differing quotes can also exacerbate consumer confusion and distress in cash settlement negotiations. Financial Rights saw a number of very low offers, during the reporting period, based on quotes obtained by the insurer that the consumer thought were inadequate. This was either because the entity quoting the work had not even been to the site or because of major gaps in the proposed scope of works. Sometimes there was too little information provided to judge the adequacy of the quote at all.

## **Everly's story – NSW – C205645**

Everly's house was destroyed in the Black Summer bushfires. His sum insured had been about \$600,000, but he was investigating rebuilding on that site for a house about 20% bigger and the building quotes came back as over \$1 million. Everly had spent significant sums on architect and engineering reports. He realised that because the house was on a steep slope, would require bushfire rated materials, and new council regulations were in force, he was probably underinsured for his current home so he consulted some online calculators and doubled his sum insured. When the house was destroyed he made a claim with his insurer and spent months waiting for a scope of works. The insurer finally provided two quotes for rebuilding, mostly provisional sums with no itemisation. No provision was made for the fire ratings, slope of the block or council regulations. The insurer's quotes ranged considerably from 30% of his original \$600,000 sum insured to 110%. Their first cash settlement offer was less than his original sum insured.

ASIC included cash settlements – based on the cost to the insurer to repair or rebuild – as an example of a potentially unfair contract term in its recent guidance to industry. AFCA also applies a rule of thumb that it will often cost the consumer between 10% and 25% more than the insurer to complete the same works.<sup>13</sup>

Financial Rights has seen numerous examples of consumers who were offered the lowest quote obtained by an insurance company, without taking into account any of the additional challenges that a consumer is likely to face given they do not possess the same commercial experience, industry connections and bulk buying capacity.

### **Mary and Steve's story – NSW – C205032**

Mary and Steve were affected by the Black Summer bushfires. Steve was able to save the house, but the surrounding infrastructure including water and septic tanks and the garage were lost. Their insurer accepted the claim and did an assessment, but when Mary asked if they could cash settle and use their own builder the insurer agreed, but quoted them 20% less than the insurer's own assessor's estimate. Mary went back to the insurer after getting advice and they were ultimately paid a fairer amount.

Consumers need time and information to assess whether a cash settlement is the right option for them and whether it is the right amount. Problems can arise when insurers seek to rush the process and close claims as quickly as possible. Many consumers feel pressured and cash settle out of frustration with the claims and repair process. In many cases, the amount accepted seems adequate at the time, but further damage becomes apparent further down the track.

### **Annie's story – NSW – C202011**

Annie had significant damage to her home and surrounding structures in the Black Summer bushfires. She accepted a cash settlement three months later. Months on she discovered significant damage to the property that had only become apparent with the passage of time, and that had not, as a result, been covered by the cash settlement she received nearly a year ago.

The General Insurance Code of Practice allows people who accept cash settlements within one month of a catastrophe event to seek a review of that settlement up to 12 months later. In her case she had received the settlement later than one month after the catastrophe.<sup>12</sup> Notwithstanding this, the insurer should be compelled to reconsider the settlement if further damage has come to light.

There were several areas of damage that were not included in the original scope of works which informed the amount of the cash settlement. The most significant of those was the roof, which started to rust due to the protective coating having been destroyed by the heat of the fire. The manufacturer of the roofing material informed Annie it would take temperatures of at least 800 degrees Celsius to remove the protective coating. The insurer sought to reject her claim for this damage on the grounds that there is an exclusion in the policy for any loss, damage or liability caused by:

- *glowing, heat, smouldering, scorching or melting where there were no flames.*

With a bushfire of that size and intensity there clearly were flames, although they may not have ignited the roof.

Cash settlements can also be a problem where the consumer has a mortgage on the property. Where there is a mortgage, 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 consumer has the capacity to repay the loan, they may not release the funds.

Finally, unless consumers begin the rebuild process fairly quickly, or effectively quarantine the payout, the settlement funds may be whittled away, undermining their capacity to rebuild and effectively recover.

## Lessons learned

People affected by extreme weather events should have greater control over how their insurance claim is settled. They should also have a basic right to choose whether their insurance claim is settled through a cash settlement or with a repair/rebuild managed by the insurer.<sup>14</sup>

Insurers should empower consumers by providing them with appropriate information setting out all the matters the consumer should consider to help them make an informed decision about cash settling their insurance claim. This should include relevant warnings, such as, if a consumer accepts a cash settlement, the insurer will no longer be required to manage or guarantee the quality, cost or timeliness of any works. Other warnings should include an explanation that the insurer is able to obtain lower rebuilding costs than the consumer and that consumers should obtain independent quotes for rebuilding before making a decision.<sup>15</sup> Consideration is currently being given by ASIC and the Insurance Council of Australia to these issues, however an outcome is, as yet, unknown. Whatever solution is proposed should be carefully and tested for effectiveness with consumers in real-life claims, and modified as required.

Insurers should be required to base their cash settlement offers on genuine repair quotes, rather than estimates made by an assessor, and consumers should be given a reasonable amount of time to get their own independent quotes and negotiate an amendment to the offer. ASIC should also use its recently increased jurisdiction in relation to claims handling and unfair contract terms to ensure that consumers are provided an appropriate uplift in a cash settlement offer as a matter of business as usual, rather than only being applied where a consumer pushes back or lodges a dispute in AFCA.

Insurers now have obligations to take extra care with consumers who may be experiencing vulnerability under the new General Insurance Code of Practice, which came into effect in July 2020. Insurers should carefully consider whether cash settling claims for some consumers is appropriate in the light of those provisions, depending on their capacity to manage the repair or rebuild process.

The General Insurance Code of Practice's provision in relation to the right to review cash settlements accepted in the wake of extreme weather events (clause 90) should be expanded to include settlements accepted later than one month after the event, given the trauma and impact of an event is known to continue for much longer.<sup>16</sup> Insurers should also be clear with consumers about their rights to review cash settlements if additional damage is discovered during the course of rebuilding or repairing.

Cash settlement rates should be tracked and insurers should ask and record consumers' stated reasons for cash settling. This data should be accessible to and analysed by ASIC as part of the regulator's claims handling oversight capacity. Relevant data should also be provided to the National Recovery and Resilience Agency. Cash settlements are often a good indicator for underinsurance.

Insurers should innovate product offerings, to assist consumers who do not want to rebuild in high risk areas to relocate, for example, rebuilding elsewhere for the same sum insured.





## Defects, maintenance and wear & tear

The third most common issue for consumers with extreme weather event insurance claims was the insurers' reliance on defect clauses to deny claims. It was the second most raised issue for people affected by storms. Claim denials based on an alleged lack of maintenance or normal wear and tear also made up a significant proportion of complaints across all extreme weather events.

Financial Rights clients regularly complain about defects, maintenance and/or wear and tear being relied upon by insurers to deny, or reduce, home building and contents claims. This is very disappointing for consumers, especially those who have a poor understanding of how insurance policies work or where the consumer believes the situation is in no way their fault. In the context of extreme weather events, this issue is magnified.

