

Disaster Insurance law

Presented by

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Why are we running this webinar?

- Disaster Season is about to start
- Climate change is increasing the frequency and severity of disaster events
- Empowering lawyers and community workers to identify and assist clients with legal problems caused by disasters.



Topics we will cover

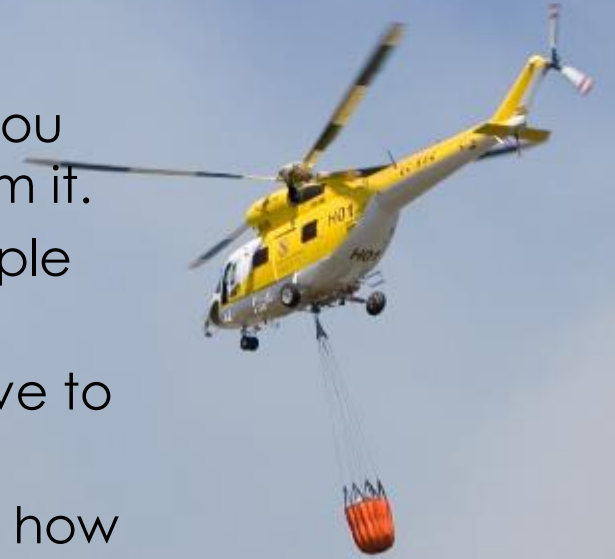
- Helping clients during a disaster
- Making an Insurance claim
- Cash Settlement vs a Rebuild of the Property
- What about building codes
- Scope of Works
- What if there is a mortgage?
- Contents Claims
- Fences and animals
- Debris
- Lodging a complaint with IDR and AFCA
- Paying an excess
- Claims Agents
- General Insurance Code of Practice



Helping Clients during a Disaster

Key Points to remember about the clients you are dealing with:

- They have all suffered trauma. It may not be obvious in everyone you deal with and some people will not recognise they are suffering from it.
- Tread carefully and kindly but do not fall into the trap of telling people what they want to hear.
- People should only have to tell their story once. Each time they have to tell their story it retraumatizes them a little bit.
- Clients may not have easy phone or internet access depending on how badly they have been affected.
- Keep paperwork to a minimum.
- Vicarious Trauma. It is just as important to look after yourself as it is your clients.



Making an Insurance claim

The Bush telegraph will be in operation following the fires with all sorts of information about:

- (a) The right things to say to an Insurer.
- (b) The wrong thing to say to an Insurer.
- (c) That you should or should not make a claim depending on which suburb or street you live in.

Our advice should be simple:

- You should always lodge a claim. It is not for the client to make that call.
- A client loses nothing by lodging a claim.

Making an Insurance claim cont.

Once a claim is lodged an assessor will attend the property to assess the claim.

The assessor will consider:

- (a) The topography of the property and what happened.
- (b) The damage to the property.
- (c) Anything the clients saw, heard or experienced.

They will then write a report to the insurer. The insurer then assesses whether the damage is covered by the insurance policy.

Assessors are not infallible. Clients have won cases when what they saw or heard was different to what an assessor concluded.

(We will come to the dispute process if a claim is refused later)

Cash Settlements vs a rebuild of the Property

Cash Settlements are where the insurer offers to pay you money to settle all or part of your claim. The insurer will make the assessment as to whether a cash settlement is reasonable.

A Cash Settlement might be reasonable if:

- (a) It is not safe to rebuild (eg Building Codes now prevent it).
- (b) The client does not wish to rebuild the property.
- (c) The claim is only being partially paid. The issue of pre-existing damage is relevant here.
- (d) The client purchased a sum insured policy and the sum insured will not allow the property to be rebuilt.
- (e) Repairs are being done by a builder who is not an approved builder of the insurer.

Cash Settlements vs a rebuild of the Property

Things to be aware of:

- (a) Make sure any cash settlement reflects what it would cost the client to rebuild the property and not what it would cost the insurer.
- (b) If there is a mortgage, check with the lender about their approach to a cash settlement. A lender might request any cash settlement be paid to them.
- (c) It is important to obtain independent quotes based on a scope of works.
- (d) If a client cash settles they will not get the benefit of any guarantees on repairs offered by the insurer.
- (e) If a claim is cash settled within 1 month of a disaster, a client may ask the insurer to reassess the loss within 12 months of the claim being paid.
- (f) Managing the administration associated with a rebuild can be difficult.

What about building codes?

Be aware that sometimes building codes may have changed between when a property was built and now. This can affect:

- (a) It might mean the property cannot be rebuilt on the property at all or can only be rebuilt in a different way.
- (b) It may be more expensive to rebuild a property because of the new requirements in a building code.
- (c) If you have a sum insured policy, you may not be able to afford to rebuild a property in the same way.

