

Flood/Insurance Law Checklist¹

Date	:	
Family Name	:	
Given Names	:	
Client ID	:	
Time of Advice Session Is it Phone or face to face?	:	
Names of Insurer		
Name of any Creditors for Financial Hardship Application		

If we are in the 1st 6 weeks following the Disaster the 1st things to check are:

1. Have you lodged a claim? An insurer cannot make a decision about whether they will pay if there is no claim to assess.
2. Where possible take lots of photos when you are cleaning up.
3. Write down what you remember of what happened and where you saw any water coming from.
4. Seek help from your lenders if you are in financial trouble.

Insurance Claims process

1. Lodgement of claim
2. If accepted, then claim is paid out and/or the property is fixed.
3. If the claim is refused, then a complaint should be made to the Internal Dispute Resolution (IDR) area of the Insurer who has refused the claim?
4. If the Insurer's IDR Department, still refuses the claim then a complaint should be lodged with AFCA.

Time Limit Warning – Client has 2 years after receiving an IDR response from the Insurer to make a complaint to AFCA if their insurance issue still remains in dispute.

The same complaint process applies if the claim is being paid but the consumer disputes either how the property is being fixed or the amount of money they are being paid to allow them to fix the property themselves.

**Client Instructions
Insurance Matters
Does the client have insurance?**

Are the client's insurance premiums paid and update? If no, has the insurer provided the client with a written notice giving them the opportunity to catch their arrears up? If the insurer has not provided this notice, client should be advised to make IDR and then AFCA complaint.	
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¹ Format adapted from the Caxton Legal Centre Inc Advice Checklist

If Yes, proceed to claims issues.	
Claims Issues	
<p>Has the client lodged a claim with their insurer?</p> <p>If no, advise the client to lodge a claim.</p> <p>If yes, need to wait for a response from the insurer about whether the claim is being paid. If the claim is being paid, refer to settlement of claims issues.</p>	
<p>Has the client been told by the Insurer not to lodge a claim because they are not covered?</p> <p>Advise the client to lodge a claim.</p>	
<p>Does the client need a copy of their insurance policy in order to lodge a claim?</p> <p>No, advise the client to lodge a claim with their insurer.</p>	
<p>From 5 April 2021 - Unfair Contract Terms now apply to Insurance Contracts. Your starting point is to identify if the term would cause a significant imbalance in the parties' rights and obligations arising under the contract. Is it not reasonably necessary to protect the legitimate interests of the party that would benefit from the term? The law does not apply retrospectively but we should argue that it would be unfair for an insurer to rely on a term that they now acknowledge is unfair.</p>	
Coverage Issues	

<p>Does the client have flood cover?</p> <p>If yes the claim should be paid, refer to sections on Settlement of Claims issues</p> <p>If no, please follow instructions below</p>	
<p>Has the client received a letter from their insurance company refusing their insurance claim?</p> <p>Identify on what basis the claim has been refused. It is likely to be a lack of flood cover</p>	
<p>Where a claim has been refused because the Insurance policy does not cover it, it is likely there will be a Hydrology Report that sets out where the Hydrologist believes the water that affected the property came from. If we have that report it is important to test those conclusions against what the client and their neighbours experienced.</p>	
<p>If client was at the property as the water was affecting the property, obtain any information they have about the direction the water came from?</p> <p>Any information clients or neighbours have about rates of rainfall in particular suburbs or videos showing flow will be relevant here. This is traumatic for clients handle sensitively.</p>	
<p>Does the client recall opting out of flood cover?</p>	
<p>Identify what other clauses in the Insurance Policy might provide coverage to the client</p> <p>It is likely that the client will not have a copy of their PDS and follow up advice might be required after we have obtained and reviewed the</p>	