### Joanna's story – Queensland – C205765

Joanna claimed on her home building insurance after her property was damaged in a storm a few months ago. Her insurer sent two assessors to look at property but Joanna was only present during the first assessment. Now her insurer has denied her claim on the basis the property was being renovated and she is excluded for damage that arose while the property was being renovated. Joanna's Internal Dispute Resolution letter says that its decision that renovations were taking place is based on a report from the assessor. But Joanna says this makes no sense, there are no repairs or renovations taking place. The exclusion wording does not apply to her property at all.

Most home building and contents insurance policies have exclusion clauses that state an insurer will not pay for damage caused by faulty construction or design of a home as well as a homeowner's failure to ensure their home is kept in good condition. To rely on these exclusions an insurer must prove that, on the balance of probabilities, the exclusion clause applies to the claim.

Defect clauses and maintenance issues are regularly asserted to deny claims across all extreme weather events and across all insurance brands. Financial Rights speaks to many consumers who have obtained independent reports that are at odds with an insurer's assertions about building defects or poor maintenance as the cause of damage. Financial Rights also see cases where insurers assert one exclusion and then move to another exclusion when evidence is presented to rebut the primary assertion. Consumers become understandably cynical that insurers are fishing for ways to deny their claim in cases where the reasons for denial shift as the claim progresses.

### Fiona's story – NSW – C208849

As a result of a storm in February there was damage to the study on the first floor of Fiona's home. Following an assessment the insurer claimed the damage was as a result of gutters above the study not being maintained. Fiona asked for a review of the insurer's decision. The evidence the insurer provided did not note any actual gutter issue.

Before Fiona could get an independent assessment her insurer told her in August they were now claiming that there was a structural defect due to a lack of eaves on the property and will refuse the claim.

Consumers generally do not understand these common insurance exclusions. Most consumers Financial Rights advises cannot understand why their insurance claim has been denied because something on their home (which was installed or built by a professional tradesperson) is alleged by the insurer to be defective. Many are confounded by assertions which do not fit the circumstances: see Gemma's story above.

### **Lenore's story – Queensland – C149457**

Lenore's home was badly affected by a storm in January 2020. She lives at the bottom of a hill and there was a lot of stormwater runoff and flooding. Lenore is over 70 years old, and on the Disability Support Pension. Her insurer sent an assessor to inspect her property who ripped out the internal walls and doors. Lenore then received a call from her insurer to say that her claim would be declined on the basis that the waterproofing downstairs in her home was insufficient, and there was also insufficient drainage at her property. Lenore explained that she did waterproof the bottom floor of her house in the past few years, and she had spent \$200,000 on improvements to her property including installing drains, building a garage and installing water tanks a number of years earlier. Her local council has also reassured her that there was ample drainage on her property. When Lenore requested that her insurer send her the expert report, they told her they couldn't provide it to her for "privacy reasons".

After Lenore lodged a complaint with AFCA, the insurer offered her \$5,000 as a "contribution to her losses", so that she could fix the internal walls and door that had been ripped out. They kept pressuring her to accept the offer despite her not having received a written copy of the terms of the offer, or copies of the evidence they relied upon to deny the claim.

There is disagreement among industry and consumers about what reasonable maintenance is. What is considered reasonable maintenance might differ depending on the homeowner.

### **Joy's story – NSW – C210874**

Joy claimed on her home building insurance after a storm damaged her roof, ceiling and floor boards. The insurer partially accepted the claim, agreeing to repair the ceiling and the floorboards. But it refused to repair the roof on the basis the damage was caused by poor maintenance of a rusted metal sheet on the roof. Four years ago, Joy's roof was damaged by a storm and the insurer also rejected the claim on the basis of poor maintenance. Joy said that at the time, she had repaired the roof by replacing damaged metal sheets with new metal sheets. She provided the invoices for the repair work done four years ago but the insurer hasn't budged.

Insurers sometimes rely on exclusions when the evidence in their favour is limited. Financial Rights has assisted many clients whose claims were denied based on an asserted lack of maintenance. Often, there is just a one line justification in the assessor's report stating the home may not have been properly maintained. Financial Rights has also spoken with many homeowners who have obtained independent assessments which are completely at odds with an insurer's assessment about building defects or lack of maintenance.

Consumers have some protection against the overuse of these clauses in the *Insurance Contracts Act*. Section 54 states that an insurer cannot refuse to pay a claim because of some act or omission by the consumer, unless the insurer's interests have been prejudiced by that act. So if a homeowner has a plant growing out of their gutters due to lack of maintenance but the home was flooded because a tree came through the roof, then an insurer cannot rely on the consumer's lack of maintenance to deny the claim, even if the consumer had not ensured the gutters were kept in good condition. Consumers often need advice to understand how to raise these complex arguments.

Section 46 of the *Insurance Contracts Act* also, on provides some protection when it comes to defect clauses.<sup>17</sup> However, its application in real life does not accord with consumer expectations.

In the context of extreme weather events, Financial Rights has assisted many clients whose claims were unfairly denied on the basis of lack of maintenance or building defect, when the event was of such magnitude that any newly installed gutters or downpipes were unlikely to have been sufficient in any case. Storms that took place in Sydney in January and February, 2020 saw more than 300ml of rainfall over two days – the heaviest rainfall recorded in 30 years. Many buildings free of defects or that had well-maintained drainage and guttering simply could not cope.

In our discussions with industry, some insurers have acknowledged that their reliance on defect clauses, maintenance and wear and tear are a common source of frustration for consumers. Financial Rights understands there will always be a line to draw where a homeowner's lack of regular maintenance has become such a problem that the insurer is no longer liable for damage, even in an extreme weather event. The difficulty is where to draw the line. This grey area seems to be taken advantage by insurers.

There is also an equity argument that reasonable maintenance may vary from person to person according to their physical capabilities and means. This problem was exacerbated during COVID-19 in 2020 when family members who are carers were unable to visit and assist with regular maintenance jobs for aged or otherwise incapacitated loved ones. Insurers should be in the business of cultivating trust and good will towards their community. Their business model and community resilience depend on it. There are many circumstances in which vulnerable people who have paid for insurance most of their adult lives and who have never have claimed before, are denied cover for an extreme weather event because of a lack of maintenance. In many cases, these people could not have carried out such works because of physical incapacity and lack of funds.

## Lessons learned

Consumers should be supported to understand the nature of defect, maintenance and wear and tear clauses in insurance through standardised and simplified definitions and community education. This could include encouraging consumers to keep records concerning maintenance to their properties and to retain relevant receipts for materials and work done where tradespeople are employed.

Insurers should be required to clearly inform consumers about the Australian Government's *MoneySmart* website on new quotes and renewal notices.<sup>18</sup> Insurers need to think outside the box about how to communicate with consumers on how insurance works, what exclusions are most common and about the shared responsibilities homeowners and insurers have when it comes to extreme weather event damage.

If an insurer seeks to deny a claim based on lack of maintenance, consumers should be notified in writing, the details of what the lack of maintenance was and the difference the maintenance would have made to the outcome. This will better enable consumers to assess their circumstances and whether they should challenge an insurer's decision. Insurers should not rely on maintenance or defect clauses to deny claims when there is compelling evidence the damage would have been caused regardless of any reasonable efforts on the part of the property owner.

Reform is required to ensure insurers cannot unreasonably avoid liability for damage caused by insured events because of defects their consumers were not aware of, and could not reasonably have been aware despite appropriate due diligence on their part.

The application of sections 54 and 46 of the *Insurance Contracts Act* must be clarified through regulatory guidance or legislative reform.

