

April 2011

## NATURAL DISASTERS INSURANCE REVIEW

### Submission

Thank you for the opportunity to contribute to the Review. The Terms of Reference do not explicitly refer to bodies corporate; owners corporations etc. We assume they are implicitly within the Review's scope as these are the vehicles for providing key insurance covers for a large proportion of individuals and businesses (eg ~22.5% of households nationally based on 2006 Census).

Industry estimates suggest approximately 400 such entities were directly affected by the Brisbane floods. Very few if any had flood coverage; losses which in many cases run into six figures will be borne collectively by the owners through reserve or sinking funds. It is common in normal circumstances for these to be significantly under-funded. As a result the floods are having a significant impact on the financial position of many of these buildings and will require substantial injections of funds from individual owners and/or significant borrowings.

The reasons for the lack of flood coverage are twofold: availability and affordability. Anecdotally, some buildings were unable to obtain quotes for flood cover. Others found that the price was a multiple of the standard policy excluding flood and chose not take it up.

The Brisbane floods have raised questions about the fiduciary duties of both professional strata managers and individuals on executive committees for these buildings in taking out appropriate insurance. It is possible if not likely that these questions will be tested at some point in the form of claims against professional indemnity and/or directors and officers covers.

This would be an unsatisfactory and highly inefficient means for recouping these losses if such claims were to be successfully brought. The more pressing issue is to ensure greater availability and improved affordability of flood covers. We are seeing similar situations unfold in cyclone-prone areas of northern Queensland where the exit of some insurers is having a domino effect as their competitors seek to avoid increasing their own exposure to these risks.

In our view a sustainable solution is unlikely to occur without further government intervention in the market. Arguably, governments at least at state and local level have some moral if not legal responsibility for the risks created by past planning and development decisions. Some financial exposure to the consequences of these decisions may concentrate their minds on avoiding such risks in the future as well as help the economic case for investment in mitigation.

Government intervention should also acknowledge the implicit of not always explicit current exposure of community finances, whether through government-funded disaster relief and recovery programs or charity appeals, to situations where there is no insurance.

In the strata and community titled property sector, government intervention already takes the form of statutory obligations to take out insurance in every state and territory's legislation governing the operation of these schemes. A schedule of the relevant provisions is attached.

Generally speaking, the public policy objective behind these provisions is to protect individual owners from the collective risks attached to the schemes. However the legislation in most cases does not contemplate the situation where the necessary covers are either unavailable or uneconomic. Nor does it consider the unlimited liability of owners corporations/bodies corporate and the joint and several liability of individual owners to these legal entities, specifically in cases where the cover is either unavailable, sub-limited, or exceeded by a loss. These unfunded liabilities of the owners corporations/bodies corporate must be met in full by its members.

In compulsory motor accident schemes, nominal insurer arrangements protect claimants where the responsible party is uninsured or cannot be identified. Historically, governments have also intervened in insurance markets in the form of statutory monopolies when access and affordability became an issue eg compulsory motor, workers compensation, home owners warranty.

Strata and community title property is a specialised market segment where, like many others, insurers compete through risk selection as well as growth and retention strategies. Generally the market works well and any government intervention should be carefully targeted to encourage rather than discourage individuals, businesses and bodies corporate/owners corporations to provide for their own risks.

Ideally, this would take the form of a geographic- and risk-specific mechanism that reduces the exposure of insurers to extreme weather events while allowing them to continue to offer affordable covers for other, more generic risks in those locations. It should also include provisions to ensure disclosure of the prescribed risks to prospective purchasers of these properties.

Critically, this mechanism must explicitly provide for owners corporations and bodies corporate. It should recognise the different types of exposure in high- and low-rise settings, the compulsory insurance requirements of state and territory legislation and the collective rather than individual nature of the risks.

