

**ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND
FINANCIAL SERVICES INDUSTRY**

SIXTH ROUND OF HEARINGS

**CLOSING SUBMISSIONS OF COUNSEL ASSISTING ON
NATURAL DISASTER CASE STUDIES**

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A. YOUI PTY LTD

A.1. Background

1. This case study concerned the conduct of Youi in its handling of two insurance claims. The Commission heard evidence from:

1.1 Ms Sacha Murphy, a Youi policy holder whose home was damaged in a hail storm in Broken Hill in November 2016;

1.2 Mr Glenn Sutton, a Youi policy holder whose home was damaged in Tropical Cyclone Debbie in March 2017; and

1.3 Mr Jason Storey, the Chief Operating Officer, Claims Services at Youi.

A.2. Evidence

(a) *Sacha Murphy*

2. Ms Murphy took out a home and contents insurance policy with Youi in 2012.¹

3. In November 2016, there was a severe hail storm in Broken Hill that caused damage to Ms Murphy's roof.² In late 2016 or early 2017, Ms Murphy made a claim under her policy for damage to the roof.³ Ms Murphy's claim was accepted on 15 February 2017.⁴ It took Ms Murphy and her partner several months to save up to pay the excess,⁵ which they paid in May 2017. In late May, Ms Murphy and her partner signed a scope of works and agreed for a building company chosen by Youi (**Builder A**) to complete the repairs.⁶

4. By that time, Youi was aware of a number of issues in relation to Builder A's performance, specifically in relation to claims in Broken Hill.⁷ Youi had formed the view that Builder A had breached the law by not taking out statutory insurance before commencing building jobs, and had suspended new jobs being allocated to Builder A.⁸ Despite this, Youi did not reallocate Ms Murphy's claim to another builder, even though work had not yet commenced on her property.⁹ Mr Storey acknowledged that, by not informing Ms Murphy about the issues it had identified with Builder A, or reallocating her claim to another builder, Youi failed to handle her

¹ Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 1[4].

² Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 1 [5], [7].

³ Transcript, Sacha Michelle Murphy, 19 September 2018, 6157.

⁴ Exhibit 6.334, Witness statement of Jason Leonard Storey, 17 September 2018, 32 [70(c)(ii)].

⁵ Transcript, Sacha Michelle Murphy, 19 September 2018, 6159.

⁶ Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 2 [10]; Transcript, Sacha Michelle Murphy, 19 September 2018, 6158.

⁷ Transcript, Jason Leonard Storey, 19 September 2018, 6205.

⁸ Transcript, Jason Leonard Storey, 19 September 2018, 6210.

⁹ Transcript, Jason Leonard Storey, 19 September 2018, 6209-10.

claim in a fair and transparent manner, failed to act in an efficient, professional and practical manner, and breached Youi's duty of utmost good faith.¹⁰

5. In around May 2017, Ms Murphy's daughter's lead levels were tested.¹¹ Lead contamination is a particular issue in the Broken Hill community, and the lead levels of children under five are monitored regularly.¹² Ms Murphy's daughter's lead levels were above the prescribed level, and, as a result of this, the lead levels in Ms Murphy's backyard were tested. The lead level was found to be very high, and Ms Murphy was told that the soil in the backyard would need to be dug up and replaced with loam. However, this remediation work could not take place until her roof was repaired, because otherwise the lead dust in the roof cavity would re-contaminate the backyard.¹³ Ms Murphy told the builder that, because of this, she wanted the repairs to the roof to be done quickly.¹⁴
6. Despite this, Builder A did not commence repairs until 4 October 2017, nearly one year after the damage had occurred.¹⁵ Mr Storey acknowledged that Youi did not do enough to address this delay,¹⁶ and that, by not taking steps to ensure that Builder A complied with its obligations to commence repairs in the timeframe set by Youi's contractual agreements, Youi failed to handle Ms Murphy's claim in a timely manner.¹⁷
7. On 4 October 2017, Builder A commenced the repairs, and removed most of the roof of Ms Murphy's property, as well as the air-conditioner and solar panels. At the end of that day, the builders told Ms Murphy and her partner that they would not do any more work because the structural issues were too much for them and they needed more money to deal with those issues. They left without covering the roof, and asked Ms Murphy and her partner to pay around \$1,800 before they would return.¹⁸ Mr Storey acknowledged that it was not acceptable that Ms Murphy and her partner were left in this position.¹⁹
8. At this time, Ms Murphy was pregnant. Because the air-conditioner had been removed, it was hot inside the house, and lead dust was able to enter through the open air-conditioning vent. Ms Murphy was concerned about the impact of this on her family and unborn child.²⁰
9. On 6 October 2017, Ms Murphy called Youi and told the representative that she was unhappy with how long it was taking for the roof to be repaired, and that she was pregnant and being

¹⁰ Transcript, Jason Leonard Storey, 19 September 2018, 6210-1.

¹¹ Transcript, Sacha Michelle Murphy, 19 September 2018, 6159.

¹² Transcript, Sacha Michelle Murphy, 19 September 2018, 6156.

¹³ Transcript, Sacha Michelle Murphy, 19 September 2018, 6160.

¹⁴ Transcript, Sacha Michelle Murphy, 19 September 2018, 6160.

¹⁵ Transcript, Jason Leonard Storey, 19 September 2018, 6216.

¹⁶ Transcript, Jason Leonard Storey, 19 September 2018, 6216.

¹⁷ Transcript, Jason Leonard Storey, 19 September 2018, 6216.

¹⁸ Transcript, Sacha Michelle Murphy, 19 September 2018, 6161, 6163.

¹⁹ Transcript, Jason Leonard Storey, 19 September 2018, 6217.

²⁰ Transcript, Sacha Michelle Murphy, 19 September 2018, 6163-4.

- exposed to high levels of lead.²¹ Youi didn't take any further action to cover the roof until 9 October 2017.²² On that day, it instructed Builder A to cover the roof, but did not check whether Builder A had done so.²³ Builder A did not cover the roof. Mr Storey accepted that Youi did not do enough when it learned that Builder A had left the roof uncovered,²⁴ and that Youi's response to the situation of Ms Murphy and her family was inadequate.²⁵
10. On 19 October 2017, just over two weeks after Builder A opened up the roof of Ms Murphy's home, Youi authorised Builder A's variation for the extra work to bring the roof up to code.²⁶ On 20 October 2017, Builder A returned to commence the repair work but then told Youi that it had identified further difficulties with the roof, and that the repair cost would be significant.²⁷ Ms Murphy called Youi later that day and told the Youi representative, among other things, that she was very upset about her family being exposed to lead dust.²⁸
 11. After this call, Youi agreed to arrange temporary accommodation for Ms Murphy and her family.²⁹ Youi again requested that Builder A make the property safe for Ms Murphy and her family to live in, by closing the roof.³⁰ After spending four nights in a caravan park, the family returned to the property.³¹
 12. Ms Murphy told the Commission that it was clear on their first night back in the house that the roof had not been replaced properly as they could hear the noise of the loose metal roofing in the wind.³² Youi did not take any steps to check that the lead dust could no longer enter the property before the family went home.³³
 13. Ms Murphy made a formal complaint to Youi on 2 November 2017, which was six pages long and raised a lengthy list of concerns.³⁴ In response, a representative of Youi spoke to Ms Murphy's partner on the phone, and sent Ms Murphy a system-generated letter.³⁵ Mr Storey agreed that the letter was not an adequate response to the complaint made by Ms Murphy, and was not an appropriate way to deal with a customer who was clearly distressed by her experience

²¹ Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 4 [23]; Transcript, Jason Leonard Storey, 19 September 2018, 6219.

²² Transcript, Jason Leonard Storey, 19 September 2018, 6219.