Rebuilding a property – Scope of works

- To progress the rebuilding of a property usually a scope of works is required.
- A scope of works lists the repairs that need to be completed that fall under your insurance claim.
- It is usually used for higher value and more complex claims.
- Usually a loss adjuster, build or engineer will prepare the report.
- Developing a scope of works will often involve a number of discussions with the client.
- A scope of works will not have to be perfect before work starts because it is common for the rebuild process to highlight further damage that needs to be fixed as part of the rebuild process.
 - Where this happens the scope of works will be adjusted.
- A scope of works can be a very technical document. If a client is uncertain about whether particular damage is covered by the scope of works it is important to ask questions.

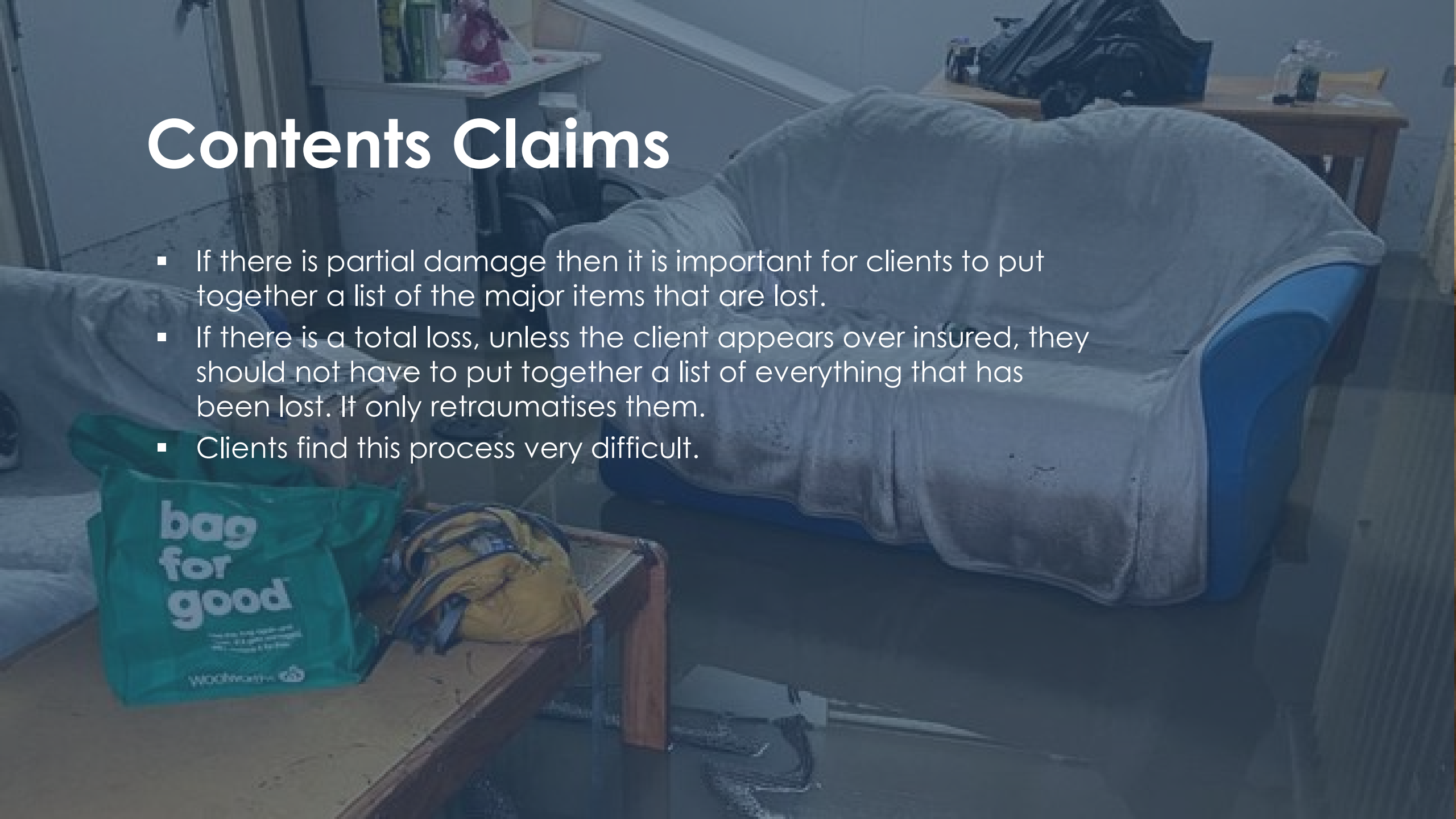
A man in a blue t-shirt and shorts stands in the center of the frame, looking towards the camera. He is positioned in front of a brick building that has suffered significant structural damage. The roof is missing in several places, leaving exposed wooden beams and a charred horizontal beam across the top. The brickwork is visible and appears to be made of light-colored bricks. The ground is covered in debris and rubble. The sky is clear and blue.

