



## **NATIONAL INSURANCE BROKERS ASSOCIATION (NIBA)**

### **RESPONSE TO INQUIRY INTO THE OPERATION OF THE INSURANCE INDUSTRY DURING DISASTER EVENTS**

#### **ABOUT NIBA**

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 500 member firms and over 2000 individual qualified practising insurance brokers (QPIBS) throughout Australia.

Over a number of years NIBA has been a driving force for change in the Australian insurance broking industry. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced a strong independently administered and monitored code of practice for members. The 500 member firms all hold an Australian financial services (AFS) licence under the Corporations Act that enables them to deal in or advise on risk insurance products.

#### **EXECUTIVE SUMMARY**

NIBA's view in relation to the insurance industry's response to the 2010/2011 extreme weather events around Australia is that the insurance industry has performed extremely well in the difficult circumstances associated with these disasters. This is more so the case given the concurrent disaster events in Victoria, Western Australia and in Christchurch, New Zealand.

That is not to say that improvements cannot be made by the industry where appropriate.

Whilst NIBA applauds the intent behind the inquiry, NIBA does believe that it is worth noting that many of the claims handling issues raised in the terms of reference can be substantially affected by improved government risk mitigation measures. Government must play a significant role in reducing the impact/scope of any disaster and thus the insurance industry's ability to more efficiently respond to them.

Like the Council of Australian Governments (COAG) NIBA is of the view that there is a need for "a whole-of-nation resilience-based approach to disaster management, which recognises that a national, coordinated and cooperative effort is needed to enhance Australia's capacity to prepare for, withstand and recover from disasters."



The solution must involve a true combination of:

- Federal/State Government/local council initiatives; and
- private sector and consumer initiatives, including insurance cover.

Such a coordinated effort can only serve to improve the insurance industry's response to disasters.

Another crucial component is to promote the value of obtaining personal advice provided by Australian Financial Services Licensees such as insurance brokers and other authorised persons. There is no substitute for the provision of advice from qualified advisers such as insurance brokers in having an insurance claim proactively managed. Despite Government attempts to simplify insurance documentation (which have continued since the introduction of the financial services reform legislation), the reality is that an insurance product is by its very nature of some complexity and consumers will not generally be inclined/or well equipped to read/understand them. The services of a professional adviser can go a long way to reducing claims issues.

NIBA sets out below its response to each of the Inquiry Terms of Reference.

## **TERMS OF REFERENCE**

### **The claims processing arrangements:**

- a. Information - whether consumers were given accurate and useful information by insurers about their right to make a claim, if they made a claim, the progress of that claim and their right to external dispute resolution**

#### ***NIBA Response***

*NIBA notes that where consumers are represented by insurance brokers they are at a significant advantage to consumers who deal directly with insurers. This is because the insurance broker is the advocate for the client in any claims disputes and advises them on their claim rights to an extent that documentation provided by insurers cannot because each and every claim situation is different.*

*NIBA understands that its members and their clients have for this reason not faced any significant problems in this respect as they are well informed and have pursued their rights accordingly.*



*Insurers are subject to strict requirements regarding disclosure of information to consumers in their product documentation (e.g. Financial Services Guides and Product Disclosure Statements) regarding claims as well as internal and external dispute resolution procedures. They would breach their Australian Financial Services Licence obligations and would be subject to significant penalties under the Corporations Act if they didn't comply. Accordingly, existing requirements are quite robust.*

*The main concern is the consumer's ability to understand the information. The reality (as in most other cases), is that a consumer relying on an expert's assistance (e.g. an insurance broker) will generally be better off (in terms of time and often result).*

**b. Timeframes - The time taken to process claims by the insurance industry and whether these timeframes were reasonable (by event and region)**

***NIBA Response***

*The time taken to process claims has generally been reasonable in the circumstances having regard to the relevant disasters and state of events. The state of events can however be improved.*

*The main problems that have caused timing issues have typically included the:*

- *number of persons affected*
- *availability of claims assessors/loss adjusters*
- *accessibility of sites*
- *availability of qualified trades people and materials required to effect repairs*
- *remoteness of some locations*

*Where there are major or multiple disasters the pressures increase significantly in relation to availability of resources. For example, where there is a major hail storm, with thousands of vehicles being damaged, it can take a long period of time for those vehicles to be repaired by the vehicle repair industry, regardless of how quickly the insurer approves the claim.*