relevant PDS and Key Fact Sheets	
<p>Did the client have the assistance of an insurance broker to help them obtain their insurance?</p> <p>What do they remember about what the broker said about any exclusions from their insurance coverage?</p>	
<p>Has the claim been refused due to subsidence or ground movement?</p> <p>Any refusal on this ground should be accompanied by an expert report.</p>	
<p>Has the claim been refused due to lack of maintenance or the property being in a poor state?</p> <p>You should get instructions about what if any maintenance the client has done. For type of maintenance is reasonable for the consumer to do will depend on their individual circumstances</p> <p>Also ask the Insurer for information about the maintenance that they say should have been done that would have made a difference to the outcome at the property.</p>	
<p>Obtain a copy of any assessors' reports about the property</p> <p>Test what is said in the reports with the clients. When assessors attend a property the clients are extremely stressed. There is a risk that the assessors will have recorded things about what happened that were not accurate or the client will have forgotten to tell the assessor important information affecting their claim.</p>	

Explore the possibility of disputing the refusal of an insurance claim by obtaining competing expert reports – These are usually very expensive	
Settlement of Claims Issues Eg Cash Settlements/ Scope of works issues	
Cash Settlement Disputes	
Has the client received the Cash Settlement factsheet that the insurer is required to provide?	
Does the client have a mortgage over the affected property? It is important to be aware that if the client accepts a cash settlement, the mortgage holder is entitled to receive this payment and is likely to oversee the release of funds as the client repairs the property. It is important that a conversation is had with the mortgage holder about this.	
Other issues to be aware of in dealing with Cash Settlements – <ul style="list-style-type: none"> • Repairs will not be guaranteed by the insurer • Make sure the settlement amount reflects what it will cost the client to obtain tradesman to repair the property rather than the insurer. It always costs consumers more than an insurer to repair a property. • If the claim is cash settled within 1 month of the claim and within 12 	

<p>months you notice that there was damage to the property you didn't claim for, you are able to ask your insurer to relook at your claim.</p>	
<p>Scope of Works disputes are highly likely to appear once claims are approved. The Scope of works is a document provided to a consumer that sets out how an insurer proposes to fix a property. The disputes arise as a result of disagreements about the best way to fix properties. Typically these disputes turn on the individual facts and are unique to each property</p>	
<p>Has the client received the required Scope of Works Factsheet?</p>	
<p>Obtain copies of any expert reports used in assessing the claim and the appropriate way of fixing the property</p>	
<p>Test with the client the accuracy of what is included in the report. Record any disagreement and the reasons behind the disagreement</p>	
<p>Explore the possibility of competing expert reports.</p>	
<p>Sum Insured Policies</p>	
<p>There is a risk that some clients may have a sum insured policy. What this means is that rather than the insurance policy agreeing to repair the property instead the client receives a sum of money. In some instances this lump sum does not allow the property to be completely repaired.</p>	
<p>Should explore what the client was told about the sum insured policy by their broker or insurer to check that no misrepresentations were made?</p>	
<p>Settlement Agreements</p>	

<p>Some Insurers require settlement agreements to be signed as a part of claims being resolved.</p> <p>Things to watch out for in any agreement include –</p> <ul style="list-style-type: none"> • That it is just the insurance claim being resolved. • See if there is a right to go back to the insurer if further damage is identified in the next 12 months (See Cash Settlement above) • Advise clients of any confidentiality clauses which are routinely put in these agreements. 	
The Insurer is taking too long to resolve my claim/Fix my property	
<p>There is a requirement on insurers to resolve complaints in a timely manner. Unfortunately the usual timeframe set out in the General Insurance Code of Practice do not apply to natural disasters.</p> <p>If there is unreasonable delay in assessing a claim or fixing the property then a complaint should be lodged with AFCA</p> <p>www.afca.org.au</p>	
<p>I have let my insurer know of damage they have missed when assessing my property but they are not listening to me – Client should be advised to lodge a complaint with AFCA. www.afca.org.au</p>	

Body Corporate Insurance

<p>Ask what the Body Corporate Manager or the Body Corporate Committee said about the insurance, was the option of flood given? (Where it was it will often be too expensive to be taken up)</p>	
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Client Instructions
Car Insurance