²³ Transcript, Jason Leonard Storey, 19 September 2018, 6220.

²⁴ Transcript, Jason Leonard Storey, 19 September 2018, 6220.

²⁵ Transcript, Jason Leonard Storey, 19 September 2018, 6220.

²⁶ Transcript, Jason Leonard Storey, 19 September 2018, 6220.

²⁷ Transcript, Jason Leonard Storey, 19 September 2018, 6221.

²⁸ Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 4 [28].

²⁹ Transcript, Sacha Michelle Murphy, 19 September 2018, 6166.

³⁰ Transcript, Jason Leonard Storey, 19 September 2018, 6221-2.

³¹ Transcript, Sacha Michelle Murphy, 19 September 2018, 6166.

³² Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 5 [31].

³³ Transcript, Jason Leonard Storey, 19 September 2018, 6222.

³⁴ Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 5 [34]; Transcript, Jason Leonard Storey, 19 September 2018, 6222.

³⁵ Transcript, Jason Leonard Storey, 19 September 2018, 6224.

with Youi.³⁶ He also agreed that the response did not comply with the requirements of the General Insurance Code of Practice.³⁷

14. The Commission heard that Youi's complaints and internal dispute resolution process more generally is considered by its compliance area to be non-compliant with legal requirements.³⁸
15. On 15 November 2017, it rained in Broken Hill.³⁹ Ms Murphy told the Commission that water poured into the house through the lounge, kitchen, bathroom and hallway, because the roof had not been replaced properly.⁴⁰ The water that got into the house caused internal damage, including cracks in the ceiling and mould.⁴¹ Mr Storey acknowledged that Youi had not checked that Builder A had put the roof on correctly before Ms Murphy and her family returned to the home, despite being responsible for the workmanship of the builder.⁴²
16. The roof was ultimately repaired by a different company in May 2018, 18 months after the hail damage.⁴³ Mr Storey acknowledged that the delays in dealing with Ms Murphy's claim have prevented the lead remediation works in Ms Murphy's backyard from proceeding.⁴⁴
17. Mr Storey acknowledged that, in relation to Ms Murphy's claim, Youi failed to conduct its claims in an honest, fair, transparent and timely manner,⁴⁵ failed to respond to the catastrophe that was the Broken Hill storm in a way that was efficient, professional, practical and compassionate towards Ms Murphy,⁴⁶ and breached its duty of utmost good faith.⁴⁷

(b) Glenn Sutton

18. Like Ms Murphy, Mr Sutton had a home insurance policy with Youi.⁴⁸ In late March 2017, Tropical Cyclone Debbie hit Queensland and caused damage to Mr and Mrs Sutton's home, including taking part of the roof off the house.⁴⁹ The damage caused by the storm meant that Mr and Mrs Sutton could not live in the house until it had been repaired.⁵⁰

³⁶ Transcript, Jason Leonard Storey, 19 September 2018, 6227.

³⁷ Transcript, Jason Leonard Storey, 19 September 2018, 6228.

³⁸ Transcript, Jason Leonard Storey, 19 September 2018, 6230.

³⁹ Transcript, Sacha Michelle Murphy, 19 September 2018, 6168.

⁴⁰ Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 6 [39].

⁴¹ Exhibit 6.330, Witness statement of Sacha Michelle Murphy, 20 June 2018, 6 [43].

⁴² Transcript, Jason Leonard Storey, 19 September 2018, 6232.

⁴³ Transcript, Jason Leonard Storey, 19 September 2018, 6234.

⁴⁴ Transcript, Jason Leonard Storey, 19 September 2018, 6234.

⁴⁵ Transcript, Jason Leonard Storey, 19 September 2018, 6234.

⁴⁶ Transcript, Jason Leonard Storey, 19 September 2018, 6234.

⁴⁷ Transcript, Jason Leonard Storey, 19 September 2018, 6191.

⁴⁸ Transcript, Jason Leonard Storey, 19 September 2018, 6234.

⁴⁹ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 1-2 [5]-[7].

⁵⁰ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 2 [7].

19. Mr and Mrs Sutton made a claim under their home insurance policy in March 2017.⁵¹ Mr Sutton told the Commission about three issues in connection with his claim with Youi: inadequate make safe works; delays in repairs; and delays in reimbursement for temporary accommodation.

Inadequate make safe works

20. In relation to the first of those issues, Mr Sutton said that, a few days after the cyclone, a building company attended his house to perform make safe works.⁵² The builder told Mr Sutton that they had only been allocated eight hours to do the job.⁵³ The builders did not install a tarpaulin to cover the hole in the roof, or conduct any drying work, despite mould being a significant problem when houses in tropical areas like Airlie Beach get inundated with water.⁵⁴ Mr Storey said that Youi does not have any particular procedures for houses at risk of mould, but that this was something Youi was considering introducing.⁵⁵ He also said that Youi does not check, as part of its standard claims process, whether make safe work has happened.⁵⁶
21. Mr Sutton told the Commission that, around a month after the cyclone, a tarpaulin was fitted over the hole in the roof.⁵⁷ However, within weeks, the tarpaulin was torn to shreds by the wind, and water was able to enter the house when it rained.⁵⁸ Mr Sutton told Youi several times that the tarpaulin was not sufficient.⁵⁹ Despite this, no one replaced the tarpaulin in the second half of 2017.⁶⁰ Over that time, mould continued to grow in the property.⁶¹ Mr Storey agreed that, by May 2017, Youi was on notice that the tarp that had been fitted had become loose and that water would be able to enter the property.⁶² Mr Storey agreed that, despite being aware since May 2017 that the tarpaulin on the roof was only a temporary solution, Youi had not taken proactive steps to check the tarpaulin or find a more permanent solution until January 2018.⁶³
22. Mr Storey said that Youi accepted responsibility for failing to ensure that the property was covered and protected from the elements while the claim was being resolved.⁶⁴

⁵¹ Transcript, Jason Leonard Storey, 19 September 2018, 6235.

⁵² Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 2 [12].

⁵³ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 2 [13].

⁵⁴ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 2 [13]; Transcript, Jason Leonard Storey, 19 September 2018, 6238.

⁵⁵ Transcript, Jason Leonard Storey, 19 September 2018, 6238-9.

⁵⁶ Transcript, Jason Leonard Storey, 19 September 2018, 6204.

⁵⁷ Transcript, Glenn Wayne Sutton, 19 September 2018, 6174.

⁵⁸ Transcript, Glenn Wayne Sutton, 19 September 2018, 6174.

⁵⁹ Transcript, Glenn Wayne Sutton, 19 September 2018, 6174-5.

⁶⁰ Transcript, Glenn Wayne Sutton, 19 September 2018, 6175-6.

⁶¹ Transcript, Glenn Wayne Sutton, 19 September 2018, 6176.

⁶² Transcript, Jason Leonard Storey, 19 September 2018, 6240.

⁶³ Transcript, Jason Leonard Storey, 19 September 2018, 6242, 6243.

⁶⁴ Transcript, Jason Leonard Storey, 19 September 2018, 6236.

