



**ASIC**

Australian Securities & Investments Commission

**REPORT 7**

# **Consumer understanding of flood insurance**

June 2000

## Introduction

Recent major floods across Australia have raised strong community concerns about the extent and availability of cover for flood damage in house and contents insurance policies. The effects of flood can be devastating and may result in the loss of homes or in extensive water damage to buildings and contents. It is therefore vital that consumers understand exactly what their insurance policies do and don't cover.

In this paper, ASIC reports on the results of a national project conducted to review:

- the adequacy of disclosure;
- industry sales processes; and
- some aspects of claims handling for flood insurance.<sup>1</sup>

At the outset it is important to note that, as the market and consumer protection regulator in the finance sector, ASIC's role does not cover all of the complex issues that arise in relation to flood insurance. Our focus is on disclosure, the sales process and claims and dispute handling. ASIC acknowledges the work that other organisations, including the Insurance Council of Australia, are doing in relation to the availability of flood risk information.

## Key findings and recommendations

### Findings

ASIC did not find examples of conduct in its review of the insurance market that warranted it taking action against insurers or intermediaries. However, ASIC's review of flood insurance highlighted some areas where improvements should be made, in relation to disclosure, sales processes and some aspects of claims handling for flood insurance. In particular, ASIC found that:

- insurance sales representatives may not be adequately trained to provide information or answer consumer queries about the availability and nature of flood cover;
- because home and contents insurance documents are often difficult to understand on the issue of flood insurance, consumers may not be aware whether they are covered for flood and, if they are, about the importance of the distinction between flood and other storm damage; and

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<sup>1</sup> Note that while the term 'flood insurance' is used as shorthand in this report, most flood cover is provided as part of house and contents insurance.

- the process for assessing flood insurance claims is usually complex and may be confusing for consumers. For example, insurance companies may use a hydrologist to determine the primary cause of water inundation.

Because of the potentially devastating effect of floods, the consumer consequences of these findings are typically more serious than they might be for most other issues arising under house and contents insurance policies.

## **Recommendations**

The overall objective of ASIC's recommendations is to improve the information available to consumers about the various aspects of flood insurance cover.

ASIC understands that the consumer problems that are associated with flood insurance will only effectively be addressed with input from industry, consumer organisations and government. ASIC supports the efforts of the insurance industry and State and Local governments across Australia to promote consumer access to comprehensive regional flood information.

In response to the key findings, ASIC makes the following recommendations.

### *Consumer education*

Consumers need to be aware that they should consider the risk of flood when purchasing a house and contents insurance policy, or when reviewing the level of cover provided under an existing policy. Therefore, ASIC recommends that consumers ask the following questions when purchasing or reviewing a house and contents insurance policy:

- Do I need to obtain cover for flood damage?
- What policy is available that will provide me with this cover? and
- Does my current policy cover flood?

ASIC understands that an easy or simple answer to these questions may not always be immediately available. However, because cover for flood damage is excluded in many house and contents insurance policies, these questions may be more critical than for other events that are commonly covered such as fire and theft. Where a claim for flood damage arises, ASIC also recommends that insurers clearly explain how it will be handled and decided.

ASIC has prepared a consumer brochure about flood insurance which is attached to this paper. The brochure, *Insurance for floods: A guide for consumers* will also be published on the new ASIC website designed specifically for consumers at [www.watchdog.asic.gov.au](http://www.watchdog.asic.gov.au). We will ask industry, councils, consumer organisations and other relevant bodies to assist in its distribution.

### *Sales processes*

ASIC recommends that insurers prompt consumers to consider the risk of flood prior to taking out a home and contents insurance policy, particularly where the consumers are located in an area known to be flood prone.

Insurance sales representatives, including telephone-sales staff, should also be adequately trained so that they are able to effectively explain the availability of flood insurance to consumers. This should include the ability to explain the difference between damage caused by storm water (which is generally covered) and damage caused by flood (which is generally not covered).

### *Disclosure*

Where possible insurers should simplify and harmonise the drafting of insurance policies so that the availability or exclusion of flood insurance under house and contents insurance policies is made clear.

For example, ASIC recommends that:

- the standard use of key common terms should be explored;
- the distinction between flood, storm and rainwater needs to be clear and consistent;
- the concept of proximate damage needs to be made clear;
- the distinction between “all in cover” and “defined event” policies should be clear; and
- information about cover for flood should be given where possible at renewal.