<p>Car Insurance has flood coverage</p> <p>So it is not likely that there will be many claims to be many refusals of car insurance claims.</p> <p>Biggest problem we foresee arising is where people had a car on finance and the damaged car is secured against the loan.</p> <p>The insurance payout they receive is often significantly less than what is owing on the car loan. The lender is entitled to take this payout. The client will still be liable to pay the balance owing on the car loan even though they no longer have a car.</p>	
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Client Instructions
Credit Matters/Financial Hardship

<p>Is the client in financial hardship following the Floods?</p> <p>If Yes, they should apply to their creditors for financial hardship on their loans while they are getting back on track?</p> <p>Similar applications should be made to the Local Council and other essential services providers if necessary.</p> <p>Explore whether electricity account should be suspended or stopped to the property if it will take some time to repair.</p>	
Has the client already made a complaint to the creditor and received a response from their IDR section? If so they only have 2 years to make a complaint to AFCA if they are not satisfied with the response.	

<p>Has the client always struggled to make repayments on the loan?</p> <p>Consider whether the client should be referred to the CPU for specific credit advice about responsible lending</p>	
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Client Instructions
Other Issues

<p>Was client renting?</p> <p>If Yes, have they been referred for tenancy advice about their rights?</p>	
<p>Has the client had their employment affected following the floods?</p> <p>If yes refer for employment law advice</p>	
<p>Was the client renting or leasing whitegoods or furniture that were affected or destroyed by the flooding?</p> <p>If yes, Financial Hardship should be sought from the lease company.</p>	

Consider any other legal rights/remedies that arise from the client's individual circumstances.

Documents provided:	Yes <input type="checkbox"/> No <input type="checkbox"/>
• Copy of Insurance Contract	<input type="checkbox"/>
• Letter from Insurer	<input type="checkbox"/>
• IDR Decision	<input type="checkbox"/>
• Court Documents	<input type="checkbox"/>
• AFCA correspondence	<input type="checkbox"/>

Summary of Facts

Advice

Applying for Legal Aid	
Was client advised about applying for legal aid?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Was client sent/given a legal aid application form?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Was client sent/given blank Legal Aid Authority to sign?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Referred to:	
	Australian Financial Complaints Authority (AFCA) www.afca.org.au Phone 1800 931 678
	Financial Counselling Phone 1800 007 007
	Telecommunications Industry Ombudsman www.tio.com.au Phone: 1800 062 058
	Energy and Water Ombudsman Qld www.ewoq.com.au Phone: 1800 662 837
	Queensland Civil and Administrative Tribunal www.qcat.qld.gov.au Email: enquiries@qcat.qld.gov.au

	<p>Office of Fair Trading https://www.qld.gov.au/law/fair-trading Phone: 13 74 68 Email: BrisbaneOFT@justice.qld.gov.au</p>
	<p>Australian Securities and Investments Commission www.asic.gov.au Phone: 1300 300 630</p>
	<p>Australian Competition and Consumer Commission www.accc.gov.au Phone 1300 302 502</p>
	<p>Private Law Firm Provide 3 different options or refer to Queensland Law Society www.qls.com.au Phone: 1300 367 757</p>
	<p>Tenants Qld www.tenantsqld.org.au Phone: 1300 744 263</p>

Has the client been advised of time limit date? Yes No

Time Limits

Receipt of an IDR decision

2 years from date of decision to lodge in Ombudsman

AFCA Deadlines

Deadlines as specified in AFCA Correspondence – Extensions may be sought from AFCA and usually granted

OTHER OPTIONS

Consider referrals to other CJS or LAQ clinics

Clinic		Details
Victim Advice Clinic	<input type="checkbox"/>	
NDIS Clinic	<input type="checkbox"/>	
Anti-Discrimination Clinic	<input type="checkbox"/>	
Employment law Clinic	<input type="checkbox"/>	
Social Security Appeals	<input type="checkbox"/>	
Other – provide details	<input type="checkbox"/>	

Lawyer's Name	:	
Signature	:	
Date	:	