Insurers should be more proactive in raising issues of maintenance, wear and tear with their consumers. Examples already exist of insurers trialling proactive measures with consumers.<sup>19</sup> Insurers can go further to identify ways they can assist their most vulnerable consumers to maintain their properties effectively. This would help to build more positive and trusting relationships with the community.<sup>20</sup> Insurers should also apply a fairness lens to claims, in addition to a strict reading of the contract, particularly when it comes to long term or vulnerable customers.



## Underinsurance

Underinsurance was the most common issue raised by proportion for people affected by bushfires. It was the fourth most commonly raised issue overall.

Underinsurance covers a range of separate but interconnected issues. Financial Rights received calls from people who were completely uninsured because of unattainably high premiums or an inability to obtain reasonably priced insurance because of severe financial hardship. In some cases people have chosen to self-insure.

### Kaleb's story – NSW – C199637

Kaleb is uninsured and lost almost everything in a bushfire. He was unable to obtain insurance to cover his businesses assets due to premium prices and the nature of the goods. Now his debts are overwhelming him, and he could lose 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.

Unfortunately, the most common forms of underinsurance are when people find themselves accidentally underinsured and those who are underinsured due to rising premiums.

## Accidental Underinsurance

In many cases the level of underinsurance was not anticipated by the consumer. The reasons for this were complex. In a year of extraordinary weather events, governments, consumer groups and insurers have expressed concern about how many households have insurance policies that are insufficient to cover a total or even partial loss.<sup>21</sup>

People have found themselves unintentionally underinsured because:

- **They have underestimated the appropriate sum insured.** Determining what it will cost to rebuild after a total loss is difficult. Variations in estimates on sum insured calculators are common. Insurers do not use standardised calculators and many have customised their building cost estimations (including varying the questions that consumers are asked). In some cases consumers cannot accurately answer questions asked about their property because of language difficulties, literacy levels, basic numeracy or an inability to estimate size areas or accurately describe building materials.
- **Rebuilding costs after an extreme weather event often increase.** This is because many homeowners may be rebuilding concurrently and there is a scarcity of labour and materials. Some insurers offer products with additional buffers but not all consumers purchase this cover and it does not appear to be routinely offered to consumers in extreme weather event-prone areas.
- **The costs of debris-removal is part of the sum insured, rather than in addition to it.** People do not always appreciate this distinction and underestimate the likely cost of safe, professional clean up services. Government sponsored programs have helped in this regard but the benefits were not passed on consistently by insurers.
- **Building code standards have increased.** Even if a consumer has chosen an accurate sum insured when they were first insured, many do not update the amount in light of renovations, building code changes, or changes to natural peril data. People generally have little to no knowledge about building codes and construction standards and whether these have changed, or if natural peril data for their address has altered.



## Harry's story – NSW – C201208

Harry's South Coast home has been insured with the same insurer since 1995. Harry was in contact with his insurer who advised him he was likely underinsured. The insurer suggested an increase to his sum insured in recognition of his proximity to bushland and the cost of rebuilding after a disaster, including debris removal. The insurer suggested a figures of \$850,000. Harry did not agree to the amount suggested because he did not think it would really cost that much to rebuild his home. He did agree to a \$100,000 increase to his sum insured.

His home was subsequently destroyed by bushfire. He lodged a claim with his insurer and discovered he was underinsured by more than \$200,000. He concedes the insurer had been correct in its assessment of what his sum insured should have been, but he has since discovered they had another product – a policy which included a 25% safety net for exactly this type of disaster scenario. He is annoyed the consultant did not offer him the safety net product as a part of the same conversation where they discussed his sum insured and his bushfire risk.

Harry originally lodged a dispute in the AFCA, but withdrew when he seemed to be getting nowhere. Financial Rights has now escalated his matter with the insurer – Harry did not accept their recommended sum insured, but he does have a point about the safety net product. He was offered accidental damage cover as part of the same conversation, a benefit that seems of little value compared to the safety net feature, which would have made a world of difference to his capacity to rebuild a similar home.

- **Consumers distrust their insurer's estimate to rebuild.** This is either because they think it is a cynical grab for higher premiums, or because they cannot accept that the cost of rebuilding will be much higher than they themselves estimate, or even paid relatively recently. This problem can be exacerbated when a consumer's lack of trust coincides with rapidly rising premiums and some level of financial stress.
- **Consumers often assume that rising premiums equate with an increasing sum insured.** People do not always carefully check the sum insured on their renewal notices and may assume that a former pattern of small incremental increases in the sum insured will continue throughout the life of the policy.

## Emily's story – NSW, South Coast – C206589

Emily's home on the NSW South Coast was destroyed by the Black Summer bushfire on New Year's Eve 2019. She made a claim on her policy, only to discover she was underinsured. The initial cash settlement offer by the insurer was roughly \$230,000 less than the cost to rebuild. It transpired that back in 2014 her insurer identified that it had mistakenly failed to record that her home was in a bushfire prone area. Upon making this assessment they significantly increased her premiums, by \$400 per month, and reduced her sum insured by approximately \$300,000. They had put her in a policy with a 25% safety net, which went some way towards abating the impact of the reduced sum insured, but was still substantially less than the former sum insured. Emily told us that none of this had been explained to her, and she had assumed that as her premiums had increased, her sum insured was at least as much as it had been previously.

At first the insurer simply affirmed their decision and the amount of the cash settlement offer, without providing any documents or explanation. After further escalation, however, the insurer explained the events outlined above and increased their offer by about \$40,000. The insurer maintained that Emily had reduced the sum insured herself to save on premiums.

Emily had conducted all her interactions with the insurer in person in the branch, so there were no call recordings to request, and the insurer did not retain notes of in branch conversations with consumers. Further, Emily's policy did clearly state the correct, reduced sum insured and she had been receiving generic information from the insurer since 2016 reminding her she was in a bushfire zone and to check whether she was underinsured as a result of higher rebuild costs to bring buildings up to the latest building codes. Emily decided to take the increased cash settlement offer. By then it had been 12 months since the fire. Fortunately, she did have a two year temporary accommodation benefit.

## Rising Premiums and Affordability

During the reporting period Financial Rights spoke to a number of people who were underinsured because they could no longer afford appropriate cover. Many of them knew they were underinsured and that their homes were at risk. This is particularly worrying for extreme weather events like the Black Summer bushfires. Experts have found that the adequacy of a person's level of insurance "has an important effect on the risks people are prepared to take to defend their properties."<sup>22</sup>

It has been clear for several years now that there are certain regions in Australia where home insurance prices are soaring due to exposure to extreme weather risk and homes will one day become uninsurable.<sup>23</sup> Calls to Financial Rights services suggest affordability is already a significant challenge in some areas.

## Sam's story – NSW – C204809

Sam received his home insurance renewal notice a couple of weeks ago. Sam has had insurance with the same insurer for 10 years. Sam says his premiums were \$1,100 last year and this year \$2,200. The policy is for a sum insured amount of \$400,000 and contents at \$80,000. Sam has never made a claim. When Sam rang the insurer to ask why the premiums have doubled he was told it was commercially sensitive and the insurer could not go into detail. Sam then called other insurers to shop around. One insurer offered him insurance at \$4,100, while another insurer said they would not insure Sam's home at all. Sam says he has not had a paycheck in six weeks because of COVID-19 and he cannot afford the higher premiums.