*The General Insurance Code of Practice (published by the Insurance Council of Australia) and Insurance Brokers Code of Practice (published by NIBA) both have specific provisions applying standards to members in relation to disasters.*



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*Flood claims are of course the ones that involve most delay and this typically arises because of:*

- *Disputes in relation to the operation of insurance policy provisions (e.g. flood exclusions and concurrent cause of loss issues) or where flood cover is provided, the scope of cover (e.g. limits, exclusions and method of settlement) – the Federal Government’s standard flood definition initiative is seeking to reduce issues in this regard. NIBA has provided a submission to Federal Treasury in relation to a proposed standard flood definition, and reference should be made to that submission for details of NIBA’s position on this matter.*

*NIBA notes that a significant proportion of insurers are proposing to provide flood cover going forward and this should reduce disputes regarding whether damage is caused by riverine flooding, storm or other damage. Much will of course depend on how the insurers seek to qualify the standard definition and issues are likely to arise from this. NIBA members will be advising their clients on their risks, the cover required and their rights under insurance policies in this regard in any case.*

- *The complexity associated with determining what is flood water and the need for experts in this regard. A bushfire/earthquake claim for example would not typically require such an expert.*

*The availability of independent experts to challenge the views of an insurer’s hydrologist has been one issue NIBA member have noted as a concern. NIBA’s submission in relation to the standard flood definition suggested that to reduce issues in this regard a process requiring an independent expert (e.g hydrologist) binding both parties could be considered. This could save time and money for all concerned and substantially speed up the claims process as both parties would not have to find their own expert.*

*However, as noted earlier, many of the delay issues relate to the impact/scope of the disaster itself which puts significant pressure on insurance industry resources and the capacity of building and other repairs to respond in a timely manner. Improved government risk mitigation measures, as proposed in the NIBA submission on the Natural Disaster Insurance Review, will (and must) play a significant role in reducing the impact/scope of the disaster and thus the insurance industry’s ability to more efficiently respond to disasters. Further detail is provided below.*



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- c. External parties - The engagement of third party experts and external consultants by the industry, including hydrologists and law firms, and the impact of these external parties on claims processing**

***NIBA Response:***

*The main concern NIBA members have informed NIBA of relates to experts (e.g hydrologists) not making their role as agent for the insurer clear and the confusion of consumers as to whether the arrival of the expert means that the insurer will pay the claim or not.*

- d. Internal Dispute Resolution - Whether industry IDR processes were effective and undertaken in a timely manner**

***NIBA Response:***

*As noted above, robust standards apply in relation to internal dispute resolution procedures in the insurance industry by reason of the operation of the Corporations Act licensing requirements under Chapter 7 (see s912A(1)(g)).*

*NIBA members are trained to understand the insurer's obligations in this respect and advise their clients on these rights. Accordingly, NIBA understands that its members and their clients have not faced any significant problems in this respect as they are well informed and have pursued their rights accordingly.*

*The only significant issue has been delay related to the impact/scope of the disaster itself which puts a significant pressure on industry resources. As noted above, improved government risk mitigation measures, as proposed in the NIBA submission on the Natural Disaster Insurance Review, will (and must) play a significant role in reducing the impact/scope of the disaster and thus the insurance industry's ability to more efficiently respond to disasters. Further detail is provided below.*

- e. Code of Practice - The effectiveness of the insurance industry's Code of Practice**

***NIBA Response:***

*The General Insurance Code of Practice currently imposes standards on insurers regarding claims handling and procedures in relation to disasters.*



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*The Code at paragraph 3 deals with insurance claims handling. It provides a time frame within which an insurer should deal with claims and a standard of conduct for claims handling. The Code also acknowledges that responding to catastrophes and disasters can result in a large number of claims and notes that it may not be possible to meet all standards of the Code following a catastrophe or disaster. Early communication on any proposed delay is crucial. NIBA is aware that some insurers are introducing new processes and procedures for more efficient claims processing, and these measures will improve the services that can be offered to clients in the future.*