Delays in repairs

23. In relation to the second issue, Mr Sutton told the Commission that, in the weeks following the cyclone, several builders inspected his property to prepare reports.⁶⁵ In May 2017, Mr Sutton was sent a scope of works for the repairs. Mr Sutton was concerned that no one had properly inspected the roof for structural damage.⁶⁶ He asked Youi to arrange for someone to inspect the roof.⁶⁷ Youi arranged for a builder to inspect the roof, and this builder prepared a report. The builder told Mr Sutton that he had not inspected the roof cavity.⁶⁸ Mr Sutton raised this with Youi and asked for an engineer to inspect the roof.⁶⁹ Youi arranged for this to happen, and the engineer concluded that the roof needed to be replaced.⁷⁰
24. In August 2017, Mr Sutton signed a building contract with the builder on the basis of an updated scope of works that included the replacement of the roof.⁷¹ Neither Youi nor the builder gave Mr Sutton a start date for the repairs.⁷²
25. By October 2017, repair work still had not started.⁷³ On 9 October, Mr Sutton sent a complaint to Youi about a number of matters, including the continuing delays.⁷⁴ Youi did not provide a written response to that complaint.⁷⁵ Mr Storey accepted that Youi did not comply with the General Insurance Code of Practice in responding to this complaint.⁷⁶
26. By November 2017, repair work still had not started. On 17 November 2017, Youi sent an email to Mr Sutton raising the possibility of cash settling the claim and advising that Mr Sutton would need to organise for an area of the house affected by termites to be repaired before any other repairs could proceed.⁷⁷ Mr Sutton told the Commission that this was “out of the blue” and Youi had not discussed a cash settlement with him.⁷⁸
27. Mr and Mrs Sutton’s home still has not been repaired. Mr Storey acknowledged that it is unacceptable that the Suttons are not yet back in their home, and said that Youi accepted responsibility for the extended delays in dealing with Mr and Mrs Sutton’s claim.⁷⁹

⁶⁵ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 3 [20].

⁶⁶ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 3-4 [21]-[22].

⁶⁷ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 4 [22].

⁶⁸ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 4 [23].

⁶⁹ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 4 [24].

⁷⁰ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 4 [25].

⁷¹ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 4 [27].

⁷² Transcript, Glenn Wayne Sutton, 19 September 2018, 6179.

⁷³ Transcript, Glenn Wayne Sutton, 19 September 2018, 6179.

⁷⁴ Transcript, Glenn Wayne Sutton, 19 September 2018, 6179-80.

⁷⁵ Transcript, Jason Leonard Storey, 19 September 2018, 6245.

⁷⁶ Transcript, Jason Leonard Storey, 19 September 2018, 6245.

⁷⁷ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 5 [31].

⁷⁸ Transcript, Glenn Wayne Sutton, 19 September 2018, 6181.

⁷⁹ Transcript, Jason Leonard Storey, 19 September 2018, 6235.

Temporary accommodation

28. In relation to the third issue, Mr Sutton told the Commission that he and his wife have been living in temporary accommodation since the cyclone in March 2017.⁸⁰ They have had to move four times,⁸¹ and each time have had to find the accommodation themselves, which has been difficult due to the limited availability of suitable accommodation in the Airlie Beach area since the cyclone.⁸²
29. Mr Sutton told the Commission about his difficulties in getting reimbursement from Youi for temporary accommodation. Youi would regularly take weeks to reimburse costs and Mr Sutton had to follow up Youi when they failed to pay.⁸³ Mr Storey agreed that Mr and Mrs Sutton were put under financial pressure because Youi delayed in reimbursing them for their temporary accommodation.⁸⁴ At various times, Mr and Mrs Sutton were left thousands of dollars out of pocket. Mr Storey agreed that it was not acceptable that Youi repeatedly delayed in reimbursing Mr and Mrs Sutton for the temporary accommodation cost.⁸⁵
30. Mr Sutton's claims advisor, who had primary responsibility for organising the reimbursement of temporary accommodation expenses, was located in South Africa.⁸⁶ Mr Storey told the Commission that it was recognised within Youi in August 2017 that it was not ideal for claims advisers based in South Africa to be trying to manage claims outside of Australian business hours.⁸⁷ Mr Storey accepted that this resulted in delays in the handling of Mr Sutton's claim.⁸⁸
31. Mr Storey accepted that, in relation to Mr Sutton's claim, Youi failed to conduct its claims handling process in an honest, fair, transparent and timely manner, failed to respond to Tropical Cyclone Debbie in an efficient, professional and practical way and in a compassionate manner, and failed to comply with its duty of utmost good faith.⁸⁹

A.3. Available findings of misconduct

32. On the evidence, it is open for the Commissioner to find that in relation to Ms Murphy's claim and Mr Sutton's claim, Youi may have engaged in misconduct in the following ways.
33. **First**, by failing to handle Ms Murphy's and Mr Sutton's claims in a claims in an honest, fair and transparent manner, as required by cl 7.2 of the General Insurance Code of Practice.

⁸⁰ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 5 [35].

⁸¹ Transcript, Glenn Wayne Sutton, 19 September 2018, 6182.

⁸² Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 5 [35].

⁸³ Exhibit 6.332, Witness statement of Glenn Wayne Sutton, 20 June 2018, 6 [36].

⁸⁴ Transcript, Jason Leonard Storey, 19 September 2018, 6235.

⁸⁵ Transcript, Jason Leonard Storey, 19 September 2018, 6235.

⁸⁶ Transcript, Jason Leonard Storey, 20 September 2018, 6257.

⁸⁷ Transcript, Jason Leonard Storey, 20 September 2018, 6261.

⁸⁸ Transcript, Jason Leonard Storey, 20 September 2018, 6262.

⁸⁹ Transcript, Jason Leonard Storey, 19 September 2018, 6236.

34. **Second**, in relation to each of those claims, by failing to respond to a catastrophe in an efficient, professional and practical way and in a compassionate manner, as required by cl 9.2 of the Code.
35. **Third**, in relation to the complaint sent by Ms Murphy on 2 November 2017 and the complaint sent by Mr Sutton on 9 October 2017, by failing to respond to the complaint in writing and by failing to tell the insured the decision in relation to the complaint or the reasons for that decision, as required by cl 10.13 of the Code.
36. **Fourth**, by breaching its duty of utmost good faith to Ms Murphy and Mr Sutton.

A.4. Available findings of conduct falling below community standards and expectations

37. It is open to the Commissioner to find that Youi engaged in conduct that fell below community standards and expectations by including a term in its home insurance policies that excluded from cover any “additional costs resulting from your buildings or any part thereof not being compliant with the most recent building codes, laws and regulations”.
38. Mr Storey accepted that it would be impractical and unreasonable for the average person to stay abreast of changes to the building code and upgrade their house accordingly. He said that it would not be economical for any homeowner to do this.⁹⁰ He also accepted that Youi does not enforce this term in practice, but instead determines whether to cover a policy holder for additional costs associated with bringing a property up to code by applying a set of guidelines that are not made available to policy holders.⁹¹
39. He accepted that, at the moment, a Youi policy holder has no idea until after they make a claim and the damage is assessed whether or not he or she will be covered for these additional costs.⁹² He accepted that this may not be satisfactory.⁹³ He also accepted that it might be possible for Youi to include a narrower exclusion in its home insurance policies, which reflected the circumstances in which the current exclusion is actually applied.⁹⁴

A.5. Potential causes of misconduct or conduct falling below community standards and expectations

40. It is open to the Commissioner to find that the misconduct and conduct that fell below community standards and expectations was attributable, at least in part, to the way in which Youi remunerated its claims handling staff. At the time of Ms Murphy’s and Mr Sutton’s claims, claims handling staff at Youi were responsible both for dealing with incoming claims and for managing existing claims. Mr Storey said that about 30 percent of the performance indicators for these staff related

⁹⁰ Transcript, Jason Leonard Storey, 19 September 2018, 6196.

⁹¹ Transcript, Jason Leonard Storey, 19 September 2018, 6197-200.

⁹² Transcript, Jason Leonard Storey, 19 September 2018, 6200.

⁹³ Transcript, Jason Leonard Storey, 19 September 2018, 6200.

