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Queensland Floods Commission of Inquiry
PO Box 1738
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Dear Commissioners

Submission by Legal Aid Queensland

Legal Aid Queensland's submission to the Queensland Floods Commission of Inquiry is in relation to performance of private insurers in meeting their claims responsibilities arising from the 2010/11 floods in Queensland.

Legal Aid Queensland (LAQ) is the leading provider of legal services to disadvantaged Queenslanders.

In response to the natural disasters of early 2011, LAQ led the provision of legal assistance to victims of the disasters through the Queensland Flood and Cyclone Legal Help service and also the Collaborative Insurance Law Service. Attachment A describes the legal assistance in more detail.

LAQ is currently providing advocacy in over 450 cases where clients are seeking to challenge insurance decisions about damage caused by the natural disasters. Attachment B classifies the cases by insurance company and by region.

LAQ considers that the Insurance Council of Australia has played a useful role since the natural disasters in a number of ways including: attendance at community forums, providing a streamlined process for obtaining copies of clients' insurance policies and obtaining hydrology reports. LAQ notes that the Insurance Council of Australia also provided a grant to LAQ of \$250,000 towards the cost of providing assistance to insurance policyholders affected by the flooding in Queensland, particularly to assist people with internal dispute resolution processes.

The manner in which individual insurers have approached claims has, however, been variable.

At the outset, the impact of the sheer variety and complexity of insurance policies and the complexity of provisions about flood insurance cover within those policies should be noted. Most policies viewed by LAQ contain 50 – 70 pages and policy wording and definition of key terms vary substantially between insurers. This causes great, if not insurmountable, difficulty for many consumers to understand or compare policies. The variety of wording and definitions also causes impediments to resolution of claims, such as where assessor or hydrology reports makes findings based upon definitions that do not match the wording or definitions in the actual policy pertaining to the property being assessed.

This difficulty has been compounded by the practice of insurance policies being sold over the phone.

Our concerns about the performance of private insurers in meeting their claims responsibilities are as follows:

- Many people experienced significant delay in having their claims processed.
- Many people purchase insurance over the phone. The unavailability in many instances of records of phone calls between insurers and customers has created problems in seeking to resolve dispute about claims, particularly where those claims rely upon verification of claims about representations made by insurers.
- Some clients reported to LAQ that they were dissuaded from lodging their insurance claims by insurers at the first point of contact after the summer events. Our understanding is that this occurred either because they were told over the phone that they would not be covered and ought not to bother lodging a claim or because they were led to believe lodging a claim would be futile.
- Some claims were arbitrarily dismissed by insurers without proper examination, for example, without an assessor being sent to the affected property.
- While some insurance companies prepared individualised responses to claims, others used pro forma responses that raised concerns that the individual claim may not have been assessed on its merits.
- While some insurance companies provided access to hydrology reports as part of their response to claims, not all did so.
- Many clients found themselves unable to afford to call their insurer to progress claims because they were using a mobile phone (their landline not operational as a result of the flood). Unfortunately calls to 1300 numbers for most clients were charged at mobile phone rates.
- LAQ has been disappointed by the attitude of some insurers in not accepting evidence of misrepresentation by clients in the absence of any refuting evidence held by the insurer. Conversely, some insurers have understood their duty of utmost good faith and when a client has shown that promises were made, the insurer has sought to honour them.

The Financial Ombudsman Service offers a real opportunity for Queenslanders to have their insurance claims reviewed. The process is robust and independent and free for consumers. In order to access the gateway of the Ombudsman, clients must first approach the Internal Dispute Resolution (IDR) team for the relevant insurer. This requirement is waived where the complaint is for failure to make a decision at all.

There is a wide discrepancy between genuine engagement in IDR by some insurers and the arbitrary pro-forma dismissal of arguments adopted by others who have treated the IDR process as an opportunity to re-state their decision without considering points raised in a request to review the decision.

For your information, we are also preparing a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the operation of the insurance industry during disaster events.

All enquiries concerning LAQ or this submission should be directed to Robyn Wilkinson,
Corporate Legal Officer, on 3238 3933.

Yours sincerely



Anthony Reilly
Chief Executive Officer
Legal Aid Queensland

Attachment A – Queensland Flood and Cyclone Legal Help and the Collaborative Insurance Law Service

Legal Aid Queensland, in partnership with other Queensland legal organisations, set up Flood and Cyclone Legal Help earlier this year in response to the natural disasters experienced across the state.