*NIBA members are trained to understand the insurer's obligations in this respect and advise their clients on their rights. NIBA members are trained to proactively manage claims submitted to insurers so they can properly advise their clients and assist in the management of any delay in payment or processing that may arise. Accordingly, NIBA understands that its members and their clients have not faced any significant problems in this respect as they are well informed and have pursued their rights accordingly.*

*The only real issue has been delay related to the impact/scope of the disaster itself which puts a significant pressure on industry resources. As noted above, improved government risk mitigation measures, as proposed in the NIBA submission on the Natural Disaster Insurance Review, will (and must) play a significant role in reducing the impact/scope of the disaster and thus the insurance industry's ability to more efficiently respond to disasters. Further detail is provided below.*

**The conduct of external dispute resolution processes for claims arising from the 2010/2011 extreme weather events, including:**

**a. The effectiveness of dispute resolution within the Financial Ombudsman Service**

***NIBA response:***

*NIBA members are trained to understand the FOS process and their client's rights in relation to this process and advise their clients on these rights. Accordingly, NIBA understands that its members and their clients have not faced any significant problems in this respect as they are well informed and have pursued their rights accordingly.*

*NIBA notes with concern activity by some law firms purporting to promote class actions against insurers in relation to policy coverage for flood and related matters. FOS provides*



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*effective, fair and independent dispute resolution services at no cost to the policyholder. NIBA is concerned that those promoting legal solutions may not be advising their clients of the availability of a free, independent dispute resolution process that is binding on the insurer.*

*Delay related to the impact/scope of the disaster itself has put significant pressure on FOS resources. As noted above, improved government risk mitigation measures, as proposed in the NIBA submission on the Natural Disaster Insurance Review, will (and must) play a significant role in reducing the impact/scope of the disaster and thus FOS's ability to more efficiently respond. Further detail is provided below.*

*The other FOS issues generally relate to flood type claims where the disputes can be more complex because of:*

- *Disputes in relation to the operation of insurance policy provisions (e.g. flood exclusions and concurrent cause of loss issues) or where flood cover is provided, the scope of cover (e.g. limits, exclusions and method of settlement) – the Government's standard flood definition initiative is seeking to reduce issues in this regard. See NIBA's submission to Treasury in relation to Standard flood definition for details of NIBA's position on this matter.*

*NIBA notes that most insurers are proposing to provide flood cover going forward and this should reduce disputes regarding whether flood is or is not excluded. Much will of course depend on how the insurers seek to qualify the standard definition and issues are likely to arise from this. NIBA members will be advising their clients on their rights in this regard in any case.*

- *The complexity associated with determining what is flood water and the need for experts in this regard. A bushfire/earthquake claim for example would not typically require such an expert.*

*The availability of independent experts to challenge the views of an insurer's hydrologist has been one issue NIBA member have noted as a concern. NIBA's submission in relation to the standard flood definition suggested that to reduce issues in this regard a process requiring an independent expert (e.g hydrologist) binding both parties could be considered. This could save time and money for all concerned and substantially speed up the claims process as both parties would not have to find their own expert.*



**b. Barriers to participation in external dispute resolution for consumers**

***NIBA Response:***

*NIBA is not aware of any issues that prevent consumers from gaining access to external dispute resolution services. When the FOS Terms of Reference were determined, they were subject to significant consultation process. NIBA is always happy to consider whether the terms should be extended where there is a real need for this. The main concern in extending the terms beyond the policies and types of persons or limits currently covered is whether the insurers who are FOS members (who ultimately share the risk) are prepared to be bound by FOS decisions for such products, persons and limits. If not, such a change will not be practically achievable.*

**c. The impact of free legal advice on people's access to external dispute resolution (including assistance provided by Legal Aid services and community legal centres).**

*As noted above, NIBA has been advised that some members are concerned that consumers represented by lawyers may not have taken advantage of the free FOS external dispute resolution process in relation to the relevant dispute despite being entitled to access these services. If this is the case is it a matter of concern that should be investigated. Such an investigation may identify why such advisers thought it in their client's interest not to do so – this may point out issues with the FOS process that are not of advantage to consumers that could be addressed.*

**Any other matters impacting on insurance claims processing arising from the 2010/2011 extreme weather events**

***NIBA Response:***

NIBA reemphasises that improved government risk mitigation measures, as proposed in the NIBA submission on the Natural Disaster Insurance Review, will (and must) play a significant role in reducing the impact/scope of the disaster and thus the industry's ability to respond more efficiently.