⁹⁴ Transcript, Jason Leonard Storey, 19 September 2018, 6197.

to dealing with new claims, and only 10 per cent related to handling existing claims.⁹⁵ This combination of roles, and the emphasis on dealing with new claims, contributed to claims staff feeling unable to spend time on dealing with their larger, more difficult claims.⁹⁶ In August 2018, Youi introduced changes to address those issues.⁹⁷

A.6. Effectiveness of mechanisms for response and redress

41. In relation to both Ms Murphy's claim and Mr Sutton's claim, the Commission heard that Youi failed to comply with the requirements of the General Insurance Code of Practice in relation to the handling of complaints.
42. In relation to Ms Murphy's claim, a representative of Youi spoke to Ms Murphy's partner on the phone, and then sent Ms Murphy a system-generated letter in response to her complaint. This letter did not respond to the matters Ms Murphy had raised in her six-page complaint, did not explain how Youi had resolved that complaint, and did not set out Youi's reasons for any decision that it made in relation to the complaint. The phone call between the Youi representative and Ms Murphy's partner was not recorded, and the only available notes of that call are brief and inadequate.
43. This had the result that, if Ms Murphy had taken her complaint to external dispute resolution, there would have been no way of testing any subsequent account given by Youi of what was said in the conversation with Ms Murphy's partner. That is a state of affairs that has the potential to undermine the effectiveness of external dispute resolution mechanisms, and underscores the importance of the requirement in the Code for general insurers to respond to complaints in writing.
44. In relation to Mr Sutton's claim, the issue is presented even more starkly. Youi did not respond in writing to Mr Sutton's complaint in his email dated 9 October 2017. There is no record of how that complaint was resolved, or Youi's reasons for any decision it made in relation to that complaint. In the absence of any record of a decision, it is difficult to see how Mr Sutton could escalate his complaint to external dispute resolution. Again, this conduct has the potential to undermine the effectiveness of external dispute resolution mechanisms.

B. AAI LIMITED (AAMI'S COMPLETE REPLACEMENT COVER POLICY)

B.1. Background

45. This case study examined the claims handling practices of AAILimited (AAI) following the Wye River bushfires on Christmas Day 2015, and the way in which AAI marketed its Complete

⁹⁵ Transcript, Jason Leonard Storey, 20 September 2018, 6268.

⁹⁶ Transcript, Jason Leonard Storey, 20 September 2018, 6269.

⁹⁷ Transcript, Jason Leonard Storey, 20 September 2018, 6270.

Replacement Cover home insurance product. The Commission heard evidence from Mr Gary Dransfield, Chief Executive Officer, Insurance, at Suncorp Group.⁹⁸

B.2. Evidence

46. Suncorp’s general insurance activities are carried out through AAI. AAI issues 37 home and contents insurance products through 13 different brands, including AAMI.⁹⁹
47. Generally, AAI’s home and contents policies are “sum insured” policies, which require the policyholder to nominate the amount for which their home and contents will be insured.¹⁰⁰ However, AAMI offers optional Complete Replacement Cover on its building insurance and landlord insurance policies.¹⁰¹ Complete Replacement Cover provides cover for the total amount that it would cost AAI to repair or rebuild a building.¹⁰² As a result, if a policyholder takes out Complete Replacement Cover, there is no need for the policyholder to nominate a particular sum for which a building will be insured.¹⁰³ When a claim is accepted under the Complete Replacement Cover policy, AAI can choose to either repair or rebuild the property, or to cash settle the claim for the amount that it would cost AAI to do the work.¹⁰⁴
48. AAI introduced Complete Replacement Cover in September 2006.¹⁰⁵ Between 1 January 2015 and 31 May 2018, AAI issued 1.59 million policies in which customers had opted into Complete Replacement Cover, accounting for almost 70 per cent of the policies in which Complete Replacement Cover was an option.¹⁰⁶ In the same period, AAI received more than \$1.48 billion in premiums in respect of those policies.¹⁰⁷
49. While Complete Replacement Cover was introduced to mitigate the risk of underinsurance,¹⁰⁸ Mr Dransfield accepted that it would only achieve that purpose if the cash settlements offered by AAI represented the true cost of repairing or rebuilding the insured home.¹⁰⁹

(a) Wye River bushfires

50. AAI received 63 claims following the Wye River bushfires, 34 of which related to AAMI products.¹¹⁰ In 28 of those 34 claims, the policyholder had opted into Complete Replacement

⁹⁸ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 1 [1]; Exhibit 6.370, Witness statement of Gary Charles Dransfield, 29 August 2018 1 [1].

⁹⁹ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 2 [10].

¹⁰⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6281.

¹⁰¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6281.

¹⁰² Transcript, Gary Charles Dransfield, 20 September 2018, 6281.

¹⁰³ Transcript, Gary Charles Dransfield, 20 September 2018, 6281.

¹⁰⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6283.

¹⁰⁵ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 8 [19]; Transcript, Gary Charles Dransfield, 20 September 2018, 6282.

¹⁰⁶ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 11 [31].

¹⁰⁷ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 11 [31].

¹⁰⁸ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 8 [19]; Transcript, Gary Charles Dransfield, 6283.

¹⁰⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6284.

¹¹⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6283.

Cover.¹¹¹ AAI settled the majority of contents claims within a few weeks, but building claims and more complex contents claims took longer to settle. Despite having estimated that within a few months, some claims would be cash settled, and others would have their scope and cost of repairs confirmed, Mr Dransfield accepted that those timelines were not met for the majority of the claims.¹¹² However, Mr Dransfield did not accept AAI's actions were the source of the delays.¹¹³ Mr Dransfield did accept that AAI could have communicated better with customers and could have done more to keep them informed of the progress of their claims.¹¹⁴

51. On 7 November 2016, Sarah Henderson MP made a speech to Parliament criticising AAMI's handling of the Wye River claims, and its Complete Replacement Cover product more broadly.¹¹⁵ Ms Henderson repeated her criticisms in a radio interview the following day. These criticisms related to a number of matters, including: delay in the resolution of claims; issues with AAI's advertising; and concerns that AAI was underquoting the cost of rebuilding. In respect of this final point, Mr Dransfield accepted that where AAI chose to cash settle a claim, it would do so on the basis of the lowest quote that was "sufficient and appropriate to complete the scope of works".¹¹⁶ Mr Dransfield accepted that there were significant differences between the amounts offered by AAI to cash settle some Wye River claims, and the quotes that those policyholders had received from other builders.¹¹⁷ Mr Dransfield also accepted that in some circumstances, it may cost AAI less to perform works than it would cost a policyholder to do so, which could result in a cash settlement being insufficient for customers to repair or rebuild themselves.¹¹⁸
52. Following these criticisms, Kelly O'Dwyer MP referred Ms Henderson's allegations to ASIC.¹¹⁹ ASIC commenced an investigation into AAI's claims handling practices in connection with the Wye River bushfires,¹²⁰ and its marketing of the Complete Replacement Cover products.¹²¹ ASIC was limited in the actions that it could take in respect of the claims handling allegations, because the handling of insurance claims is excluded from the definition of a "financial service" by reg 7.1.33 of the Corporations Regulations 2001 (Cth).¹²²

¹¹¹ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 27 [76]; Transcript, Gary Charles Dransfield, 20 September 2018, 6284.

¹¹² Transcript, Gary Charles Dransfield, 20 September 2018, 6285.

¹¹³ Transcript, Gary Charles Dransfield, 20 September 2018, 6286.

¹¹⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6286-7.

¹¹⁵ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, Exhibit GCD-4 [Tab 28 SUN.0760.0006.0015].

¹¹⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6288.

¹¹⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6289-90.

¹¹⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6289.

¹¹⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6293.

¹²⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6293-4.

¹²¹ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, Exhibit GCD-4 [Tab 41 SUN.0760.0302.0500].

¹²² Transcript, Gary Charles Dransfield, 20 September 2018, 6301; Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, Exhibit GCD-4 [Tab 41 SUN.0760.0302.0508].