Since this review was conducted, the insurance industry has demonstrated a greater awareness of the problems faced by consumers in relation to flood insurance. ASIC notes that some of those insurance companies that participated in this review have already reviewed their documentation relating to flood insurance with the aim of improving information disclosure.

## ASIC's role in consumer protection

ASIC is the regulator with responsibility for market integrity and consumer protection in the finance sector. In relation to general insurance, ASIC has powers under:

- insurance legislation including the Insurance Contracts Act and the Insurance Agents and Brokers Act; and
- the consumer protection provisions of the ASIC Act, which include prohibitions on misleading and deceptive conduct and unconscionable conduct.

Whilst ASIC's consumer protection role is focused primarily on disclosure, conduct and consumer education in the finance sector, we also have oversight responsibility for industry codes of practice and for alternative dispute resolution schemes. However ASIC has no regulatory role in relation to broader flood mitigation issues.

## ASIC's project — what did we do?

ASIC undertook a national project involving our regional offices in States and Territories where there have been recent large floods: Western Australia (Moora), Northern Territory (Katherine), Queensland (Townsville), New South Wales (Coffs Harbour and Wollongong) and Victoria (Benalla). The campaign involved:

- visiting insurance companies operating in the States and Territories participating in the project and raising issues about flood insurance and sales processes;
- speaking with local councils in those areas;
- speaking with consumer representatives, including those who have direct experience assisting consumers with claims for flood damage under insurance policies;
- reviewing in detail fourteen (14) house and contents insurance policies to determine if it was clear that the relevant policy did or did not cover flood<sup>2</sup>;
- reviewing determinations by Insurance Enquiries and Complaints (IEC)<sup>3</sup> in relation to complaints about claims arising from recent floods; and

<sup>2</sup> CGU, GIO, AMP, TIO, Mercantile Mutual, SGIO, Australian Alliance, Australian Pensioners, Colonial, FAI, Western QBE, CIC HIH, QBE, Suncorp Metway and Wesfarmers

<sup>3</sup> IEC is the complaints resolution scheme that handles complaints about general insurers

- speaking to IEC panel members.

ASIC would like to thank all of those individuals and organisations that participated in this project.

### **Other work on flood cover**

Responsibility for floodplain management and flood mitigation measures rests with State and Local governments. Most State governments have programs to assist Local government undertake floodplain management, flood mitigation measures and emergency management planning. The Commonwealth also provides funding assistance under the Natural Heritage Trust, the Regional Flood Mitigation Programme and the Natural Disaster Risk Management Studies Programme.

Other work is being done by a range of industry and consumer organisations in relation to flood insurance issues.

For example, the Insurance Council of Australia (ICA) conducted a survey in late 1999 to assess the availability of current flood information and the extent of flood mitigation works across Australia, primarily at the local council level. The ICA website contains further information about the results of this survey at [www.ica.com.au](http://www.ica.com.au).

The NSW Legal Aid Commission has also produced a booklet giving advice to consumers about managing flood insurance claims — *Turning The Tide: A Guide to Getting Your Insurance Claim Paid*. This booklet is available on the Commission's website at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au).

More recently, representatives of the insurance industry launched the Insurance Disaster Response Organisation, which has been established to provide a coordinated industry response to natural disasters. According to launch documents, this might involve the IDRO providing information to consumers about how to lodge a claim and providing a single public contact point if a disaster occurs.

## **Flood insurance — coverage and availability**

### **What is a flood?**

In general terms, flood damage refers to the inundation of a property by water which overflows from a natural watercourse, while storm and tempest damage refers to the inundation of a property by water as the result of a storm<sup>4</sup>.

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<sup>4</sup> Definitions vary between policies from different insurance companies.

Both types of damage are usually linked to a storm in the first instance and often a property may be inundated by both water from the storm and water overflowing from a natural watercourse. However, for the purposes of insurance cover, it is important to understand that most policies:

- do not cover damage to a property caused by the inundation of water flowing from a natural watercourse; or
- do not cover damage where the property is inundated by mingled waters from the storm and from the overflow of a natural watercourse (unless most of the damage is caused by stormwater); or
- do not cover damage where the proximate cause of the damage is another phenomenon, such as earth movement, even though this may itself have been caused by water from a storm.

Information from insurers, consumer representatives and from IEC indicates that it is these policy distinctions which cause most confusion, and therefore most disputes, about flood insurance claims.