## **Keavy's story – Queensland – C205401**

Keavy is having problems obtaining affordable insurance on his home in Queensland. Last year he used a broker who obtained home and contents coverage for \$3,000. This year the cheapest coverage the broker can find is \$7,400. Keavy has tried other brokers and he has gotten about a dozen quotes and they are all around \$10,000-\$13,000. Keavy's home flooded in 2011 but he says he is not particularly high risk. Keavy wants to know how he can change the categorisation of his home being 'high risk' to insurers.

## **Storm and flood events in February-March 2021**

The recent heavy rain and flood events along the east coast of NSW and Queensland have resulted in a number of unique problems.

In the wake of the floods in South East Queensland in 2011, the Australian Government enacted a common flood definition to ensure clarity and consistency concerning what was meant by "flood" cover in an insurance policy. This replaced the myriad of definitions that previously existed. However, flood cover is not mandatory and people may opt out. In Financial Rights' experience, it is often the people who need flood cover the most who have opted out, usually because they cannot afford the premiums. As a result, many people affected by this and other recent flooding events, did not have flood cover.

## **Fran's story – NSW – C215816**

Fran's home was flooded in the NSW floods in March 2021. Fran is 82 years and lives in a caravan in a high flood risk area. The flood arrived when she was asleep, soaking the bed along with everything else.

Fran was previously with another insurer with a policy that covered flood. Fran moved to another insurer on the recommendation of another caravan park resident after her husband died and her insurance became too expensive. Fran made a claim and has been told that she was not covered for flood.

## **Tom's story – NSW – C201658**

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 the basis he is not covered for flood damage. Tom knows he does not have flood coverage, he removed it from his policy last year to reduce his premiums. He knew it was flood prone when he purchased the property, but not the cost to insure against it. Flood coverage was going to cost \$8,000 per annum.

Financial Rights has also spoken to consumers who mistakenly believed they were covered and are bitterly disappointed to find out the contrary. Worse, it appears that some policies have been drafted in such a way that storm water run-off is excluded along with flood, greatly reducing the usefulness of the cover and undermining the principle of the common flood definition.

## Cynthia's story\* – NSW – C215781

Cynthia has home and contents insurance, with the flood exclusion in place. She is an Aboriginal woman with dependent children. She had bought the property a few years earlier, and was not aware it was in a flood zone until shortly before settlement. After settlement she was quoted \$8,000 per year for flood cover. She could not afford this on her limited income. She rang in late 2020 to ensure she had some cover because she'd heard summer was likely to have a lot of storms. She rang the insurer she had always had a relationship with and secured what she thought was at least storm cover, even though she knew she would not be covered for flood. The sales representative had indicated there was a limitation with rainwater runoff and storm surge but Cynthia understood this was just a short term embargo and did not think much more about it.

Cynthia's home was impacted by the 2021 floods and storms. Water came from the road and caused inundation. It covered the ground floor of the house, and eventually mixed with the water from the river and reached over 2m inside.

The policy stipulates that if you exclude flood, you also exclude rainwater run-off, greatly reducing the effectiveness of the residual cover for storm

The insurer's assessor asserted that the water was all "rainwater runoff" and therefore excluded from cover. The insurer provided some temporary accommodation.

*\*Source: Mid North Coast CLC*

It is worth observing that many policies held by people on farms or in remote and rural locations did not respond to their needs because of insurer's reliance on exclusion clauses. Features such as bridges and other infrastructure, which are essential to access many of these properties are often not covered, livestock cover may be limited to fire and not storm or floods. Features such as bridges and other infrastructure, which are essential to access many of these properties are often not covered and livestock cover may be limited to fire and not storm or flood.

## Anna's story – NSW – C216339

Anna was impacted by the NSW floods in March 2021 that washed away a bridge which was the only access to her property.

Anna – who is over 60 years – has had to climb up and down an embankment in order to enter her property on foot. This has meant sleeping in her car at times as it is too dangerous to negotiate the climb at night.

Anna has been with her insurer more than 35 years and was unaware her policy excluded bridges. The property is essentially uninhabitable until she can access it via a new bridge which will cost \$60,000 or more to build. Anna is extremely disillusioned that the insurance she has paid for all these years was useless to her when she finally needed it.

## Lessons learned

The Australian Government's recent announcement that a new National Recovery and Resilience Agency will be established to provide relief to communities and advise it on how to mitigate the impacts of future weather events is welcome. So too is the decision to set up the Australian Climate Service to better collate data to inform emergency management policies. Both of these were on the back of recommendations of the Bushfire Royal

Commission. There are a number of other recommendations from recent reports that should be implemented as soon as possible. The Australian Competition and Consumer Commission's (ACCC) recommendations in its final report on insurance in Northern Australia should be adopted and implemented immediately.<sup>24</sup>

Removing taxes, stamp duties and levies on home insurance could help to address immediate affordability concerns.<sup>25</sup>

Accurate sum insured calculators rely on many sources of data that could be collected and shared by Australian governments. States should open up local government data sets to insurers and consumers to enable more automated data collection and disclosure. For example, concerning flood mapping, height, renovation data, vehicle salvage data, smash repair data and building code changes.<sup>26</sup> This could be facilitated by agencies such as the new Australian Climate Service.

Insurers should develop up-to-date, standardised and independently reviewed insurance calculators to increase consumer trust in the process and openness about policies and offerings.

Consumers need accurate and timely information about their sum insured. This should be effectively and regularly communicated to them, including at renewal time. The ACCC recommended that insurers be required to estimate an updated sum insured for home insurance consumers and advise them of this estimate on their renewal notice.<sup>27</sup> Insurers should be required to take into account any known natural peril data and building code changes in this estimate. Every renewal notice should disclose the previous year's insurance premium,<sup>28</sup> an updated sum insured estimate and the previous year's sum insured, in a clear and easy to understand format, along with an explanation and reasons for any significant changes.<sup>29</sup>

The sum insured should not include additional benefits such as debris removal and architectural fees. These should be benefits provided over and above the sum insured. The sum insured for one person should mean the same thing as it does for their neighbour. Efforts to promote improved consumer understanding would be greatly improved by ensuring that people are comparing like with like, especially on such a crucial feature as the sum insured.

Home insurance policies in high risk areas should all include a 25% buffer for total loss extreme weather events.

More work also needs to be done to understand the nature and type of information insurers can give to consumers within the meaning of providing general financial advice, for example when it comes to rebuilding costs, building valuations and natural peril data. ASIC should provide clearer guidance regarding the nature and type of information insurers can give to consumers, without it constituting personal financial advice. This would ensure insurers are not unhelpfully conservative in their approach to providing information to consumers.

The ACCC's recommendations regarding "reducing risk and building better" should also be implemented. This involves improved planning and building regulations and better communication of the risks and costs of insurance to prospective property buyers. Mitigation works by homeowners can reduce the risk of damage for individual properties but should be accompanied by insurer discounts. Currently many insurers have no transparent or reliable means of tracking mitigation works by homeowners and there are no guaranteed premium reductions for consumers. If insurers and governments want homeowners to fund mitigation works, insurers should be made accountable to reduce premiums accordingly. Government subsidisation of property level mitigation works should also be considered. These are all measures that could fall within the remit of the National Recovery and Resilience agency.