53. On numerous occasions throughout this period, representatives from AAI met with Members of Parliament.¹²³ Mr Dransfield's evidence was that AAI has a "business interface" with all levels of government, including Ministers and Shadow Ministers, around policy matters and "topics ... of interest or relevance to [Suncorp's] various operations".¹²⁴

(b) Marketing of the CRC product

54. In May 2015, about six months prior to the Wye River bushfires, AAI ran a direct mail campaign which promoted its Complete Replacement Cover to AAMI personal insurance customers.¹²⁵ The mail out included the following statement:

... with our Complete Replacement Cover you can have peace of mind that we cover the repair or rebuilding of your home if it is damaged or destroyed by an insured event, **no matter the cost to us**.¹²⁶

55. In July 2015, AAI published similar representations on the AAMI website.¹²⁷ The statements on the Home Building Insurance part of the website were:¹²⁸

Optional extra: Complete Replacement Cover. Our best protection against underinsurance, **With no set limit. We cover the rebuilding of your home, no matter the cost to us.**

56. In November 2016, almost a year after the Wye River bushfires, AAI began a mass market radio campaign promoting its Complete Replacement Cover option.¹²⁹ The radio advertisement included the statement: "we'll repair or rebuild your house – **no matter the cost**".¹³⁰ At around the same time, AAI also introduced search engine marketing with the tagline: "rebuild your house **regardless of cost** if damaged or destroyed by [an] insured event".¹³¹

57. Mr Dransfield acknowledged that the clear message of the advertising material, both before and after the Wye River bushfires, was that AAI would **repair or rebuild** homes subject to Complete Replacement Cover, **no matter the cost** to AAI.¹³² Mr Dransfield accepted that:¹³³

57.1 It was not correct that AAI would necessarily repair or rebuild homes covered by the Complete Replacement Cover Product, because AAI could choose to provide a cash settlement instead.¹³⁴

¹²³ Transcript, Gary Charles Dransfield, 20 September 2018, 6312, 6296-7.

¹²⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6296.

¹²⁵ Transcript, Gary Charles Dransfield, 20 September 2018, 6303.

¹²⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6304.

¹²⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6305.

¹²⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6305.

¹²⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6305.

¹³⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6306.

¹³¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6306.

¹³² Transcript, Gary Charles Dransfield, 20 September 2018, 6306-7.

¹³³ Transcript, Gary Charles Dransfield, 20 September 2018, 6307.

¹³⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6307.

- 57.2 It was not correct that AAI would repair or rebuild, “no matter the cost” to AAI.¹³⁵ There were cost limits, both “in terms of the costs that AAI felt was fair and reasonable in relation to the scope of work”, and from the requirement that AAI was to repair or rebuild on a “new for old” basis.¹³⁶
58. In late 2016, ASIC expressed concerns to AAI that its advertising of the Complete Replacement Cover product may be misleading.¹³⁷ After deciding not to launch a new advertisement as planned in January 2017, AAI sought ASIC’s views on its new advertising materials in February 2017. ASIC told AAI that “having viewed the materials”, there were some “similarities in the messaging” of the previous advertising materials, which ASIC was reviewing, and AAI’s new advertising materials.¹³⁸
59. Despite this, AAI launched its new advertising materials in early March 2017.¹³⁹ Mr Dransfield told the Commission that AAI did so because there was a strong belief that the advertising material satisfactorily explained the way in which the Complete Replacement Cover product worked, and that the material was not misleading.¹⁴⁰ Mr Dransfield accepted that AAI could not have been *certain* that the materials were not misleading, given the views that ASIC had expressed about that material.¹⁴¹ Mr Dransfield also acknowledged that AAI’s “business imperative to grow the home insurance portfolio”¹⁴² trumped any desire to ensure that AAI’s new marketing materials were not misleading to customers.¹⁴³
60. Between March and October 2017, ASIC and AAI continued to engage about ASIC’s concerns with AAI’s advertising.¹⁴⁴ AAI maintained that its advertising was not misleading or deceptive, and that it did not contain false or misleading representations.¹⁴⁵
61. At a meeting between ASIC and AAI on 30 October 2017, ASIC told AAI that it planned to issue infringement notices in respect of the advertising.¹⁴⁶ On 6 November 2017, ASIC issued four infringement notices alleging contraventions of s 12DB(1)(e) of the *Australian Securities and Investments Commission Act 2001* (Cth), relating to representations made in radio advertisements and on AAMI’s website between late 2016 and mid-2017.¹⁴⁷ The infringement notices said that

¹³⁵ Transcript, Gary Charles Dransfield, 20 September 2018, 6307.

¹³⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6307.

¹³⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6309.

¹³⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6315.

¹³⁹ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 40 [110].

¹⁴⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6315-6.

¹⁴¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6316.

¹⁴² Transcript, Gary Charles Dransfield, 20 September 2018, 6316.

¹⁴³ Transcript, Gary Charles Dransfield, 20 September 2018, 6316.

¹⁴⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6318.

¹⁴⁵ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 41[113]; Exhibit GCD-4 [SUN.0760.0502.0141] (Tab 63); Transcript, Gary Charles Dransfield, 20 September 2018, 6317.

¹⁴⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6318-9.

¹⁴⁷ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, 44 [127]; Exhibit GCD-4 [Tab 58 SUN.0760.0302.0656] [SUN.0760.0302.0660] [SUN.0760.0302.0653].

ASIC had reasonable grounds to believe that AAMI had contravened s 12DB(1)(e) of the *Australian Securities and Investments Commission Act 2001* (Cth) by “making false or misleading representations that services had particular benefits”, namely, that AAMI would repair or rebuild an insured’s house no matter the cost.¹⁴⁸

62. The total value of the infringement notices was \$43,200,¹⁴⁹ which AAI paid.¹⁵⁰ Had these matters been litigated, the maximum penalty that a Court could have awarded in respect of each potential contravention would have been \$1.8 million.¹⁵¹ The effect of paying the infringement notices was that the Commonwealth and ASIC could not bring proceedings against AAI for the alleged contraventions.¹⁵²
63. Mr Dransfield told the Commission that AAI paid the infringement notices despite having maintained throughout the ASIC investigation, and still maintaining, that its advertising was not misleading or deceptive.¹⁵³ Mr Dransfield acknowledged that the cost of paying the four infringement notices was approximately 0.001 per cent of AAI’s premium income from its Complete Replacement Cover product in 2017.¹⁵⁴ Mr Dransfield agreed that it could be concluded that the balancing of commercial risks and rewards paid off for AAI.¹⁵⁵
64. In March this year, at ASIC’s request, AAI introduced a Supplementary PDS to make the features and operation of the Complete Replacement Cover product more transparent.¹⁵⁶ The Supplementary PDS contains three key terms that reflect AAI’s existing claims handling practices.¹⁵⁷ Mr Dransfield recognised that the Treasury proposals paper on the extension of the Unfair Contracts Terms regime referred to examples of potentially unfair contract terms, including a term that looked very similar to the second term in the Supplementary PDS.¹⁵⁸ However, Mr Dransfield did not accept that this term was potentially unfair to AAI policyholders.¹⁵⁹ The third term introduced a definition of “reasonable cost,” which was defined to mean the lesser amount of any quotes obtained by AAI.¹⁶⁰ Mr Dransfield did not agree it would be confusing to customers to define “reasonable cost” in this way.¹⁶¹

¹⁴⁸ Exhibit 6.369, Witness statement of Gary Charles Dransfield, 24 June 2018, Exhibit GCD-4 [Tab 58 SUN.0760.0302.0650].

¹⁴⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6321.

¹⁵⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6321.

¹⁵¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6321.

¹⁵² Transcript, Gary Charles Dransfield, 20 September 2018, 6321.