### **Availability of flood insurance**

Flood insurance is not available in many areas in Australia. The reasons why flood cover may not be available vary across different regions, and will obviously be influenced by the perceived risk of flood in any given area. Availability of cover may also be influenced by localised floodplain management, flood mitigation measures and access to flood mapping information. These issues are outside of the scope of this report.

The insurance industry has argued that the provision of flood insurance relies largely on the availability of adequate flood mapping and other information to enable the underwriting of risks.

The existence and availability of this information also varies across different regions. However, in many parts of Australia there are extensive and established programmes in place that involve integrated floodplain management studies and flood mitigation measures. The costs of these programmes can be significant.

Where localised information is not readily available, underwriters argued that it was relatively difficult to offer flood insurance because they could not assess the risk of flood and therefore accurately price the insurance cover. Even where information is available, insurance cover for flood prone areas may still not be offered by insurers or may be prohibitively priced.

Many of the insurers ASIC spoke to who don't currently offer flood insurance said that they would consider offering cover if it was expressly

sought. This would require, however, that consumers were aware of their need for cover in the first instance.

### *Standard cover and flood insurance*

Section 35 of the Insurance Contracts Act provides that *standard cover* (that is, minimum levels of cover for prescribed events) will be deemed to be included in certain classes of insurance policy, including home buildings insurance and home contents insurance (other than cover notes and renewals). The *standard cover* terms and conditions are set out in the Insurance Contracts Regulations.

The Regulations<sup>5</sup> state that standard cover in respect of home contents insurance includes loss that is:

*... caused by or results from - ... storm, tempest, flood, the action of the sea, high water, tsunami, erosion or landslide or subsidence ...*

If an insurer seeks to limit or exclude its liability in respect of the standard cover, which includes flood, then the insurer must prove that:

- it clearly informed the consumer of the limitation or exclusion in writing before the contract was entered into;<sup>6</sup> or
- the consumer knew of the limitation or exclusion; or
- a reasonable consumer in the circumstances could be expected to have known of the limitation or exclusion.

If the insurer is unable to prove one of these three cases, then the insurer will be liable to make good any losses suffered by a consumer that were caused by, or resulted from, any of the standard events (construed in accordance with their ordinary meanings).

ASIC is aware that the existence and concept of *standard cover* is not widely understood by insureds and consumers.

## **Consumer problems with flood cover**

ASIC's review highlighted a range of consumer problems that arise in relation to flood insurance. In the following section we provide more detail about those aspects of the sales, disclosure and claims handling processes that might confuse consumers about the availability and extent of flood insurance.

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<sup>5</sup> Regulation 14(a)(xi)

<sup>6</sup> Notwithstanding the words "before the contract was entered into", sub-section 11(11) has the effect of permitting the insurer to provide the required information to the prospective insured "at the time when the contract is entered into".



Before discussing these issues in relation to flood insurance, we note that financial products are relatively complex compared to many other products that consumers purchase. For example, most financial products cannot be ‘tested’ before they are bought and most involve estimates of the future risks of particular events. Consumer information problems are therefore a well recognised and persistent feature of the broader financial services market. This is why disclosure requirements are an important feature of regulation in this sector.

### **What problems do consumers face?**

- Consumers may often have only a limited understanding about whether their policy, or the policies that they are looking to purchase, will provide effective cover for flood damage. Where localised information about the risk of floods is not available, this may reduce awareness about the need to consider cover for flood damage under a house and contents insurance policy.
- The terminology in policy documentation can be confusing. The use of technical terms, differing definitions for common words (including the word ‘flood’), and technical meanings for otherwise commonly used words (such as ‘watercourse’) might not be understood by consumers.
- Experience from a number of recent floods suggests that consumers are not always aware of the distinction between the damage caused by storm and the damage caused by flood, even though this may determine whether they are covered for their loss. This is true also of the concept of “proximate” damage that is critical to many flood claims.
- The assessment of claims for flood damage is often a more complex process than for other events covered under house and contents insurance policies. This is not something that a consumer would typically consider when taking out insurance. Because consumers might not be making fully informed purchasing decisions, problems may be highlighted when claims arise *after* floods have occurred.

These findings are largely supported by the Code Review, which found that clear communication about flood insurance continues to be a problem in policy documents. The Code Review also noted that in flood prone areas, consumers seemed often to believe that they had cover against flood when, in fact, they only had cover in respect of stormwater.

