

Call for Submissions - QLD 2010/11 Floods Commission Inquiry

Issue: Private Insurers and their responsibilities.

Subject: **QLD Government revision of the *QLD Body Corporate and Community Management Act & Regulations - FLOOD POLICY***

In follow-up to the advertised Call for Submissions- QLD Floods, I address my concern with insurance deficiencies in the *QLD Body Corporate and Community Management Act & Regulations* and recommend a revision to these regulatory documents.

Concern:

Body Corporate Committees are required to manage Body Corporate common property and assets in compliance with the *QLD Body Corporate and Community Management Act & Regulations*. In respectful consideration, these documents have the intent to provide direction for good management and protection of common property and resident assets and provide community harmony.

However, in consideration of insurance requirements in reflection of recent devastating floods, I believe these documents may also unintentionally deprive certain dwelling owners (i.e. buildings with a shared adjoining wall) without a free choice of insurance selection and may indeed create a form of *entrapment* for owners in respect of omission of adequate „*flood*’ insurance.

In the essence of this submission, I refer to Pg. 93 of the applicable Regulations (which have included within this text for reference and advise it may not be of current amendment status) which on reading Para.127 will show the responsibility for Body Corporate entities in regards their requirement to ensure practical cover against ‘*damage*’ whereas ‘*damage*’ is defined in the previous Para.126 to include; “*earthquakes, explosion, fire, lightning, storm, tempest and „water’ damage ..*” Note that there is no definition of ‘*water damage*’ given nor is there the provision of the word ‘*flooding*’ included.

Also reading at Para.127.(3) (b) clearly states that insurance „*must provide for reinstatement of property to its condition as new*’ ..

Further to this is that most Body Corporate insurances (which in most situations are arranged through Body Corporate insurance brokers) do not nominally provide for „*flood*’ insurance and with the Regulations also requiring such owners to reimburse for insurance premiums, you can realise the *entrapment* situation that they are legally committed to..

In the consideration of these issues, I frame the view that Private Insurance companies are not providing responsible comprehensive Body Corporate insurance

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products to meet the requirements of the act by intentional omission of „flood’ provision relative to „water damage’ from their offered policies.

This is a definite regulatory non-compliance that needs to be addressed.

Summary:

In regards to the recent SEQ (and particularly the Ipswich) flood events I believe a revision the content of the *Body Corporate and Community Management Act & Regulations* is required to ensure that appropriate elements of „flood’ insurance is directed. In current text, I could argue that my understanding of the current *QLD Body Corporate and Community Management Act & Regulations* (if no interim amendments or revision have provided variations) may well cause a situation where such flood affected dwelling owners could rightfully litigate against the QLD Government for *entrapment* against choice of obtaining adequate „flood’ insurance and now finding they are in financial hardship post flooding.

I might be advocating a bit of ‘*bush-lawyer*’ determinations in my perspective, but I do feel the QLD Body Corporate and Community Management Act & Regulations need to be reviewed subsequent to this major flood experience to ensure they provide;

- a. Clear regulatory guidelines to Body Corporate Committees to effect appropriate „flood’ insurance requirements as a component of „water damage’ for owner/ resident protection, and
- b. Direct regulatory requirement for Body Corporate Insurance Brokers to ensure that their insurance products comply with the intent of the QLD Body Corporate and Community Management Act & Regulations and provide provision for „flood’ Insurance cover as a component of the definition of „water damage’.

Submitted by:

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*Body Corporate and Community Management
(Standard Module) Regulation 1997*

- (a) temporary wall, floor and ceiling coverings; or
- (b) fixtures removable by a lessee or tenant at the end of a lease or tenancy.

“damage”, for coverage under insurance required to be put in place under this division, means—

- (a) earthquake, explosion, fire, lightning, storm, tempest and water damage; and
- (b) glass breakage; and
- (c) damage from impact, malicious act, and riot.

Insurance of common property and body corporate assets

127.(1) The body corporate must insure, to full replacement value—

- (a) the common property; and
- (b) the body corporate assets.

(2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this division.

(3) A policy of insurance taken out under this section—

- (a) must cover, to the greatest practicable extent—
 - (i) damage; and
 - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
- (b) must provide for the reinstatement of property to its condition when new.

(4) The owner of each lot that is included in the scheme is liable to reimburse the body corporate for the proportion of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.