¹⁵³ Transcript, Gary Charles Dransfield, 20 September 2018, 6321.

¹⁵⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6322.

¹⁵⁵ Transcript, Gary Charles Dransfield, 20 September 2018, 6323.

¹⁵⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6323.

¹⁵⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6323-4.

¹⁵⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6325.

¹⁵⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6325.

¹⁶⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6325.

¹⁶¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6325.

65. When asked about his broader views on the extension of unfair contract terms protections, Mr Dransfield said that there was no clear rationale for the extension, and that it would increase the underwriting risk borne by insurers without commensurate enhancement in protection for consumers.¹⁶² Mr Dransfield also expressed the view that s 13 of the *Insurance Contracts Act 1984* (Cth), coupled with the dispute resolution environment, already afforded strong protections to consumers.¹⁶³ Mr Dransfield accepted that he placed a heavy reliance on the external dispute resolution body in his assessment of customer protection.¹⁶⁴

B.3. Available findings of misconduct

66. On the evidence, it is open to the Commissioner to find that AAI may have engaged in misconduct. By representing in its Complete Replacement Cover advertising materials that AAMI **would repair or rebuild** an insured's house, **no matter the cost**, AAI may have engaged in conduct that was misleading or deceptive in contravention of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth). As we have noted, Mr Dransfield accepted that three aspects of that representation were incorrect.¹⁶⁵ Alternatively, on the basis of the same representation, AAI may have made false or misleading representations in contravention of s 12DB(1)(e) of the *Australian Securities and Investments Commission Act 2001* (Cth).

B.4. Available findings of conduct falling below community standards and expectations

67. On the evidence, it is open to the Commissioner to find that AAI may have engaged in conduct that fell below community standards and expectations in a number of respects.

68. **First**, as Mr Dransfield acknowledged, AAI could have done more to keep policyholders affected by the Wye River bushfires informed as to the progress of their claims,¹⁶⁶ and could have better explained the delays that it was facing when trying to complete the scope of works.¹⁶⁷

69. **Second**, as also acknowledged by Mr Dransfield, AAI sent home and contents policy renewal letters to policyholders whose properties had been destroyed by the Wye River bushfires.¹⁶⁸ As a result, those policyholders were charged premiums for policies relating to properties that were destroyed or were no longer habitable.¹⁶⁹

70. **Third**, AAI cash settled claims based on the lowest quote that it obtained to complete the scope of works. As was apparent in the three particular Wye River cases examined, this raised serious

¹⁶² Exhibit 6.370, Witness statement of Gary Charles Dransfield, 29 August 2018, 8 [30]; Transcript, Gary Charles Dransfield, 20 September 2018, 6326.

¹⁶³ Transcript, Gary Charles Dransfield, 20 September 2018, 6327.

¹⁶⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6327.

¹⁶⁵ Transcript, Gary Charles Dransfield, 20 September 2018, 6306-7.

¹⁶⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6286-7.

¹⁶⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6286-7.

¹⁶⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6299.

¹⁶⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6299.

concerns about whether cash settlement sums were sufficient to allow policyholders to repair or rebuild their own homes on a new for old basis.¹⁷⁰

71. **Fourth**, despite ASIC drawing AAI’s attention to similarities between the messaging of advertising materials that it was investigating and advertising materials that AAI was proposing to launch, AAI nonetheless proceeded to launch an advertising campaign featuring those materials in early March 2017.¹⁷¹
72. **Fifth**, in the Supplementary PDS that AAI launched in March this year, AAI formalised its existing claims handling practices, by introducing a term that has been recognised by government and industry as a potentially unfair contract term.¹⁷²
73. **Sixth**, in the Supplementary PDS AAI also included a definition of “reasonable cost” which may have been confusing to policyholders.¹⁷³

B.5. Potential causes of misconduct or conduct falling below community standards and expectations

74. It is open to the Commissioner to find that one potential cause of the conduct relating to AAI’s advertising material was an internal culture that favoured growing the business over compliance. Mr Dransfield’s evidence was that the business imperatives to grow the home insurance portfolio at AAI trumped the desire to ensure the marketing material was not misleading to customers.¹⁷⁴ The lack of value placed on compliance may also be demonstrated by AAI’s continued insistence that its advertising was not false or misleading, despite its acceptance that certain representations were incorrect, and despite having received and paid infringement notices relating to that advertising.

C. AAI LIMITED (HUNTER VALLEY STORM)

C.1. Background

75. This case study concerned the handling of Ms Bernadette Heald’s insurance claim by AAI. The Commission heard evidence from Ms Bernadette Heald and again from Mr Gary Dransfield, the Chief Executive Officer of Insurance at the AAI Group.¹⁷⁵

¹⁷⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6289-90.

¹⁷¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6315; Witness statement of Gary Charles Dransfield, 24 June 2018, 40 [110].

¹⁷² Exhibit [6.405]. Proposals Paper: Extending Unfair Contract Terms [RCD.0021.0025.0001 at 0012, 0022]; Transcript, Gary Charles Dransfield, 20 September 2018, 6324-5.

¹⁷³ Transcript, Gary Charles Dransfield, 20 September 2018, 6325.

¹⁷⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6316.

¹⁷⁵ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 1 [1].

C.2. Evidence

76. The Healds held a home and contents policy with AAI. The policy was branded as a Suncorp product.¹⁷⁶ On 22 April 2015, they lodged a claim with AAI for damage to their property caused by a major storm in the Hunter Valley region.¹⁷⁷
77. Ms Heald gave evidence about the severity of the storm and the damage caused to her home by the storm.¹⁷⁸ Immediately after the storm, damage was evident to the balcony railings, laundry and garage.¹⁷⁹ Over time, more damage became evident. Amongst other things, gyprock and brickwork began cracking and laundry tiles began popping off, exposing the property's slab. There was also a hairline crack in the slab which grew larger over time.¹⁸⁰ When it rained, dirty storm water would rise up through the slab and flow into the house.¹⁸¹ In about June or July 2015, the western wall of the property started coming away from its supports.¹⁸² Ms Heald kept AAI updated on the additional damage to her property as it occurred.¹⁸³
78. Ms Heald explained that the difficulties that she had with the property greatly affected her two children, both of whom have health problems. Her daughter, who suffers from anxiety, became so stressed by the popping and cracking throughout the house that she would wake up during the night terrified that the house was going to collapse.¹⁸⁴
79. The day after Ms Heald lodged her claim, AAI appointed a building inspector to inspect the damage caused by the storm, and appointed a builder to undertake a make safe.¹⁸⁵
80. It took until mid-May 2015 before a builder attended at the property to fix the railing.¹⁸⁶ It took until mid-June for AAI to send a builder to complete a make safe on the railings.¹⁸⁷
81. There were also delays in having the damage assessed. Ms Heald said that she and her husband were frustrated by AAI's failure to properly assess the damage to their property.¹⁸⁸ Between May and October 2015, AAI sent a building inspector,¹⁸⁹ a building assessor,¹⁹⁰ and two engineers¹⁹¹

¹⁷⁶ Transcript, Bernadette Jodie Heald, 20 September 2018, 6330.

¹⁷⁷ Transcript, Bernadette Jodie Heald, 20 September 2018, 6330.

¹⁷⁸ Transcript, Bernadette Jodie Heald, 20 September 2018, 6330.

¹⁷⁹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6330.

¹⁸⁰ Transcript, Bernadette Jodie Heald, 20 September 2018, 6332; Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 4 [23].

¹⁸¹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6332; Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 4 [23].

¹⁸² Transcript, Bernadette Jodie Heald, 20 September 2018, 6333.

¹⁸³ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 27 [74] see [table entry 2].

¹⁸⁴ Transcript, Bernadette Jodie Heald, 20 September 2018, 6333.