It also needs to be remembered that house and contents policies cover a range of possible events that may cause losses for consumers, of which flood is only one. Consumers have to consider a variety of different risks in choosing a policy, and have to take into account legal and other issues about cover in relation to all these risks. These additional considerations

tend to further complicate the process of choosing and assessing cover for flood damage.

ASIC notes that these problems may also be common to small businesses as well as individual consumers. ASIC received a submission from one business organisation whose members had recent experience with flood damage. The submission supported the findings contained in this paper about the complexity of insurance documents relating to flood and about the technicalities of the claims handling process.

### **Why might consumer problems arise?**

ASIC is pleased to report that it did not find cause to take legal action against insurers or intermediaries in relation to any particular flood episode. However, ASIC found that there was scope for improved industry practices and better consumer understanding about flood insurance.

#### *The sales process*

Many insurance companies participating in this review advised ASIC that they sell policies by telephone through their own agents. Therefore, consumers often receive the written policy document *after* they have arranged interim cover. Whilst there was general awareness about the sensitivity of flood insurance issues, it is not clear that sales representatives were given training that enabled or required them to proactively deal with flood insurance issues

Furthermore, the selling process may not always ensure that consumers are advised on and given the opportunity to consider what they need. This is because it is a process of selling a policy, rather than providing advice. It is not even clear whether advice is readily available about house and contents insurance or whether consumers are advised to review policy exclusions.

Without undertaking some kind of informed analysis about flood risk, consumers are less likely to be in a position to look for the policy that best suits their needs.

It is also important to note that many insurers did not offer flood cover and those that did offer it, with the exception of one insurer, offered it as an extra. This means that consumers might have to inquire about, and then obtain a flood rating, before the insurer could give a price for cover. Again, this assumes a high level of knowledge on the part of consumers that is not consistent with the claims experience following major floods.

*Disclosure*

ASIC reviewed 14 insurance policies from large insurers in those States and Territories that have recently experienced floods. Whilst most of these insurers considered that exclusions in their policy documents made it clear that flood was not covered, they also conceded that there was generally:

- no special disclosure for flood prone areas;
- no additional disclosure made upon renewal unless there had been a change to the terms of the policy; and
- no additional information given to consumers to alert them to the fact that they were not covered for flood.

Most participating insurers also noted that the majority of disputes arose in relation to claims where there a large storm had caused concurrent storm damage, flooding and earth movement and where there was a dispute about the proximate cause of damage. ASIC is concerned that this concept of ‘proximate’ damage is poorly understood. For example, consumers might believe that a standard house and contents insurance policy provides cover for any damage caused by a storm.

The actual position is that most policies cover consumers for damage which can be **directly** attributed to a storm. However, most policies do not cover consumers for damage which is the **indirect** result of a storm. For example, where there is a subsequent overflow from a natural watercourse, or the movement of earth after a storm or where the storm is also caused by an event that is excluded under the policy.

## **ASIC’s review of documents**

In reviewing house and contents insurance policies, ASIC found that the documents themselves sometimes had features which made it more difficult to work out if cover for flood damage was available.

### **Document format**

In some cases, the policy comprised a number of documents. This means that a consumer might be required to read the application, the policy, schedules and endorsements (preferably at the same time) to understand the entire insurance contract.

There were also a number of policies in which references to flood (such as definitions and exclusions) were found on different pages and were not cross referenced to each other. This made it more difficult to appreciate the difference between **direct** and **indirect** damage caused by a storm and which of these is covered.

## Type of policy

The structure of a policy, that is whether it is an *all in cover* policy or a *defined event* policy, might also make it more difficult for a consumer to work out the extent of their home and contents insurance coverage.

An *all in cover* policy is less complex. It basically states that cover will be provided for damage to the insured house and contents subject to explicit exclusions. Therefore, a consumer need only read the exclusions to make a judgement about the extent of the cover.

It is relatively more difficult for consumers to review their coverage under a *defined event policy*. In order to make an assessment about effective cover, a consumer would need to imagine all the likely events that might occur, and for which they might require cover, but which are not explicitly referred to in the document.

It must be clear, from the drafting of the insurance documents, whether a particular house and contents insurance policy is an *all in cover* or *defined event* policy.

## Definitions and terms

Different definitions of the term *flood* used by insurers also makes it difficult for consumers to make comparisons between house and contents insurance policies. And some of the policies reviewed used terms that were not defined. This means that consumers might have to obtain advice on the legal definition of the relevant term in order to understand the policy. Also, some policies did not place the definitions at the front of the document making those policies hard to understand as consumers read through from the front of the document.