The ACCC also recommend reviewing and mandating standard cover and standardising definitions of prescribed events such as storm. Annie's and Cynthia's story above demonstrate the problem of definitions not meeting expectations for those impacted by extreme weather events. Restrictive fire definitions were highlighted by Choice in a 2020 product review after the bushfires which has led to insurers reviewing the definition. The undermining

of the common flood definition by requiring consumers who opt out of flood to opt out of other aspects of losses associated with storm cover (like rainwater run off) is also of serious concern.

While some work has begun to examine this issue by Government, it is critical that an effective standard cover regime with standard definitions that are more in line with community expectations are introduced sooner rather than later.

## **Confronting the challenges of climate change**

Beyond these measures, insurance affordability in a time of climate crisis also raises issues concerning how our society should share the burden of responding to increasing extreme weather event risks. Australia must determine how much risk individual homeowners should bear or whether society should share costs with areas of the country that are less climate-affected. The concept of sharing the risk of increasing insurance prices borne by increasing extreme weather events is gaining support.<sup>30</sup>

As a country we have already developed many areas for housing that lie in flood zones, or face high bushfire risks, cyclone exposure, or are prone to coastal erosion and actions of the sea. Climate science tells us that these risks are likely to increase, or move to new areas not previously subject to such events. It is important to limit further development in known high risk areas, and to undertake reasonable mitigation measures without impacting on the environment impacts or damaging cultural heritage sites. Leaving consumers and taxpayers to bear the consequences of decades of poor planning and climate change inaction is both inequitable and antipathetic to community resilience.<sup>31</sup>

The Australian Government announced in May 2021 that it would introduce a cyclone reinsurance pool backed by a \$10 billion government guarantee, aimed at reducing insurance costs for cyclone prone Northern Australia.<sup>32</sup> Many insurers oppose such a scheme on the basis it would distort price signals about risk and that cyclone mitigation measures would both reduce the actual risks and bring down insurance prices.<sup>33</sup> The ACCC found in its final report that the likelihood of reinsurance pools significantly impacting premiums levels was uncertain and that the measures could not be targeted to those most in need. Further, it involved the significant transfer of risk from the insurance industry to governments. The ACCC favoured well-designed direct subsidies as having the greatest potential “to relieve some of the acute affordability and cost of living pressures facing consumers in higher risk areas, at a lower cost and more effectively than other measures.”<sup>34</sup>

The cyclone reinsurance pool also fails to take into account problems posed by all the other climate change perils, such as storm, hail, flood, coastal erosion/sea level rise and bushfires.

Direct subsidies on premiums to vulnerable residents in high risk areas are the best way for Australia to assist its citizens who face disproportionate risks because of the location of their property. Direct subsidies can help to lower levels of underinsurance and non-insurance, which can lower costs to governments of providing post-event relief. They can also help support government objectives towards decentralisation and promote thriving regional communities. Such subsidies should be targeted, means and asset tested, and carefully designed to ensure they do not simply increase insurance premiums or facilitate further development of high risk areas. Property buy-backs should also be part of the adaptation mix.

A national data collection program on underinsurance should be developed. Trends in underinsurance should be tracked by the newly established National Recovery and Resilience Agency, especially in high risk regions. This would enable governments to take targeted action in those areas to address affordability with mitigation projects or direct subsidies or both.

Finally, Australian governments should take more decisive action to address climate change through reductions in greenhouse gas emissions. Many of the above risks are already locked in under current trends regardless of what action is taken now. More drastic action is required to prevent an increasing escalation of extreme weather events. Recovery and resilience are important, but prevention is critical.



## The importance of legal assistance

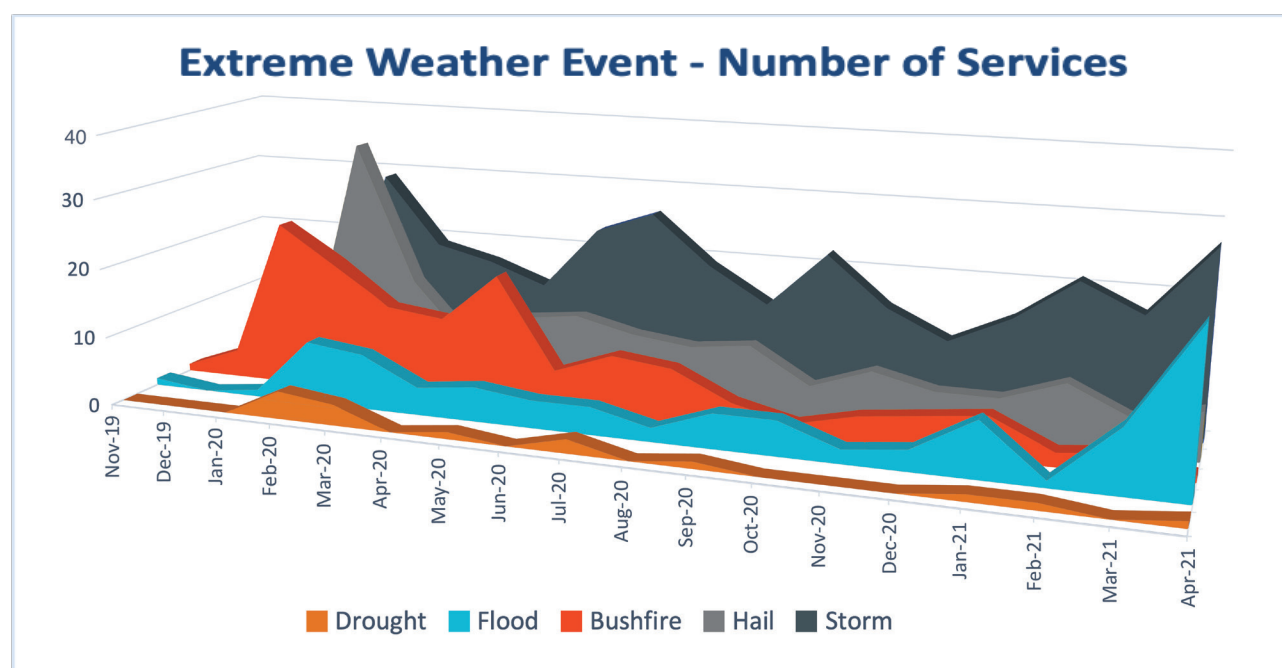
Extreme weather events during the reporting period, between November 2019 and April 2021 generated a significant amount of work for Financial Rights services. The organisation was fortunate to receive additional funding from the Australian Government to assist people with bushfire-related problems. The Insurance Council of Australia declared seven other catastrophes in the same period. Of those, the Black Summer bushfires was the biggest by value of property losses, and certainly the most frightening. However, this event was fourth in terms of the number of claims.