¹⁸⁵ Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 2 [7].

¹⁸⁶ Transcript, Bernadette Jodie Heald, 20 September 2018, 6332.

¹⁸⁷ Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 5 [25].

¹⁸⁸ Transcript, Bernadette Jodie Heald, 20 September 2018, 6333.

¹⁸⁹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6331.

¹⁹⁰ Transcript, Bernadette Jodie Heald, 20 September 2018, 6332.

¹⁹¹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6332, 6334.

- to assess the damage. Each alluded to some possible structural damage, but no one could properly explain what was wrong with the house.¹⁹²
82. When the first engineer attended at the property, he undertook a half hour visual inspection and did no testing.¹⁹³ When the engineer's report was provided, the Healds disagreed with many aspects of it.¹⁹⁴ The report included a scope of works for the repair of superficial cracking, but recommended that the repairs not be undertaken for 6 to 12 months so as to allow the slab and grown soils to dry.¹⁹⁵ The scope of works did not include any repairs to the foundation of the house.¹⁹⁶ The Healds requested that AAI appoint a new engineering firm to assess the property. AAI rejected that request, but agreed to appoint a second engineer from the same firm to prepare a report.¹⁹⁷ This second engineer's report contained a revised scope of works, this time including a replacement to the slab in the laundry.¹⁹⁸ The Healds' concerns were not allayed by the further report.¹⁹⁹
83. Because of the difficulty the Healds encountered in dealing with AAI, they contacted Brenda Staggs, a lawyer from Legal Aid. Ms Heald gave evidence that she did not think they would have been able to deal with the claim without the assistance of a solicitor.²⁰⁰ Ms Staggs first wrote to AAI on the Healds' behalf in May 2015, explaining the health problems faced by their children, and noting temporary accommodation may be appropriate.²⁰¹
84. Mr Dransfield gave evidence that upon receiving the email from Ms Staggs in May 2015, AAI should have ensured that the make safe was completed to the satisfaction of the family.²⁰² He said that AAI should then have sent an engineer to the property as soon as possible to assess the safety of the home, and that AAI should have been discussing temporary accommodation with the Healds.²⁰³
85. Ms Heald also gave evidence that she advised AAI on several occasions that she had concerns that the property was not safe to live in,²⁰⁴ and requested temporary accommodation on multiple occasions.²⁰⁵ However, AAI only agreed to move the Healds into temporary accommodation in

¹⁹² Transcript, Bernadette Jodie Heald, 20 September 2018, 6331, 6332-4; Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 4 [18]-[19].

¹⁹³ Transcript, Bernadette Jodie Heald, 20 September 2018, 6332.

¹⁹⁴ Transcript, Bernadette Jodie Heald, 20 September 2018, 6334.

¹⁹⁵ Transcript, Bernadette Jodie Heald, 20 September 2018, 6333.

¹⁹⁶ Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 5 [24].

¹⁹⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6345; Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 6 [29].

¹⁹⁸ Transcript, Bernadette Jodie Heald, 20 September 2018, 6335.

¹⁹⁹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6335.

²⁰⁰ Transcript, Bernadette Jodie Heald, 20 September 2018, 6341-2.

²⁰¹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6331; Transcript, Gary Charles Dransfield, 20 September 2018, 6344.

²⁰² Transcript, Gary Charles Dransfield, 20 September 2018, 6345.

²⁰³ Transcript, Gary Charles Dransfield, 20 September 2018, 6345.

²⁰⁴ Transcript, Bernadette Jodie Heald, 20 September 2018, 6331, 6337.

²⁰⁵ Transcript, Bernadette Jodie Heald, 20 September 2018, 6338.

- March 2017, two years after the Healds' lawyer raised their entitlement to accommodation.²⁰⁶ The Healds commenced living in temporary accommodation on 28 April 2017.²⁰⁷
86. AAI tried to cash-settle the Healds' claim in October 2015 for around \$30,000.²⁰⁸ The Healds rejected that offer and lodged an internal complaint with AAI.²⁰⁹ Ms Heald gave evidence that she did not recall ever being told by AAI about internal dispute resolution.²¹⁰ Mr Dransfield did not dispute the fact that the Healds were not informed of AAI's process.²¹¹
87. Ms Staggs emailed AAI again in mid-October 2015, expressing concerns of the Healds with the delay in attending to the repairs to the property. The Healds were concerned that a wall might collapse and injure them, or their neighbour's children.²¹² Mr Dransfield acknowledged that this concern held by the Healds was a very serious matter, and that at this time, again, AAI should have seriously considered temporary accommodation for the Healds.²¹³
88. On 4 December 2015, Mr and Ms Heald lodged a complaint with the Financial Ombudsman Service.²¹⁴
89. On 31 December 2015, AAI wrote to the Healds, agreeing to appoint a local engineer to attend the property and provide a further report.²¹⁵ Mr and Ms Heald appointed Burke Engineering Services Pty Ltd.²¹⁶
90. This letter also made an offer of \$3,000 compensation for the frustration and inconvenience AAI had caused.²¹⁷
91. Burke Engineering provided a preliminary report on 25 January 2016,²¹⁸ advising that further investigations would be required before a detailed assessment could be provided.²¹⁹ In the meantime, it suggested that temporary fencing be installed.²²⁰ Burke Engineering subsequently provided two further reports, in which it said that the issues with the foundation (including the

²⁰⁶ Transcript, Bernadette Jodie Heald, 20 September 2018, 6339; Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 32 [83(i)]; Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 3-10 [16]-[52].

²⁰⁷ Transcript, Bernadette Jodie Heald, 20 September 2018, 6340; Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 33 [83(l)]; Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 10 [52].

²⁰⁸ Transcript, Bernadette Jodie Heald, 20 September 2018, 6335.

²⁰⁹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6336.

²¹⁰ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 36 [88].

²¹¹ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 36 [88] see [table entry 10].

²¹² Transcript, Gary Charles Dransfield, 20 September 2018, 6346.

²¹³ Transcript, Gary Charles Dransfield, 20 September 2018, 6346.

²¹⁴ Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 8 [41].

²¹⁵ Exhibit 6.389, 31 December 2015, Letter Suncorp to Healds, 31 December 2015 [FOS.0031.0001.0020].

²¹⁶ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 36 [89] see [table entry 11].

²¹⁷ Exhibit 6.389, 31 December 2015, Letter Suncorp to Healds, 31 December 2015. [FOS.0031.0001.0020].

²¹⁸ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 37 [92(a)].

²¹⁹ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 37 [91] see [table entry 12].

²²⁰ Exhibit 6.386, Witness statement of Gary Charles Dransfield, 13 June 2018, 37 [91] see [table entry 12].

footings and slab), coupled with the water inundation, had caused the damage to the property.²²¹ It recommended the footings and slab be replaced.²²² AAI maintained that it was entitled to settle the claim on the basis of its engineer's scope of works, which provided that the cracking could be repaired without needing to replace the foundations and that a complete demolition of the property was not warranted.²²³

92. Mr Dransfield accepted that the engineers appointed by AAI to produce reports on the damage to the Heald property failed to produce thorough reports and that the conclusions reached by AAI's engineers were ultimately incorrect.²²⁴ Mr Dransfield further acknowledged the potential risk of subconscious bias, on behalf of panel firms, towards particular outcomes because of the panel arrangements.²²⁵ Mr Dransfield accepted that there was a potential for this subconscious bias to have occurred in the Healds' case, given the significant divergence of views between the AAI-appointed engineers and the independent engineer, Burke Engineering.²²⁶
93. In January 2017, FOS informed AAI and that it considered that AAI was liable for the damage to the property, including to the foundations.²²⁷ A new scope of works was required.
94. By April 2017, AAI had still not obtained a fresh scope of works.²²⁸ Mr Dransfield acknowledged that that delay was unacceptable.²²⁹
95. AAI and the Healds subsequently made offers to settle the matter between 5 May 2017 and January 2018.²³⁰
96. In January 2018, FOS made a determination in favour of Mr and Ms Heald, awarding them more than \$744,000.²³¹ This amount included interest from 5 August 2015, the date FOS held AAI should have determined its liability.²³²
97. Mr Dransfield acknowledged that, overall, AAI had failed the Healds in the handling of their claim, and apologised for AAI's failures.²³³ He acknowledged that AAI failed the Healds by

²²¹ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 37 [91] see [table entry 12].