Other issues which might be better explained, and which may have an effect on consumer claims, included:

- what replacement value means;
- the effect of averaging clauses;
- whether consumers may arrange repairs themselves (or whether they need to obtain the insurer's consent to repairs);
- the effect of signing a deed of release;
- temporal limits to damage claims (within 24 hours of storm ceasing); and
- financial limits to damage (20% of sum insured).

## Claims handling and disputed claims

The insurers that participated in this review:

- have internal complaints resolution procedures; and
- refer those complaints that they are unable to resolve internally to an external complaints resolution scheme (the IEC).

This is a requirement under the General Insurance Code of Practice (the Code).

Many insurers had flood claims experience and said they were aware of consumer concerns where a substantial claim was denied. Most insurers agreed that determining the proximate cause of damage when there had been a storm and a subsequent flood was complex, and that the claims handling process could be time-consuming, technical and confusing for consumers.

For example, as part of the claims handling process, an insurer might appoint a hydrologist to determine the primary cause of damage. In the event of a dispute about the treatment of the claim, the insurer would generally seek to rely on the advice of the hydrologist.

Where a hydrologist is appointed to assess a particular claim, ASIC notes that they should only be represented as “independent” where this can be verified. To promote the resolution of complaints, insurers should also provide copies of relevant hydrologist reports to claimants at the earliest opportunity.

Another issue that complicated the claims handling process occurred when some consumers had claims for flood damage refused and close neighbours had apparently similar claims paid by other insurers. This might be because of different policy terms and conditions or because individual insurers take a different approach to claims payment - which might include making an ex-gratia payment in relation to a disputed claim.

### IEC Panel determinations

ASIC examined IEC determinations of flood disputed claims for the Benalla, Coffs Harbour, Katherine, Townsville and Wollongong floods to help us understand the problems consumers have faced with flood cover. The IEC’s jurisdiction does not extend to disclosure and sales processes, except where they relate directly to a disputed claim.

ASIC did not review the merits of these IEC determinations. However we note that the IEC Panel regularly made comments about the importance of clear disclosure in policy documents, and about other concerns that consumers commonly raise about flood insurance,

irrespective of whether the eventual determination was in favour of the insurer or consumer. For example, the determinations considered:

**Whether certain policy documents satisfied the requirement to clearly inform consumers about the exclusion of cover for flood:**

*“The insurer has submitted that it has complied with its obligation under section 35 of the Act. The Panel notes that the policy document, within the first nine pages, has a section headed “IMPORTANT NOTICES”. In the four pages there is nothing said about any derogation from standard cover. The house policy definitions section refers to flood but does not mention its exclusion at that stage. The first reference to the exclusion of flood is a clause on page 14 of the policy. Whilst, in the Panel’s view, the process of clearly informing the insured could have been done better it considers that identification of the flood exclusion would have left nobody in any doubt about the policy provision on flood.<sup>7</sup>”*

**The effect of layout and presentation of a document on a consumer’s ability to understand the terms of the policy:**

*“The policy document is somewhat cluttered in its appearance. It explains that flood is excluded from home building cover at page 17 of a 40 page document and at p 21 it explains that contents cover excludes flood. The definition of flood appears at page 8. Whilst an insured’s attention is not immediately arrested by these references there is nothing confusing about them. The policy is reasonably well indexed. The Panel is thus of the opinion that the policy document satisfies the statutory requirement to clearly inform.<sup>8</sup>”*

**The effect that prominence given to particular items in a policy document can have on the statutory requirement to clearly inform:**

*“In this case the reference in the policy to the exclusion of flood first appears at page 13 of the policy document. It is not highlighted and is not particularly prominent. However, the term appears in the definition section and appears under the part of the policy that identifies what is not covered by the policy. The index draws attention to three entries of the term. Although the term could have been more prominently identified within the policy a person looking to see if flood is covered would have no difficulty in finding the answer. In the Panel’s opinion, the insurer has satisfied its obligations pursuant to Section 35 of the Act.<sup>9</sup>”*

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<sup>7</sup> IEC Determination Referral No 299 047141

