

## FLOODS SEMINAR – QUEENSLAND LAW SOCIETY

### Flood v Storm – insurance claims John Berrill, Principal, Maurice Blackburn

#### 1. INTRODUCTION

We have all seen the devastation caused by the floods in Queensland. Homes and businesses have been inundated, cars, boats and piers damaged, crops and livestock lost and people killed.

We are now seeing the all too frequent controversy about insurance claims:

- am I covered for flood damage?
- do I have enough cover?
- what insurance benefits are provided?
- what is the claims/complaints process?

This paper will deal with some of the issues and hopefully inform practitioners how to help consumers with insurance claims.

## 2. TYPES OF INSURANCE POLICIES

### Home and contents insurance

- for home owners and tenants
- covers loss/damage to buildings, contents, specified personal property

### Business insurance

- covers, loss/damage to business premises and equipment
- includes business interruption insurance for loss of profits, expenses, etc

### Motor vehicle insurance

- covers damage to motor vehicles
- includes liability cover

### Boat insurance

- covers damage to boats and trailers
- includes liability cover

### Life, TPD and income protection insurance

- private general and life insurance policies may cover death, total and permanent disability (TPD), trauma and income protection

### Cover may be provided through:

- group insurance policies eg through employer sponsors
- group superannuation policies provide cover for death, TPD and temporary disability (TTD)

### 3. WHAT IS COVERED/EXCLUDED?

Home and contents and business insurance

- all such policies cover storm damage
- some include flood cover
- some cover flash flooding
- most exclude storm/tidal surges

Motor vehicle, boat, life, TPD and income protection insurance

- all cover storm, flood and tidal surge damage/death/disability

Definitions

- vary from policy to policy but there are common definitions
- **Flood:** the overflow of water from rivers, creeks, dams, reservoirs or canals.
- **Storm:** rainwater or wind damage and local run off from streets, gutters or storm water drains
- **Flash flooding:** flood damage where the inundation occurs within twenty-four hours (or up to seventy-two hours) of the downpour
- **Tidal/storm surge:** the action of water from the sea, high sea water, tidal action or tsunami

#### 4. TYPES OF BENEFITS

##### Fixed price cover

- insured for loss/damage up to a predetermined fixed amount
- common in building insurance
- often results in underinsurance, particularly in major disasters if repair/replacement prices rise

##### Replacement/repair cover

- insurance to replace damaged/lost items with new items
- alternatively, repair damaged items to their pre-damaged condition or pay the equivalent costs of doing so
- insurers often replace lost/damaged contents, and repair buildings or pay the cost equivalent of rebuilding

##### Clean up costs

- covers the reasonable costs incurred in the demolition of any damaged buildings and the removal of debris
- the costs may be included in the sum insured

##### Temporary accommodation

- covers the reasonable cost of alternative accommodation if the principal place of residence is damaged such that it is uninhabitable
- usually for a maximum of twelve months
- sometimes capped as a percentage of the sum insured but usually payable in addition to it

##### Legal/professional costs

- covers reasonable professional fees relating to loss/damage
- for example, accounting fees to calculate business losses, legal fees to discharge mortgages etc
- often capped and included in the sum insured

## 5. HOW TO CLAIM

### Claim

- contact the insurer by telephone, online or by post
- complete a claim form
- take photographs of damaged premises/items
- collate an inventory of all lost/damaged items – no matter how badly damaged

### Claims process

- insurers are subject to the General Insurance Code of Practice
- the insurer will acknowledge receipt of the claim and notify what information/documentation is required
- the insurer will appoint a claims assessor to assess the losses
- the insurer may obtain expert reports (e.g. from an hydrologist) either specific to the claim or generally
- no time limit for a decision on a claim – although on average takes between one to three months
- the insurer must notify of the decision in writing. This must include reasons for the decision, relevant documents and notification of the complaints handling procedures
- arrange for payment of the claim and/or the repair/replacement of items

### Financial hardship

- if urgent financial need is demonstrated, a claim may be fast-tracked and an advance payment can be made

### Further claims

- if after a claim is paid, the insured discovers further loss/damaged items or further information about existing claimed items, further claims can be paid
- an insured must lodge further claim(s) within six months of finalisation
- only applies to catastrophes – such as the Queensland floods and cyclone

## 6. COMPLAINTS

### Internal Dispute Resolution (IDR) complaints

- if a claim is rejected or no satisfactory decision is received, an insured can lodge an IDR complaint to the insurer
- a complaint is dealt with by an IDR complaints officer – not the original claims assessor
- an IDR complaint decision must be made within forty-five days
- some insurers have multi-tiered IDR complaints processes which can result in delays
- an IDR complaint decision must be in writing with reasons, including relevant documents and notification of rights of appeal.

### Financial Ombudsman Service

- if an IDR complaint is not accepted within forty-five days, an insured can lodge a complaint to the Financial Ombudsman Service (FOS)
- all general insurers (and life insurers) operating in Australia must belong to an external dispute resolution scheme approved by the Australian Securities and Investments Commission (ASIC)
  - FOS is the only scheme approved by ASIC
- FOS has the power to overturn insurers' decisions and order claims to be paid
- FOS can deal with claims up to \$500,000 and can make determinations up to \$280,000 plus interest
- insurers are bound by FOS' decisions but insureds are not
- other relevant factors
  - general insurance complaints take approximately six to nine months to determine although this varies
  - FOS can conciliate disputes but the settlement rate is low for general insurance disputes
  - non-binding recommendations are made by FOS staff
  - determinations are made by single adjudicators or three person Panels
  - there are no filing fees for insureds (only for insurers) and usually no costs
  - complaints are decided on the papers with written submissions

- recommendations and determinations are made in writing with reasons
- there are very limited rights of internal appeal against determinations
- complaints must be lodged within two years of receipt of an IDR complaint decision
- consequential loss awards limited to \$3,000

## 7. COURT

An insured can sue an insurer for breach of contract

- a claim for up to \$150,000 can be dealt with in the Queensland Magistrates' Court
- the District Court has jurisdiction up to \$750,000
- the Queensland Supreme Court has unlimited jurisdiction
- a Court can order the insurer to pay a claim plus interest and costs
- costs usually follow the outcome of the case
- Court may award consequential losses
- the statute of limitations for breach of insurance contract is six years from the date of the breach

## 8. CYCLONES/TRAVEL INSURANCE

Home and contents and business insurance policies do usually cover cyclone damage

- however, most exclude tidal/storm surges
- many (but not all) Cyclone Yasi claims will be covered

Travel insurance policies usually exclude claims arising from a war, rebellion, revolution or insurrection

- the civil unrest in Egypt is probably not excluded