²²² Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 37 [91] see [table entry 12].

²²³ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 37 [91] see [table entry 12].

²²⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6372.

²²⁵ Transcript, Gary Charles Dransfield, 20 September 2018, 6372.

²²⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6372-3.

²²⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6364.

²²⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6365.

²²⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6365-6.

²³⁰ Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 10-1 [53]-[60]; Transcript, Bernadette Jodie Heald, 20 September 2018, 6340-1.

²³¹ Transcript, Bernadette Jodie Heald, 20 September 2018, 6341; Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, 11 [60].

²³² Exhibit 6.328, Witness statement of Bernadette Jodie Heald, August 2018, Exhibit BJH-23 [FOS.0031.0001.3557 at .3560].

²³³ Transcript, Gary Charles Dransfield, 20 September 2018, 6343-4.

having too many people involved in their claim, and that AAI failed to show compassion to the Healds' situation.²³⁴

98. Mr Dransfield told the Commission that AAI did not manage the Healds' claim in a satisfactory manner.²³⁵ In particular, he accepted that the following aspects of the handling of this claim were unacceptable:

98.1 the delay in resolving whether a complete repair or rebuild was required;²³⁶

98.2 AAI's lack of effective and compassionate communication with the Healds regarding the extent of the damage to the property and the possibility of repairs;²³⁷

98.3 the failure to appoint a dedicated claims handler to the Healds' claim;²³⁸

98.4 AAI's processes for dealing with vulnerable customers like the Healds;²³⁹

98.5 AAI's failure to advise the Healds of its internal dispute resolution process on 18 June 2015.²⁴⁰

99. Mr Dransfield also acknowledged that AAI had broader, systemic issues, identified by FOS, in 2016, being:²⁴¹

99.1 its failure to comply with its obligation to provide information to policyholders about the internal dispute resolution process;²⁴²

99.2 delays in assessing damage and conducting repair or rectification works;²⁴³ and

99.3 its failure to ensure timely implementation of FOS determinations and negotiated settlement agreements.²⁴⁴

C.3. Available findings of misconduct

100. On the evidence, it is open for the Commissioner to find that AAI may have engaged in misconduct in the following respects.

100.1 **First**, by failing to act with the utmost good faith as required by s 13 of the *Insurance Contracts Act 1984* (Cth).

²³⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6343-4.

²³⁵ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 40 [100].

²³⁶ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 40 [101(a)].

²³⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6344; Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 40 [101(b)].

²³⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6344; Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 40-1 [101(c)].

²³⁹ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 40-1 [101(c)].

²⁴⁰ Exhibit 6.368, Witness statement of Gary Charles Dransfield, 13 June 2018, 41 [101(d)].

²⁴¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6381.

²⁴² Transcript, Gary Charles Dransfield, 20 September 2018, 6375.

²⁴³ Transcript, Gary Charles Dransfield, 20 September 2018, 6378.

²⁴⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6380.

100.2 **Second**, by breaching cl 7.2 of the General Insurance Code of Practice, which required it to conduct claims handling in an honest, fair, transparent and timely manner. Mr Dransfield accepted that AAI had failed to meet this duty.²⁴⁵

100.3 **Third**, by breaching cl 7.13 of the General Insurance Code of Practice, which required AAI to keep the Healds informed about the progress of their claim at least every 20 business days. Mr Dransfield accepted that AAI had failed to do this.²⁴⁶

100.4 **Fourth**, by breaching cl 9.2 of the General Insurance Code of Practice, which required AAI to respond to catastrophes (as defined) in an efficient, professional and practical way. Mr Dransfield accepted that AAI had failed to do this.²⁴⁷

100.5 **Fifth**, by breaching cl 10.5 of the General Insurance Code of Practice, which required it to make information available about the customer's right to make an internal complaint and about its processes for handling complaints. Mr Dransfield accepted that AAI had failed to do this.²⁴⁸

C.4. Available findings of conduct falling below community standards and expectations

101. On the evidence, it is open for the Commissioner to find that AAI may have engaged in conduct falling below community standards and expectations in the following respects.

102. **First**, as acknowledged by AAI, several aspects of the way in which AAI communicated with the Healds in relation to their claim, fell below community standards and expectations, including:

102.1 AAI failed to communicate with the Healds, over the duration of the claim, in an effective and compassionate manner.²⁴⁹

102.2 AAI failed to inform the Healds of the extent of disagreement between the expert engaged by AAI and the expert engaged by the Healds over the scope of works necessary to rectify the damage. This ultimately led to the Healds being confused about AAI's position and the basis for it.²⁵⁰

103. **Second**, as acknowledged by AAI, the failure to allocate a single officer to handle the claim exacerbated the difficulties confronted by the Healds. In the circumstances of the Healds claim, AAI's internal claim handling processes failed to meet community standards and expectations by prolonging the time by which the dispute was resolved and adding in a material way to the stress placed upon the Heald family.²⁵¹

²⁴⁵ Transcript, Gary Charles Dransfield, 20 September 2018, 6372.

²⁴⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6372.

²⁴⁷ Transcript, Gary Charles Dransfield, 20 September 2018, 6371-2.

²⁴⁸ Transcript, Gary Charles Dransfield, 20 September 2018, 6372.

²⁴⁹ Transcript, Gary Charles Dransfield, 20 September 2018, 6371.

²⁵⁰ Transcript, Gary Charles Dransfield, 20 September 2018, 6371.

²⁵¹ Transcript, Gary Charles Dransfield, 20 September 2018, 6371.

104. **Third**, as acknowledged by AAI, the delays in AAI resolving the disagreements between engineers and the delay in offering to fund the Healds' choice of engineer resulted in an overall delay in resolving this dispute.²⁵²

105. **Fourth**, as acknowledged by AAI, the failure of AAI to accept the substance of the Burke Engineering Report in June 2016,²⁵³ and resolve the matter in favour of the Healds at that time, constituted conduct that fell below community standards and expectations.

C.5. Potential causes of misconduct or conduct falling below community standards and expectations

106. On the evidence, it is open to the Commissioner to find that the conduct falling below community standards and expectations may have been attributable to the inadequacy of AAI's internal systems and processes in handling claims and disputes arising from those claims. In particular Mr Dransfield gave evidence that AAI's team management model failed the Healds.²⁵⁴

107. In relation to the inadequacy of AAI's internal systems regarding the handling of claims, the evidence given by Mr Dransfield illustrates that AAI did not have mechanisms in place to ensure effective and clear communications with policyholders while assessment of their claim was ongoing.²⁵⁵ Mr Dransfield's evidence also shows that matters which required escalation and consideration were not dealt with effectively by AAI, sometimes at the expense of policyholders.²⁵⁶

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²⁵² Transcript, Gary Charles Dransfield, 20 September 2018, 6371.

²⁵³ Transcript, Gary Charles Dransfield, 20 September 2018, 6371.

²⁵⁴ Transcript, Gary Charles Dransfield, 20 September 2018, 6344.

²⁵⁵ Transcript, Gary Charles Dransfield, 20 September 2018, 6371.

²⁵⁶ Transcript, Gary Charles Dransfield, 20 September 2018, 6371.