The initial response included:

- Establishing Legal Aid Queensland's 1300 number and call centre as the first point of contact for Flood and Cyclone Legal Help
- Developing a website, as a subset of the Legal Aid Queensland website, which includes links to legal information resources, relevant information and websites, upcoming events, fact sheets and an insurance claim guide – all directly linked from the Premier's disaster assistance page
- Compiling resources kits for lawyers from Legal Aid Queensland and partner organisations working under the Flood and Cyclone Legal Help banner
- Coordinating or supporting the attendance of lawyers from Legal Aid Queensland and partner organisations at recovery centres to provide legal help
- Convening community meetings in affected areas such as Ipswich, Goodna, Karalee, Oxley, Yeronga and Indooroopilly. The forums included joint meetings with the Insurance Council of Australia and the Financial Ombudsman Service.

Hundreds of people turned out for the above community meetings, most with pressing concerns about the progress of their insurance claims and many bewildered by the dawning realisation that their insurance policies were inadequate.

Many people expressed anger and dissatisfaction with the progress of their insurance claims at the forums. CPU staff were not able to point to any law or regulation or industry code which mandated an insurer response to a claim within a time limit or that required insurers to expedite a claim where the insured's home was unliveable.

Following the initial response, Legal Aid Queensland also established a new Collaborative Insurance Law Service (CILS) with to help clients experiencing delays in getting a response or who have had their claim fully or partially refused.

CILS was aimed at helping clients experiencing delays in getting a response from their insurer or who had their insurance claim fully or partially refused. Our partners in CILS are Caxton Legal Service, Legal Aid New South Wales and the National Insurance Law Service which is hosted by the Consumer Credit Legal Centre (NSW).

The service aims to help people through insurers' internal dispute resolution processes, and if appropriate through external dispute resolution with the Financial Services Ombudsman, to resolve claims without needing to go to court.

Lawyers use a person's insurance policy, their statement of facts, hydrology reports and damage assessments to prepare a strategy for each individual claim. Detailed submissions marshalling the facts and flagging legal arguments are sent to insurers, seeking review of refused claims.

The service is providing assistance to over 600 Queenslanders and it has already had a number of successful wins for clients in overturning claim decisions on review and is continuing the fight for other clients.

Legal Aid Queensland also provided \$250,000 directly to community legal centres to create a statewide network of lawyers to deliver free flood and cyclone legal information and advice.

LAQ's partner organisations in Flood and Cyclone Legal Help include:

- Queensland Association of Independent Legal Services
- Queensland Public Interest Law Clearing House
- Aboriginal and Torres Strait Islander Legal Service
- Queensland Law Society
- Queensland Bar Association
- Department of Justice and Attorney General

Attachment B – LAQ insurance matters by insurer and location

As 12 July 2011, LAQ acted for clients as set out below by geographical region and by insurer. Some clients have multiple claims because their contents and home insurers were not the same company.

AAMI	54 Beachmere	1
AIS	1 Bohle	1
Allianz	42 Buderim	1
APIA	2 Bundaberg	2
Argis	1 City	10
Asset Insure	1 Columboola	1
Australian Seniors	2 Darling Downs	1
Budget Direct	13 East Brisbane	1
Calliden	1 Emerald	6
CGU	45 Esk	1
CHU	7 Hervey Bay	1
CommInsure	16 Injune	1
CSA	1 Inner West	58
CUA	3 Innisfail	1
CUNA Mutual Group	4 Ipswich	209
Defence Service	2 Lockyer Valley	10
Duplex Flood Insurance	1 Narangba	1
Elders	9 North Brisbane	7
HBA	1 Oakey	2
Hollard Insurance	1 Rockhampton	1
Lumley Insurance	1 Somerset	25
MemberCare	1 South Side	54
MHIA	3 Stanthorpe	1
National Seniors	1 Toowoomba	4
NAB	2 West Brisbane	61
NRMA	60 TOTAL	461
QBE	54	
RACQ	109 LAQ total files	461
REAL	4 Statements taken (on number of files)	394
Seniors Insurance Agency	2 IDR submissions sent	241
Suncorp	12 Progressed to FOS	112
Westpac	5	
WFI	4	
Youi	2	
Zurich	1	
TOTAL	468	