### Catastrophes ranked by value (\$) – insured losses only<sup>35</sup>

Date	Event	Claims (approx)	\$
Nov-19	2019/20 Black Summer Bushfires (NSW, QLD, SA, VIC)	38,000	\$2.325 bn
Jan-20	January Hailstorms (ACT, NSW, VIC, QLD)	130,000	\$1.66bn
Feb-20	East Coast Storms and Flooding (NSW, QLD)	100,000	\$960m
Mar-21	Storms and flooding (NSW & QLD)	40,000	\$600m
Nov-19	South East Queensland Hailstorm (QLD)	30,000	\$499m
Feb-21	Perth Hills Bushfire (WA)	995	\$85m
Nov-20	South East Queensland Hailstorms (QLD)	5,000	\$60m
Apr-21	Cyclone Seroja (WA)	700	unknown

When the provision of Financial Rights legal services is mapped against the timeline of the catastrophes, it becomes apparent that the number of claims is a better indicator of the amount of work generated, than claim value, although there may be more at stake for people in a high value claim event.

Around 78% of Financial Rights work related to storm, hail and floods across the reporting period. The services provided also related to previous extreme weather events, which often have a very long tail of disputes. Legal Aid NSW provided an important service in the initial aftermath of an extreme weather event, with a presence at many Disaster Recovery Centres, and dedicated staff and phone lines. Financial Rights can attend such events only rarely due to resource restraints. Financial Rights used its extensive contacts at Legal Aid NSW, local community legal centres and at AFCA to ensure people affected by extreme weather events could find the service no matter what stage they may be at during their recovery experience.





Climate science tells us that extreme weather events are likely to increase. A recent report involving a collaboration between insurance group IAG, the National Center for Atmospheric Research and the Cyclone Testing Station at James Cook University, revealed the following anticipated changes to extreme weather events as a result of increasing global temperatures:

- Intense short bursts of rain leading to increased flooding;
- Decreasing storms generated by east coast lows in winter and spring and more storms, generating greater damage, in summer and autumn;
- More intense tropical cyclones that will move further south towards more densely populated regions of Australia on both the east and west coasts;
- Sea level rises leading to storm surges and coastal erosion;
- Longer fire seasons and more extreme fires, with less time for hazard reduction measures between seasons;
- Increased risk of large (2cm-4.9cm in diameter) and giant hails storms (over 5cm), with such storms being less likely in northern and central Qld and more likely further south as far as Melbourne.<sup>36</sup>

It is evident that events are already playing out as the science predicts.

Appropriate legal advice and assistance is vital for Australians to recover effectively after extreme weather events and remain resilient moving forward. Without access to advice, many consumers are overwhelmed with the process of managing insurance disputes and even simply finding authoritative sources to answer their many questions.

### **Narelle's story – NSW – C197979**

Narelle's home in Northern NSW was destroyed by bushfires. Her home needed to be rebuilt and it was expected to take at least 12 months. She had home building and contents insurance. Under her policy, she was entitled to \$20,000 for temporary accommodation, which is in addition to the sum insured under her policy.

The insurer notified Narelle that it had booked her three weeks of accommodation, at a cost of \$205-\$220 per day and totalling approximately \$5,700. The insurer had not consulted with her beforehand as to her requirements, nor did it confirm that she wanted to proceed with this booking. Narelle stayed at the booked accommodation for the first week but realised it was too expensive to stay there long term. She raised her concerns with the insurer about the high cost of the accommodation, and explained that she needed to cover the costs of temporary accommodation for at least 12 months. She asked the insurer to cancel the rest of the booking. The insurer responded that it had already paid for this accommodation up front and it could not do anything unless the owners agreed to a refund. The owners ultimately did not agree to a refund. Narelle moved out of this accommodation and moved into a community refuge centre, where she pays \$125 per week.

Financial Rights assisted Narelle to raise a dispute with the insurer. Specifically, we raised that the insurer had not acted fairly or reasonably in booking and paying for accommodation, which used up more than a quarter of her temporary accommodation entitlement, without consulting with her beforehand. Financial Rights argued that this conduct was not consistent with the insurer's duty of utmost good faith nor its obligations under the General Insurance Code of Practice.

The insurer agreed to refund Narelle the entire value of the prepaid accommodation, including the week she actually used.

In addition to insurance problems, we were able to assist people to hold creditors at bay, providing crucial breathing space until insurance claims, and government and charitable payments, reached their intended recipients.

### **Sheree's story – NSW – C199922**

Sheree ran a successful shop on the Mid-North Coast of NSW. She was first impacted by a storm event which resulted in lightning damage to her point of sale EFTPOS machine, and then her town was evacuated for a week due to bushfires. Sales dropped dramatically in the wake of the fires, and although the shop itself was not burnt, the impact on the local economy was considerable. Between the storm damage and the fires, Sheree's business suffered and she fell behind in payments to one of her suppliers. The supplier issued a Bankruptcy Notice for more than \$20,000.

Sheree managed to borrow enough money to make a substantial payment to the supplier, which brought the debt below the bankruptcy threshold (\$5,000 at the relevant time in late 2019). Unfortunately the supplier's solicitor had added over \$10,000 in legal fees by then and intended to push on with the creditor's petition to make Sheree bankrupt in the Federal Magistrate's Court in Melbourne. Financial Rights solicitors intervened and sought an adjournment of the bankruptcy proceedings. In the meantime, Sheree was successful in obtaining a government grant as a result of the impact of the bushfires and we were able to settle the matter with the supplier with some of the money. Had Financial Rights not intervened, Sheree would have already been made bankrupt prior to receiving the grant, and it would have cost more than the entire grant just to annul the bankruptcy, let alone get Sheree's business back on its feet.

Financial Rights also assisted Sheree with her business interruption insurance claim and a dispute in relation to her credit report.

In addition to direct legal services, Financial Rights provides vital expert advice, information and resources to other services on the ground in extreme weather event-affected areas. Financial Rights conducted 13 community legal education sessions, attended by more than 225 people, primarily financial counsellors and community legal centres staff from disaster affected regions around the country, during the reporting period. This results in a partnership approach to client services, with many clients being referred to Financial Rights by local community legal services for direct assistance, or being assisted by the local service supported by Financial Rights expert advice and assistance.

Financial Rights' factsheets and other online material also experienced significantly more pageviews during the reporting period.

Financial Rights also provides vital intelligence to the insurance and credit industry, lawmakers and regulators. Throughout this period Financial Rights made 37 submissions in relation to insurance related issues alone as well as reports and information concerning extreme weather events and COVID-19 insights on a monthly basis to ASIC.

### **The impact of unstable funding**

Sadly, funding for these services is precarious at best. While there is some core funding for the Insurance Law Service at Financial Rights provided by the Commonwealth Attorney General's Department, it is insufficient to run the service in business as usual circumstances to deal with motor vehicle accidents, isolated house fires and thefts, life insurance and income protection disputes, and junk insurance such as funeral insurance and consumer credit

insurance. Extreme weather events generate significant additional legal need and are steadily becoming the new norm. The Insurance Law Service has been held together for a number of years with a patchwork of funding from a variety of sources, including community benefit payments as a result of ASIC enforcement activity. Financial Rights confronts a funding crisis at least every two years and this year is no different. Financial Rights is on the verge of having to drastically reduce our services from July 2021.

Funding has become increasingly short-term and issue or event based. This makes it impossible for services to plan effectively, attract and retain quality staff, or invest in long term strategies. Funders must understand and recognise that extreme weather events are increasing in frequency and that adequate funding for legal assistance services is vital to meet increased community demand.

