



24 May 2022

Professor Mary O’Kane AC  
Michael Fuller APM  
NSW Independent Flood Inquiry

Dear Professor Mary O’Kane AC and Michael Fuller APM

### **Insurance affordability and flood resilience**

Thank you for the opportunity to comment on the NSW Independent Flood Inquiry. The Financial Rights Legal Centre (**Financial Rights**) will address Terms of Reference 1(e): *recovery, including housing, clean-up, financial support, community engagement and longer-term community rebuilding*. Specifically we will comment on home and contents insurance as a resilience and recovery tool in NSW.

Financial Rights operates the Insurance Law Service and has been providing free, specialist legal advice about insurance to Australians since 2007. The Insurance Law Service is the only free, independent, national specialist insurance legal advice service in Australia. Since its inception we have:

- Answered more than 65,000 calls for specialist insurance legal advice;
- Represented more than 1,400 insurance law clients; and
- Assisted consumers to obtain millions of dollars in entitlements in the form of refunded premiums, paid insurance claims, ex-gratia payments and compensation.

Over the last 15 years our specialist solicitors have given thousands of legal advices to consumers after extreme weather events. This includes the recent February-March 2022 floods in northern NSW. From January 2022 we have provided over 80 services to people who identified ‘flood’ as the reason they were seeking assistance, and over 150 services to people who identified they had been affected by a “storm or flood”. We expect these numbers to rise over the coming months as insurance claims disputes develop.

Flood impacts have a long tail of disputes which can generate work many months after an event. Since January 2020 we have delivered over 280 services identified as ‘flood’. And since August 2020 there have been nearly 1000 services with the problem type ‘insurance/storm/flood’. We are still getting calls from new clients who are trying to resolve a legal dispute from flood events in NSW in 2020 and 2021.

Insurance plays an important role in supporting NSW property owners in the face of catastrophic events. Adequate insurance cover is integral to protecting consumers' most valuable assets and to maintaining and protecting the living standards of all Australians.

We are very concerned at the reports of non-insurance and underinsurance in NSW flood-affected communities. Since the 2017 NSW floods insurance premiums have increased dramatically. Financial Rights has heard reports of annual premiums costing tens of thousands of dollars. ABC recently reported residential premiums costing as much as \$30,000<sup>1</sup>. Premiums at that level are prohibitively expensive. Many residents in the flood affected areas would have had no choice except to opt out of flood cover, leaving them with no ability to rebuild after the devastating February-March 2022 floods.

What we are seeing in these communities is nothing short of market failure. There is no private market solution to the increasing problem of insurance affordability in the face of climate change. The NSW and Federal Governments need to consider insurance market interventions which will bring insurance premiums back into reach of average homeowners in high risk communities.

### ***Direct subsidies***

In 2021 Financial Rights released a report analysing our natural disaster legal assistance advice. [Exposed: Insurance problems after extreme weather events](#). The report looks at the problem of insurance affordability in Australia in detail and makes several recommendations for reform.

Financial Rights believes direct subsidies on premiums to vulnerable residents in high risk areas are the best way for governments to assist citizens who face disproportionate risks because of the location of their property. Direct subsidies can help to lower levels of underinsurance and non-insurance, which can lower costs to governments of providing post-event relief. They can also help support government objectives towards decentralisation and promote thriving regional communities. Such subsidies should be targeted, means and asset tested, and carefully designed to ensure they do not simply increase insurance premiums or facilitate further development of high risk areas. These measures should only apply to existing dwellings and more should be done to warn potential property buyers of the likely insurance costs associated with the property they are buying. Property buybacks should also be part of the adaptation mix, with some areas so vulnerable to climate risk that they will be both uninsurable and unsafe for residential occupation.

NSW should also develop a state-wide data collection program on underinsurance. Trends in underinsurance should be tracked by Resilience NSW, especially in high risk regions. This would enable the NSW Government to take targeted action in those areas to address affordability with mitigation projects or direct subsidies or both.

### ***Taxes, Levies and Stamp Duty***

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<sup>1</sup> <https://www.abc.net.au/news/2021-03-23/flood-insurance-costing-30000-dollars-where-not-to-build/13268966>

The NSW Government should also remove NSW taxes/stamp duty on home insurance or re-base it to sum insured amounts instead of premium levels.

The NSW Government initially move to shift the funding of NSW's emergency services from an insurance-based model to a property-based model by 1 July 2017. However, this reform was deferred and the insurance-based funding scheme transitioned back to an insurance based model in 2019. The NSW Emergency Services Levy Monitor's office ceased on 30 June 2020 when the Emergency Services Levy Insurance Monitor Act was repealed.