<sup>8</sup> IEC Determination Referral No 299 047 211

<sup>9</sup> IEC Determination Referral No 299 047231

### **The distinction between storm, rainwater and flood damage:**

*“The claimants submit that they were not clearly informed of the distinction between the words “storm”, “rainwater” and “flood”. The male claimant, in a statement dated 1 June 1999, states: “When I received the policy I recall reading page 5 where there was a definition of “rainwater”. I thought this is what the policy covered. I also looked at page 10 of the policy and saw the words “storm” and “rainwater”. I thought my wife and I would be covered for any water damage. I thought that everything on page 10 was covered.*

*The Panel notes that the male claimant has lived and worked in Australia since 1952. He admits to having read his policy. The Panel finds it difficult to accept that he has not understood the words “But not loss or damage caused: by Flood” which are located in the same area of the policy as the understood words. Flood is also defined in the same location as the understood meanings of storm and rainwater. The Panel is of the view that the wording of the policy is clear and unambiguous. It takes into account the male claimant’s statement that he read and understood portions of the policy. The fact that he did not read the entire document is not the fault of the insurer. In the circumstances the Panel is of the view that the insurer had discharged its obligations under section 35 of the Act by clearly informing the claimants, in writing, of the policy provisions relating to storm, rainwater and flood.<sup>10</sup>”*

## **Legal issues and the Code of Practice**

This report was prepared by ASIC with regard to the obligations of insurers under the Code and at law. The key obligations that informed the findings in this report are discussed below.

### **Duty of Utmost Good Faith**

Section 13 of the Insurance Contracts Act<sup>11</sup> states that:

*A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.*

This duty (or its common law counterpart) extends to all negotiations leading up to the making of the contract of insurance<sup>12</sup>. It is arguable that the duty of utmost good faith may, in some circumstances, require an insurer to inform a prospective consumer about unusual terms. Section 14 of the Insurance Contracts Act prevents an insurer from relying on a

<sup>10</sup> IEC Determination Referral No 299 037484

<sup>11</sup> Insurance Contracts Act 1984

<sup>12</sup> Marks and Balla *Guidebook to Insurance Law in Australia (Third Edition)* at p.214

provision in a policy where to do so would be to fail to act with utmost good faith.

### **Requirement to clearly inform**

This report notes the application of section 35 of the Insurance Contracts Act and the requirement that an insurer clearly inform a consumer about any departure from the regulated *standard cover*.

If insurers are aware that technical policy distinctions, such as the difference between damage caused by flood and damage caused by storm, are confusing — then they may be obliged to inform more clearly.

### **Consumer protection provisions of the ASIC Act**

Division 2 of Part 2 of the Australian Securities and Investments Commission Act 1989 regulates conduct relating to financial services. This includes a *contract of insurance*<sup>13</sup>. This Division is broadly modelled on the unconscionable conduct and consumer protection provisions of the Trade Practices Act 1974

A key provision that might arise in circumstances where a consumer is alleging that they are confused by oral or documentary representations is section 12DA. This provides that a corporation must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive, or is likely to mislead or deceive.

### **General Insurance Code of Practice**

The Code applies to the sale of house and contents insurance policies, amongst other products. It contains a number of requirements that are relevant to flood insurance, notably that it is a key objective of the Code to facilitate the education of consumers about their rights and obligations under insurance contracts.

The Code also has a number of specific requirements relating to policy documents. For example insurers are required to express policy documentation in plain language and to design and present policy documentation with the aim of assisting comprehension by consumers<sup>14</sup>.

The Code Review was published in 1998. It considered some of the consumer issues relating to policy disclosure and flood claims. In relation to the Principles of the Code, the Code Review found that:

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<sup>13</sup> Section 12BA of the ASIC Act

<sup>14</sup> Clause 4.1.a.



- some submissions to the Review commented on the duty of utmost good faith reflecting adversely on some practices of insurers;
- consumers sometimes had to prove occurrences or causes that were sometimes technically beyond them, like power surges or earthquakes; and
- the principle of *utmost good faith* might be narrowly interpreted by some insurers and, even though technically correct, this might be to detriment of fair, just and reasonable decisions; and

The Code Review also suggested that while solutions to flood related consumer problems are being considered, insurers should try to improve the layout of policies so that consumers in flood prone areas might better understand whether their policies provide adequate cover. The Code Review recommended, for example, that insurers consider fixing stickers (explaining the risks covered and excluded) on policies sold to consumers in flood prone areas<sup>15</sup>.

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<sup>15</sup> Recommendation 16(a)