## Endnotes

- <sup>1</sup> Financial Rights services include the provision of relevant information, more detailed legal advice, financial counselling and task assistance.
- <sup>2</sup> Drought-related calls were not analysed because they were too few during the relevant period to draw insights or identify trends.
- <sup>3</sup> Financial Rights received specific funding to expand its services to include small business and primary producers affected by bushfires, in September 2020. Financial Rights assisted a small number of farmers and small business people prior to receiving this funding. The service was not previously promoted to anyone other than individual consumers. Calls about farm insurance and business insurance are expected to increase going forward.
- <sup>4</sup> Alicja Grzadowska, "Bushfire clean-up to allow insurer savings to be passed on to policyholders" in Insurance Business News Australia (26 February 2021), <https://www.insurancebusinessmag.com/au/news/breaking-news/bushfire-clean-up-to-allow-insurer-savings-to-be-passed-on-to-policyholders-247637.aspx>; Rob Whelan, Chief Executive Officer, Insurance Council of Australia, "Insurers Welcome Government-Funded Bushfire Clean-Up Arrangement For Nsw Communities" in Insurance Council of Australia: Media releases (18 January 2020), [https://www.insurancecouncil.com.au/media\\_release/plain/554](https://www.insurancecouncil.com.au/media_release/plain/554); Staff, "Bushfire response: insurers welcome government clean-up pledge" in InsuranceNews.com.au (20 January 2020), <https://www.insurancenews.com.au/daily/bushfire-response-insurers-welcome-government-clean-up-pledge>
- <sup>5</sup> Australian Securities and Investments Commission v Youi Pty Limited [2020] FCA 1701 at [9] per Allsop CJ.
- <sup>6</sup> Royal Commission into Natural Disaster Arrangements Final Report (28 October 2020), chapter 20, para 20.37; Senate Inquiry: Lessons to be learned in relation to the Australian bushfire season 2019-20, Interim Report (7 October 2020), chapter 7, para 7.102.
- <sup>7</sup> Australian Treasury, Natural Disaster Insurance Review Inquiry into flood insurance and related matters (September 2011), [https://treasury.gov.au/sites/default/files/2019-03/p2011-ndir-fr-NDIR\\_final.pdf](https://treasury.gov.au/sites/default/files/2019-03/p2011-ndir-fr-NDIR_final.pdf). The National Disaster Insurance Review Report highlighted the role of insurance in community recovery from natural disasters. In particular it highlighted the impact delays in insurance have on victims with "those with damaged homes in limbo and unable to undertake repairs or return to their homes"(para 1.36) as well as the community by inhibiting it's ability to recover (para 1.39).
- <sup>8</sup> Australian Securities and Investments Commission, Open letter to Directors of general insurance companies: Insurance Claims and natural disaster events (17 December 2020), <https://download.AustralianSecuritiesandInvestmentsCommission.gov.au/media/5896425/AustralianSecuritiesandInvestmentsCommission-letter-to-insurers-insurance-claims-and-natural-disaster-events.pdf>.
- <sup>9</sup> Ibid, p 9.
- <sup>10</sup> Ibid.
- <sup>11</sup> Australian Institute of Health and Welfare, Stress and trauma (23 July 2020), <https://www.aihw.gov.au/reports/australias-health/stress-and-trauma>. The Australian Institute of Health and Welfare reports that stress and trauma over a life times arising from an extreme weather event is considerable, drawing on studies by Deloitte Access Economics 2016, The Economic Cost of the Social Impact of Natural Disasters and Alderman K, Turner LR and Tong S "Assessment of the health impacts of the 2011 summer floods in Brisbane" in Disaster Medicine and Public Health Preparedness (2013) 7(4), pp380-6:
- <sup>12</sup> Australian Securities and Investments Commission, Unfair contract term protections for consumers, example 3, <https://asic.gov.au/about-asic/what-we-do/our-role/laws-we-administer/unfair-contract-terms-law/unfair-contract-term-protections-for-consumers/>
- <sup>13</sup> Australian Financial Complaints Authority, Making insurance claims handling a financial service:Submission (January 2020). p 5, <https://www.afca.org.au/media/708/download>.
- <sup>14</sup> Australian Competition and Consumer Commission, Northern Australia Insurance Inquiry, Final Report (November 2020), recommendation 20.2, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/northern-australia-insurance-inquiry/final-report>
- <sup>15</sup> Ibid.
- <sup>16</sup> Australian Institute of Health and Welfare, Stress and trauma (23 July 2020), <https://www.aihw.gov.au/reports/australias-health/stress-and-trauma>.
- <sup>17</sup> Insurance Contract Act 1984, s46(2)Where, at the time when the contract was entered into, the insured was not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection, the insurer may not rely on a provision included in the contract that has the effect of limiting or excluding the insurer's liability under the contract by reference to the condition, at a time before the contract was entered into, of the thing.
- <sup>18</sup> Australian Competition and Consumer Commission, Northern Australia Insurance Inquiry, Final Report (November 2020), recommendation 18.2, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/northern-australia-insurance-inquiry/final-report>.
- <sup>19</sup> Safety Hub, IAG working with CHE Proximity to build a Microsite, App and Social assets for its NRMA brand (2019), <https://www.cheproximity.com.au/work/safety-hub> NRMA conducted a 3 month trial of the Safety Hub which aimed "to see how safe we can make Australia." A select group of NRMA Insurance consumers were invited to participate. The Safety Hub designed personalised safety tasks based on relevant risks, and then helped the user to complete them. For example, a home owner was asked to check for leaks. According to the app: Frayed, rusted and kinked flexi hoses are one of Australia's leading cause of water damage in homes between 5 years and 30 years old. The user was then given an explanation of what a flexi-hose is and directed how to check for leaks. The user was also asked to introduce themselves to their neighbours. Neighbours can assist by keeping an eye on your property while you're away. This can reduce the risk of crime or incidents.
- <sup>20</sup> Lucas, CH, Booth, KI and Garcia, C, "Insuring homes against extreme weather events: a systematic review of the research" in Climatic Change (2021) 165(3), article 61, <http://ecite.utas.edu.au/144172>. Uptake of insurance has been linked to social norms and to trust, with trust in turn being linked to personal experience or broader social narratives about insurance.
- <sup>21</sup> Tooth, Richard. Australian Household Insurance: Understanding and Affordability (Sapere Research Group, February 2012), p 21, <https://srgexpert.com/wp-content/uploads/2017/11/Sapere-IAG-Consumer-Survey-Report-vPublic.pdf>. Underinsurance is common. However, there is no accurate information on the extent of underinsurance as it can only be identified at the time of a claim when the loss exceeds the sum-insured. The 2012 household survey suggested most households are confident they are adequately covered by their building insurance policy. Only 6 % of respondents said they were not confident they were adequately covered. However, the survey found around 30 % of policyholders relied solely on their own estimate and did not use a calculator. Furthermore, consumers may deliberately select a lower sum-insured to reduce their premium. The survey also found that of those with contents insurance cover, around 10 % (representing about 0.7 million households) reported that they knew their cover was less than the costs of replacement of goods and a further 34 % (representing around 2.2 million households) were unsure. Susan Bell Research, ASIC Report 416: *Insuring your home: Consumers' experiences buying home insurance* (Susan Bell Research for the Australian Securities and Investments Commission, October 2014), <https://download.asic.gov.au/media/2195187/rep416-published-28-october-2014.pdf>. Quantum Market Research, *Understand Insurance Research Report. Quantum Market Research for the Insurance Council of Australia* (August 2014), [http://understandinsurance.com.au/assets/research/ICA%20Understand%20Home%20Insurance\\_Report.pdf](http://understandinsurance.com.au/assets/research/ICA%20Understand%20Home%20Insurance_Report.pdf). The Quantum survey found around 4% of homeowners with building insurance deliberately undervalued their sum-insured to reduce their premium. A potential factor is that, due to the high cost of rebuilding, the recommended sum-insured may be significantly higher than the property value. Underinsurance appears to be more common with contents insurance.