The government has put forward the following reasons for this deferral:

*This has been done to ensure property owners - especially small to medium businesses - do not face an unreasonable burden in their contribution to the State's fire and emergency services.*

*In the majority of cases across NSW, fully insured people would be better off under the new system.*

*However it had become clear that some fully insured businesses were facing unintended consequences. The Government has listened to the concerns of the community and will take the time to get this reform right.<sup>2</sup>*

Financial Rights continues to support the moving of the funding of NSW's emergency services from an insurance-based model to a property-based model. We continue to do so for the same clear reasons put forward by Gladys Berejiklian and the NSW Government in 2015:

*"Fire does not discriminate and the community rightly expects that firefighting and SES services will be available to everyone in their time of need. It is also fair to expect all property owners to pay their share for these vital services....This fairer model for funding fire and emergency services will reduce the cost of insurance and encourage more people to insure their properties."<sup>3</sup>*

The ACCC has also recommended governments abolish stamp duty on home, contents and strata insurance products as a means of addressing affordability issues in its ongoing Northern Australia Insurance Inquiry. The ACCC states that:

*it has been widely acknowledged that stamp duties on insurance contracts are an inefficient form of taxation."<sup>4</sup>*

Other previous reviews have also advocated for the abolishment of stamp duty on insurance contracts. For example, the Review of Australia's Future Tax System (also known as the 'Henry review') said:

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<sup>2</sup> <https://www.treasury.nsw.gov.au/projects-initiatives/fire-and-emergency-services-levy>

<sup>3</sup> Media Release - Minister for Emergency Services , NSW moves to a fairer system for funding fire and emergency services, 10 December 2015, <https://www.eslinsurancemonitor.nsw.gov.au/nsw-moves-fairer-system-funding-fire-and-emergency-services>

<sup>4</sup> ACCC, Northern Australia Insurance Inquiry, First interim report. November 2018. Recommendation 1. Available at: <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

*'all specific taxes on insurance products, including the fire services levy, should be abolished.'*<sup>5</sup>

As an alternative to removing stamp duties and levies on insurance, the ACCC recommends reducing the burden of these levies on consumers in higher risk areas by levying stamp duties for home, contents and strata insurance with reference to the sum insured value, rather than the premium level. Calculating the stamp duty by reference to the premium rather than the property value means that people in higher risk areas are charged a higher amount for insurance to reflect the extra risk, and they pay an inflated stamp duty amount on that premium as a result. This is a windfall gain for the state government and an unfair double penalty on high risk property owners, which has the potential to drive up levels of uninsurance and underinsurance. The ACCC also recommends that governments should direct a portion of revenue from stamp duties on insurance products towards measures to improve affordability for low income consumers or to fund mitigation works.<sup>6</sup>

While the ACCC recommendations were made in the context of increasing insurance premiums in Northern Australia due to flood and cyclone risk, these issues are now clearly pertinent Australia wide as the impacts of climate change bring catastrophic fire and storm and flood conditions across the entire country. The NSW government should not receive a windfall gain from the growth of insurance premiums in high risk areas after the February-March 2022 floods. Any recouping of costs to cover emergency services should be shared by the community fairly via a direct levy on property as mentioned above, rather than by unnecessarily inflating the costs of purchasing adequate insurance.

### ***Clean up and access to temporary housing***

The NSW Government should be commended for coordinating the clean-up of residential and commercial properties damaged in the 2022 floods. This coordinated effort has been really critical in trying to help homeowners with underinsurance. Not all insurance policies include debris removal as an extra benefit, many simply require the homeowner to deduct the cost (upwards of \$50,000) from their sum insured.

The ACCC has also recommended additional measures that the NSW Government could enact which would assist with underinsurance problems after major flood disasters. The first is to ensure that insurance providers disclose costs that count towards 'sum insured' – like debris-removal, demolition or professional fees where these are not provided for through a separate allowance under the policy. This will help consumers make more informed decisions about their nominated sum insured. This information should also be listed on any quotes for new policies, renewal notices and on their certificates of insurance.

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<sup>5</sup> Australia's future tax system: Final Report, Part 2: Detailed analysis, Chapter E: Enhancing social and market outcomes, 2 May 2010, p. 474.

<sup>6</sup> ACCC, Northern Australia Insurance Inquiry, First interim report. November 2018. Recommendation 2. Available at: <https://www.accc.gov.au/system/files/Northern%20Australia%20Insurance%20Inquiry%20-%20First%20interim%20report%202018.PDF>

Another measure that NSW could take is to prompt consumers to consider likely insurance costs before purchasing real estate. Consumers should be prompted to obtain an insurance estimate as part of their due diligence, which would help to dissuade homebuyers from purchasing properties where they will not be able to afford adequate annual insurance. This applies to insurance coverage for all kinds of natural disasters, not just flood. If home insurance policies are better standardised than the estimated insurance cost could be listed in a statutory information disclosure for a real estate transaction. NSW would need to take steps to ensure that vendors are unable to receive payment for the inclusion of an insurance quote in the disclosure documents.

Access to temporary accommodation has been a major problem arising from recent flood and storm events. Even people with adequate insurance cover cannot take advantage of their temporary accommodation benefits when there are no suitable properties to occupy. There is a role for the NSW government in exploring options for boosting temporary housing stock to ensure that people can be safely housed pending the repair or rebuilding of their properties.

### Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox  
Chief Executive Officer  
Financial Rights Legal Centre  
Direct:  
E-mail:

### About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.