

# **Disaster Insurance Case Questions Submissions to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry**

## **Round 6 Hearing**

### **Legal Aid NSW**

#### **Introduction**

1. Legal Aid NSW welcomes the opportunity to provide written submissions on Natural Disaster case studies following Round Six of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Commission).
2. The Commission has highlighted critical systemic issues in the conduct of General Insurers following Natural Disasters.

#### **Background**

3. A recent study (Australian Business Round Table, 2013) indicated that in 2015 the total cost of natural disasters in an average year (including tangible and intangible costs) was more than \$9 billion, which is currently equivalent to about 0.6 per cent of gross domestic product. The cost is expected to almost double by the year 2030 and to average \$33 billion per year by 2050. This was without considering the potential impact of climate change.
4. Since 2008 Legal Aid NSW has provided legal assistance to clients following natural disasters with the aim of mitigating the impact that disasters have on individuals, families and communities. Over this time we have developed a model of service delivery for people affected by natural disasters that is holistic, timely and trauma-informed. For many of the families that we assist, if their claims are not accepted, they face being unable to rebuild or repair their homes. The model of service delivery employed by Legal Aid NSW aims to provide a holistic approach to a client's problems by providing early legal assistance, identifying systemic legal issues and referring them to appropriate stakeholders or regulators, and providing legal education on insurance issues.
5. In New South Wales, Legal Aid NSW is part of a whole of government response following a natural disaster. We provide information and assistance in the immediate aftermath of a disaster and where necessary provide ongoing assistance throughout the claims process up to and including where necessary assistance and representation at the Financial Ombudsman Service (FOS).

#### **Disaster insurance Issues**

6. In the event of a disaster, the CEO and executive of Legal Aid NSW administer the Legal Aid Disaster Response Plan, and Legal Aid NSW is the lead agency in co-ordinating the legal response for NSW.
7. Observations from our casework experience mirror the conduct highlighted by the case studies. For the purpose of this submission we limit our comments to 5 issues, being:

- a. lack of a trauma-informed approach to claims management;
- b. cash settlements
- c. lack of regulation and oversight of third party assessors, claims handlers and contractors;
- d. lack of independence of “Experts”; and
- e. need for legal assistance.

## Lack of Trauma Informed Claims Handling

8. A trauma-informed approach:
  - a. acknowledges the wide spread impact of trauma and understands pathways of recovery;
  - b. is aware of the signs and symptoms of trauma in clients, families of survivors as well as staff providing assistance;
  - c. responds to those signs by fully integrating knowledge about trauma into policies, practice and procedures; and
  - d. aims to actively resist re-traumatisation.
9. It is particularly important when working with traumatised clients to ensure that they feel that there is a relationship of trust and transparency in the process and that they are provided with empowerment and agency during the claims process. In each of the case studies before the Commission we saw a lack of understating of a trauma informed claim approach.
10. In the case of Sacha Murphy, the Commission heard of how YOUI responded to a 6 page letter with a one page system generated email. In doing so YOUI failed to acknowledge the trauma that Ms Murphy felt and failed to provide an environment that fostered a relationship of trust.
11. In the case of Bernadette Heald, there was evidence before the Commission that AAI were on notice of the Heald’s psycho-social situation and the stressors that Ms Heald and her family were already experiencing. The Commission learnt that despite this, AAI did nothing to ensure that the Heald’s claim was managed to take this into account.
12. Additionally the Commission heard of how the Heald’s had to explain their situation again and again to different claims staff each time they called.

## Cash Settlements

13. Legal Aid NSW acknowledges that cash settlement are problematic in that insureds are often left with a short fall in building costs. This can occur because insureds underestimate the costs of rebuilding the property and quotes provided by insurer’s builders can contain discounts or are provided on the basis of an ongoing commercial relationship which allows the builder to take advantage of economies of scale.
14. However, where a cash settlement is the preference of the insured, Legal Aid NSW believes that once the claim has been accepted, the insurer should make an immediate payment of the consumer’s total entitlements under the policy.
15. That is, where a building has been completely destroyed, the insured should be paid the amount that they are insured for, plus the maximum provided for all other benefits (such as professional fees, debris removal and temporary accommodation), without having to obtain a scope of works or quotes for building and other fees.

16. Legal Aid NSW believes that this would reduce trauma for the insured as they would not have to go through the motions and itemise everything that they have just lost. Instead they would be able to focus on recovery.
17. In the Heald's case although AAI eventually accepted that the claim was a total loss, and that the Healds were in fact, under insured, it took almost another year before AAI paid the Healds what they were owed. This only occurred following a final determination by FOS.

## Lack of Regulation and Oversight of Third Party Assessors, Claims Handlers and Contractors

18. All 3 case studies illustrated the lack of regulation of third parties, in particular contractors. In the case of Ms Murphy, she was exposed to increased lead levels while pregnant. In the case of Mr Sutton, mould has infiltrated his property and continued to grow. In the case of the Healds, if they had accepted the opinion of the first engineer who attended their property they would have been left with \$30,000.00 and a property that was both irreparable and unsafe to live in.

## Lack of Independence of Experts

19. AAI acknowledge that the report of the Heald's Engineer was superior to the AAI Engineer. Ms Heald gave evidence that the AAI Engineer attended their home and told them certain things but wrote something different in his report.
20. The Commission noted that there may be a bias albeit unconscious, by the experts or contractors who provide those reports. In NSW when instructing an Expert for the purpose of providing evidence in litigation the Expert Witness Code of Conduct must be read, acknowledged and complied with. The Expert Witness Code provides that the Expert must act independently, within their area of expertise, and set out any assumptions that they have made in the body of the report.

## Need for Legal Assistance

21. Insurers are experienced at handling claims and used to dealing with large volumes of claims. In contrast, victims of natural disasters may have never previously made an insurance claim, are unfamiliar with the terms and conditions of their policies and experiencing significant levels of trauma. They are usually part of an entire community that is trying to recover economically as well as psychologically. In the case of the Hunter floods, three members of that community lost their lives.
22. Bernadette Heald gave evidence about her need for legal assistance, and she said that AAI placed "road blocks" at every step of the way. This included AAI responding to Heald's FOS claim with several volumes of documents, many of which were largely not necessary to address the issues raised in the Heald's dispute. Ms Heald gave evidence that she would not have been able to navigate the volume of the documents and the nature of the argument constructed by AAI without legal assistance.

## Available findings of misconduct

23. Legal Aid NSW urges the Commission to make the findings of misconduct set out in RCD0027.0001.0002 as available to the Commission in all 3 case studies.

## Available findings of conduct below community expectations

24. Legal Aid NSW urges the Commission to make the findings of conduct falling below community expectations set out in RCD0027.0001.0002 as available to the Commission in all 3 case studies.