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Banking royal commission: ASIC 'whitewash' let insurers gouge clients

RICHARD GLUYAS THE AUSTRALIAN 12:00AM June 23, 2018

From a balcony perched high above Victoria's famed Surf Coast, Mark Strachan used to watch lazy Southern Ocean breakers crash on to the Wye River beach below.

Strachan was overseas for the Christmas 2015 bushfire, but the ferocity of the blaze, which incinerated 116 homes including his own, marked the beginning of a year-long nightmare over the handling of his insurance claim by Suncorp-owned AAMI.

"I told AAMI: 'That's my super on that (Wye River) hill'," the Geelong-based professional photographer tells *The Weekend Australian*.

"I also said I was prepared to go the distance against them. It was a very stressful time for me and my wife."

The fallout from AAMI's handling of claims from the Wye River disaster reverberates to this day.

On Monday, the financial services royal commission turns its attention to the industry's interaction with regional and remote communities, with Wye River one of four case studies in a segment on natural disaster insurance.

The others include Cyclone Debbie in March 2017, which is the nation's second most expensive disaster after Cyclone Tracy hit Darwin in 1974, the November 2016 hailstorm in Broken Hill, and the April 2015 Hunter Valley floods in NSW.

A Suncorp spokeswoman said the company supported the royal commission and would welcome any measures to improve customer outcomes, but it was inappropriate to comment on the Wye River bushfire.

Federal Liberal Party MP Sarah Henderson, who represents the Corangamite electorate that incorporates the Surf Coast, resumed her attack yesterday on the insurer's handling of the Wye River claims.

Questioning ASIC in her role as chairwoman of a parliamentary oversight committee, Henderson said homeowners who believed they had complete replacement cover had gone to “hell and back”.

The choice for them came down to quotes submitted by a contractor on AAMI's panel, or a rival bid from the policyholder's preferred builder, with the difference topping \$500,000 in the case of one Wye River resident.

While customers still had the option of retaining their own builders, any cash settlement of the claims was at the lower amount.

Henderson yesterday branded ASIC's review of the disaster as a “complete whitewash”.

“We now have this insurance policy being offered around Australia with the same flaws and ASIC not addressing the fundamental problems,” Henderson said.

New ASIC chairman James Shipton responded that he had met a Wye River resident only this week who still hadn't been able to rebuild and was forced to take legal action against his bank and insurance company to get some level of redress.

Shipton said the circumstances surrounding Wye River were “incredibly confronting”, and it highlighted the need for insurers to be mindful of their human and social obligations, not just their legal positions.

In further questioning, the true nub of the issue was exposed — ASIC has no jurisdiction at all over claims-handling because it's a specific exclusion in the Corporations Act definition of a financial service.

As a result, claims-handling is not subject to the act's consumer protection provisions, which means the service doesn't have to be efficient, honest or fair.

That's why ASIC was restricted to a slap on AAMI's wrist when it reviewed its enforcement options post-Wye River.

The regulator announced in November last year that AAMI had paid \$43,200 in penalties for misleading advertising in relation to its “complete replacement cover” home-building insurance product.

ASIC's beef was that the statement gave the impression that AAMI would itself take the steps to rebuild a home or repair a home when a claim was made, but the policyholder could be left to organise the rebuild if AAMI chose to pay out the "assessed cost" in cash.

A group of seven Wye River homeowners, including Strachan, banded together to take on AAMI when quotes supplied by their builders far exceeded the insurer's assessed cost.

Strachan, who has sold his Wye River property and is not appearing as a witness in the royal commission, says he reached a settlement with AAMI two days before the first anniversary of the bushfire. The terms are subject to a nondisclosure agreement.

"AAMI took a while to come around but we're very happy," he says.

The issue of natural disaster insurance has been examined extensively by inquiries in recent years, from two main perspectives. The first is the availability and affordability of insurance, and the reasons for non-insurance and underinsurance.

A plethora of disasters, particularly in the nation's cyclone-prone north, has led to surging premiums, making insurance increasingly unaffordable.

A study from 2006 to 2013 found that the insurance industry paid out more than \$1.40 in north Queensland claims for every \$1 of premium collected.

There are still more than 100,000 homes in the area that fail even the most basic test of cyclone resilience.

The second aspect concerns the conduct of insurers and the performance of insurance markets, such as the handling of disaster-related claims, the effectiveness of the industry code of practice, reliance on policy exemptions and level of pricing and competition in some locations.

Industry sources point out that policies for complete replacement cover, which led to the Wye River controversy, only extended to replacement of the original home, along with any upgrades to meet new building standards.

Despite this, policyholders often sought to "build the house they want".

Post-disaster rebuilds in isolated regions also led to extreme inflation, so it was important to try to keep costs down and not trigger a savage round of premium rises.

“But above all, the conversation should be about how we build a country that’s more resilient to climate change,” an executive says.

While reforms to enhance ASIC’s oversight of claims handling now await the outcome of the royal commission, Henderson is fed up with AAMI’s excuses and ASIC’s failure to take timely action. “In my view, AAMI deliberately short-changed homeowners, which was unjust and heartbreaking,” she says.

“When I raised this issue (at yesterday’s committee hearing), I was disappointed with ASIC’s response.

“While it found that AAMI had misled customers and fined AAMI accordingly, I do not believe that ASIC ever appropriately addressed AAMI’s conduct.

“If changes in the law were required, why didn’t ASIC say something at the time?”