- <sup>22</sup> Senate Standing Committee on Finance and Public Administration, *Lessons to be Learned in Relation to the Australian Bushfire Season 2019-20, Interim Report* (7 October 2020), para 7.17.
- <sup>23</sup> Ting, I, Scott, N, Palmer A and Slezak M, "The Rise of Red Zones of Risk" in Australian Broadcasting Commission, <https://www.abc.net.au/news/2019-10-23/the-suburbs-facing-rising-insurance-costs-from-climate-risk/11624108?nw=0>. The report cites analysis by Climate Risk which shows the number of "uninsurable" addresses in Australia is projected to double by the turn of the century to nearly 720,000 – or one in 20 – if nothing is done to address escalating risk from extreme weather and climate change. This prompted the Australian Government's request in 2017 that the ACCC undertake an inquiry into insurance affordability and availability in northern Australia.
- <sup>24</sup> Australian Competition and Consumer Commission, *Northern Australia Insurance Inquiry, Final Report* (November 2020), <https://www.accc.gov.au/focus-areas/inquiries-ongoing/northern-australia-insurance-inquiry/final-report>.
- <sup>25</sup> Australian Competition and Consumer Commission, *Northern Australia Insurance Inquiry, Final Report* (November 2020), recommendation 3.1, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/northern-australia-insurance-inquiry/final-report>; Productivity Commission, *Inquiry into Natural Disaster Funding Arrangements: Volume 1 – Natural Disaster Funding Arrangements* (2014), recommendation 4.8, <https://www.pc.gov.au/inquiries/completed/disaster-funding/report>, Productivity Commission, *Barriers to Effective Climate Change Adaptation*, (20 September 2012), recommendation 16.1, <https://www.pc.gov.au/inquiries/completed/climate-change-adaptation>.
- <sup>26</sup> Owens, D and O'Kane, M, *Final Report of the NSW Bushfire Inquiry*, (31 July 2020), p 195, <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/NSW-Bushfire-Inquiry-1630/Final-Report-of-the-NSW-Bushfire-Inquiry.pdf>. Ensuring that consumers take out the right amount of insurance will be critical to community resilience after an extreme weather event. The report found one immediate measure that could help build community resilience for upcoming bushfire seasons includes developing a centralised Bushfire Alert Level (BAL) and Asset Protection Zones (APZ) database with local government to ensure information regarding BALs and APZs is easily accessible by insurance companies and existing and future landowners.
- <sup>27</sup> Australian Competition and Consumer Commission, *Northern Australia Insurance Inquiry, Final Report* (November 2020), recommendation 18.9, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/northern-australia-insurance-inquiry/final-report>.
- <sup>28</sup> Australian Financial Complaints Authority, *General Insurance Code of Practice* (1 July 2015), clause 50. Clause 50 commits insurers to giving home building and/or contents and motor vehicle insurance holders a comparison between this year and last year's premium.
- <sup>29</sup> Australian Financial Complaints Authority, *General Insurance Code of Practice* (1 July 2015), clause 50. Clause 50 commits insurers to giving home building and/or contents and motor vehicle insurance holders an explanation of how the premium is calculated; Tooth, R, *Open Insurance The Consumer Data Right and Insurance* (22 September 2020), <https://financialrights.org.au/wp-content/uploads/2020/12/Open-insurance-final-report.pdf>. There may also be opportunities in open insurance to improve both the shopping around and renewal processes provided sufficient work is done to standardise definitions and sum insured calculators, and appropriate access is given to other relevant data sets in relation to the property, the insured and the relevant perils.
- <sup>30</sup> Royal Commission into National Natural Disaster Arrangements, *Royal Commission into National Natural Disaster Arrangements Report: Overview - The 2019-2020 disaster season* (28 October 2020), overview, <https://naturaldisaster.royalcommission.gov.au/publications/html-report/overview>: "It has long been necessary, and is now widely recognised and accepted, that governments, businesses, communities and individuals each play a role in various aspects of natural disaster mitigation, preparedness, response and recovery. National cooperation is essential to make Australia resilient to natural disasters." *Senate Inquiry: Lessons to be learned in relation to the Australian bushfire season 2019-20, Interim Report* (7 October 2020), chapter 7, para 7.114: "The committee is particularly concerned at the evidence given by Allianz that it will expect policy-holders to shoulder the burden of increased severe and catastrophic weather risk through increased premiums ... we do not accept the proposition that policy-holders should carry the entire burden." Australian Competition and Consumer Commission, *Northern Australia Insurance Inquiry, Final Report* (November 2020), p vii, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/northern-australia-insurance-inquiry/final-report>: "Direct subsidies have the greatest potential to work in a targeted way to relieve some of the acute affordability and cost of living pressures facing consumers in higher risk areas, at a lower cost and more effectively than other measures."
- <sup>31</sup> Lucas, CH, Booth, KI and Garcia, C, "Insuring homes against extreme weather events: a systematic review of the research" in *Climatic Change* (2021) 165(3), article 61, <http://ecite.utas.edu.au/144172>. Research suggests that there are limits to the effectiveness of using premium prices to signal risk and encourage risk averse behaviour. Only the affluent are able to respond to such signals, and they do not do so reliably. Less affluent people are likely to be simply left behind in high risk areas, without access to affordable insurance, with falling property values for those who own their homes, and no realistic option to move.
- <sup>32</sup> Prime Minister, *Media Release: More Affordable Access To Insurance For Northern Australians* (4 May 2021), <https://www.pm.gov.au/media/more-affordable-access-insurance-northern-australians>.
- <sup>33</sup> Insurance Council of Australia, *Media Release: Insurers welcome reinsurance commitment*, (4 May 2021), [https://www.insurancecouncil.com.au/assets/media\\_release/2021/210504%20Government%20reinsurance%20pool%20Media%20Release.pdf](https://www.insurancecouncil.com.au/assets/media_release/2021/210504%20Government%20reinsurance%20pool%20Media%20Release.pdf).
- <sup>34</sup> Australian Competition and Consumer Commission, *Northern Australia Insurance Inquiry, Final Report* (November 2020), recommendation 8.1, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/northern-australia-insurance-inquiry/final-report>.
- <sup>35</sup> Data is drawn from the Insurance Council of Australia's website [disasters.org.au](https://disasters.org.au) accessed on 14 May 2021, and from various media releases, as updated from time to time. Claim numbers and losses have been rounded and sometimes averaged between different figures given in different releases.
- <sup>36</sup> Bruyère, C, Holland, G and Prein, A (et al) (November 2019) *Severe weather in a changing climate. Insurance Australia Group (IAG)*, <https://www.iag.com.au/sites/default/files/documents/Severe-weather-in-a-changing-climate-report-151119.pdf>



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