What if there is a mortgage?

- Important for deciding whether to accept a cash settlement.
- If they have a mortgage over the property, a lender may ask for the cash settlement to be paid onto the mortgage or may ask that the cash settlement be paid to them so that they can manage the rebuild.
- It is really important to communicate with a lender about their approach to this before making a decision about a cash settlement.

Contents Claims

- If there is partial damage then it is important for clients to put together a list of the major items that are lost.
- If there is a total loss, unless the client appears over insured, they should not have to put together a list of everything that has been lost. It only retraumatises them.
- Clients find this process very difficult.



Fences and Animals

- This is a big issue for farmers.
- Can be very difficult to find insurance that protects against losses of this type.
- There will either be coverage or there won't.



The background image shows a scene of significant destruction. In the upper left, a house with a corrugated metal roof is partially collapsed. To the right, a white car is heavily damaged and partially buried in a large pile of debris, including wood, metal, and other household items. The foreground is a muddy, wet area covered with various pieces of debris, including large sheets of white material and wooden planks. The overall atmosphere is one of devastation and the aftermath of a major disaster.

Debris

- Some insurance policies provide coverage for the cost of debris removal.
- Some policies don't.
- In the most recent East Coast bushfires the problem was that different State Governments had different approaches to how debris would be dealt with.
- Important to check with your State Government what there approach is to providing assistance with debris removal.

Lodging a Complaint against an Insurance Refusal

Two Step process:

STEP 1.

Lodging a complaint with the insurer's Internal Dispute Resolution area.

Tips for an IDR Complaint

- It is generally speaking not enough to say "I disagree."
- Help the client identify what they saw or heard that differs from what the insurer or assessor has taken into account.
- What is it that the insurer has got wrong legally.
- 30 days to respond if it is a standard complaint.
- Reality is that disaster complaints are often not standard.

Lodging a Complaint against an Insurance Refusal cont.

STEP 2.

Lodging a Complaint with the Australian Financial Complaints Authority AFCA
www.afca.org.au Ph 1800 931 678

Tips

- The client's experience of what happened is relevant especially if it does not agree with expert reports.
- Free for consumers.
- Consumers do not have to accept Determination from AFCA and can still take their matter to Court. Reality is that due to cost this is not an option for most consumers due to cost.

Claims Agents

Please watch out for claims agents.

For a fee these organisations will either:

- (a) Offer to manage your claim with the insurer for a fee.
- (b) Offer to dispute your insurance claim with your insurer for a fee.

The process for disputing an insurance claim is free.

These claims agents do not tend to see consumers achieve any better results and often disrupt the process.

Required to be licensed from 1 January 2022 and a member of AFCA.

Maintenance/Lack of repair Clauses

Be wary of Insurers denying a claim because they allege that the property has not been properly maintained.

These clauses are often used by insurers as a catch all to deny a claim without evidence of:

- (a) What maintenance was not done?
- (b) What repairs were not done properly?
- (c) How that maintenance or repair would have made a difference to the damage caused to the property?

Financial Hardship

- If you have a mortgage
 - Ask for financial hardship with your lender
 - If you can't come to an arrangement with the lender complain to AFCA
- Other help
 - Local council programs for local council rate relief
 - State government assistance for loans etc
 - Release of superannuation in specified circumstances
 - Any state or commonwealth grants that are available



General Insurance Code of Practice 2020

- The vulnerability and financial hardship provisions of the General Insurance Code came into force on 1 January 2021 - <https://insurancecode.org.au/app/uploads/2020/06/2020-GI-Code.pdf>
- See Part 9 – Customers Experiencing vulnerability
- Part 10 – Financial Hardship
- Part 8 – Making a claim does not come into force until 1 July 2021 but there are similar provisions in the earlier version of the Code.
- See Part 7 of 2014 Code - <http://codeofpractice.com.au/document>
- Key Issue to watch out for is the issue of paying an excess.

Referral pathways



Legal Aid Queensland
1300 527 700



Legal Aid NSW
1800 801 529

Other services



Financial Rights Insurance Law Service
1300 663 464

Thank you

Please type any questions into your question panel