Like the Council of Australian Governments (COAG) NIBA is of the view that there is a need for "a whole-of-nation resilience-based approach to disaster management, which recognises that a national, coordinated and cooperative effort is needed to enhance Australia's capacity to prepare for, withstand and recover from disasters."

For example, in relation to the flood disaster risk the Government could:

- develop and implement effective, risk-based land management and planning arrangements and other mitigation activities such as:
  - *the development by Government of a consistent national land use planning policy that works towards reducing the number of flood exposed properties.*

*Good work has been done in relation to bushfires already. For example, in NSW, risks associated with bush fires are regulated under the Rural Fires Act 1997. Under Division 8 of that Act, there is a legislative framework for land use planning and controls which mandates the assessment and control of bush fire hazards in land use planning and development.*

*In NSW, risks associated with flooding are not regulated, but are the subject of mere guidelines jointly published by the Department of Planning and the Department of Natural Resources. Recent events have shown that people die from flood events, just as they die from bush fires and the major risk of damage to private and community infrastructure from both types of events is also essentially the same. NIBA queries why one is regulated by a strong legislative framework, and the other is fully devolved to local councils with mere guidelines issued by the State?*

- *modernising the Building Code of Australia to include minimum standards for the durability of property that is subject to natural hazards. e.g ensuring the floor level is higher than any expected flood.*
- *appropriate allocation of funds dedicated to preventative infrastructure projects including levees, barrages, flood gates and improved drainage.*

*A good example of the value of such initiatives is where Lismore, NSW, built a flood levy for approximately \$19 million and a year after its completion had a one-in-10-year flood event. The town was protected by the levy and saved an estimated \$15m in damages. There are numerous other examples of the value to the community such Government mitigation funding can have.*

*Not all mitigation need be expensive. For example, the risk of flooding in Brisbane is already mitigated (to a degree) by the Wivenhoe Dam. There is a clear opportunity by way of proper management of the dam and the controlled release of water to*



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*further minimise the risk of flooding and pressure on the insurance industry and consumers.*

*Such initiatives, whilst difficult, are a key part of the long term solution. Such measures would also increase the insurance industry's ability to price risk accordingly in flood-prone areas, which is currently affected by a lack of flood mapping data and state-funded mitigation programs. Government could monitor industry response to such initiatives to ensure reduced risk is in fact taken into account.*

- have effective arrangements in place to inform people about how to assess risks and reduce their exposure and vulnerability to hazards.

*In relation to flood, publicly funded and centralised flood mapping could be made available by the Government to the community. Currently there is no such mapping other than the National Flood Information Database created by the Insurance Council of Australia which identifies properties with a flood risk according to publicly available Government flood mapping.*

*Centralised flood mapping could be combined with obligations regarding the disclosure of any flood risk and possibly promotion or provision of information regarding risk mitigation options to property owners and tenants when buying property or entering into leases or in rate notices, so as to promote their own risk mitigation strategies.*

*The value of obtaining personal advice provided by Australian Financial Services Licensees such as insurance brokers and other authorised persons should also be promoted. There is no substitute for the provision of advice in relation to the nature and extent of risk, and the range of insurance policies available to respond to those risks, from qualified advisers such as insurance brokers.*

- support individuals and communities to prepare for extreme events.

*Federal and State Government and local councils will have to play a significant role in this regard.*

- ensure the most effective, well-coordinated response from our emergency services and volunteers when disaster hits.

*Federal and State Government and local councils will have to play a significant role in this regard.*



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- work in a swift, compassionate and pragmatic way to help communities recover from devastation and to learn, innovate and adapt in the aftermath of disastrous events.

*Federal and State Government and local councils will have to play a significant role in this regard. The introduction of annual reporting by the Productivity Commission on the effectiveness of State and Federal disaster relief payments would also assist in the above.*

NIBA notes that the next step in the COAG Strategy is to develop a national implementation plan. It is expected that state, territory and local governments will use the Strategy to inform local action.

NIBA believes that development of such a plan should be given a high priority and consideration be given to imposing requirements (rather than guidelines) where possible to ensure mitigation is properly progressed.

If you would like to discuss any aspect of this matter further do not hesitate to contact us.

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