It is likely that the more efficient model will involve some form of reinsurance or claims recovery process that directly reduces the exposure of insurers' capital, rather than a premium subsidy which must necessarily also cover the considerable cost of capital associated with those risks. In this context it is noteworthy that these issues do not arise in the Northern Territory where the Territory Insurance Office (TIO) is able to provide extreme weather covers on a sustainable and commercial basis.

Yours sincerely

**Mark Lever**  
**Executive Officer**

<b>NSW</b>	STRATA SCHEMES MANAGEMENT ACT 1996 s83	<p>(1) The owners corporation for a strata scheme for the whole of a building must insure the building and keep the building insured under a damage policy with an approved insurer in accordance with this section.</p> <p>(2) The building is to be insured for at least the value of the building indicated by the last valuation obtained for the building in accordance with this Division.</p> <p>(3) The damage policy is to be in the name of the owners corporation.</p> <p>(4) This section does not apply to an owners corporation for a strata scheme comprising 2 lots if:</p> <p>(a) the owners corporation so determines by unanimous resolution, and</p> <p>(b) the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot, and</p> <p>(c) no building or part of a building in the strata scheme is situated outside those lots.</p> <p>(5) An owners corporation that breaches subsection (1) is guilty of an offence. Maximum penalty (subsection (5)): 5 penalty units.</p>
<b>Vic</b>	Owners Corporations Act 2006 s59	<p>(1) An owners corporation must take out reinstatement and replacement insurance for all buildings on the common property in accordance with this Division.</p> <p>(2) The insurance required under subsection (1) is insurance for damage to property under which the owners corporation insures for-</p> <p>(a) the cost necessary to replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition when new; and</p> <p>(b) the payment of expenses necessarily and reasonably incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary, being incidental to the replacement, repair or rebuilding of the damaged property.</p> <p>(2A) The insurance required under subsection (1) includes reinstatement and replacement insurance for the owners corporation's portion of any shared services.</p> <p>(3) The owners corporation must ensure that the insurance required under subsection (1) includes-</p> <p>(a) a provision that the interests of mortgagees are noted; and</p>

		<p>(b) a provision that a mortgagee whose interest is noted shall be given the notices that are required under section 59 of the Insurance Contracts Act 1984 of the Commonwealth at the same time that those notices are given to the insured; and</p> <p>(c) a provision that the insurer cannot avoid the whole contract for breach of a condition of the contract unless the breach is by the owners corporation or all lot owners, but the insurer has a right of indemnity against those lot owners who breach the contract.</p>
<b>Qld</b>	BODY CORPORATE AND COMMUNITY MANAGEMENT (STANDARD MODULE) REGULATION 2008 S178	<p>(1) The body corporate must insure, for full replacement value--</p> <p>(a) the common property; and</p> <p>(b) the body corporate assets.</p> <p>(2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this part.</p> <p>(3) A policy of insurance taken out under this section--</p> <p>(a) must cover, to the greatest practicable extent—</p> <p>(i) damage; and</p> <p>(ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; And</p> <p>(b) must provide for the reinstatement of property to its condition when new.</p> <p>(4) The owner of each lot that is included in the community titles scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.</p>
<b>WA</b>	STRATA TITLES ACT 1985 S53-54	<p>53C . Insurance for common property in single tier strata schemes</p> <p>(1) The strata company for a scheme shall —</p> <p>(a) insure and keep insured any building, or part of a building, or improvement on the parcel that is common property; and</p>

	<p>(b) effect and maintain insurance in respect of damage to property, death or bodily injury for which the proprietors of lots in the scheme could become liable in damages as holders of the common property.</p> <p>(2) The strata company does not have the obligations described in subsection (1) if —</p> <p>(a) there is no common property in the scheme except —</p> <p>(i) cubic space in which there is no building or improvement above or below the horizontal boundary of any lot; or</p> <p>(ii) fencing on the boundary of the parcel or any lot; or</p> <p>(b) the strata company has by resolution without dissent (or unanimous resolution in the case of a two-lot scheme) determined that subsection (1) is not to apply to the scheme.</p> <p>(3) A resolution under subsection (2)(b) remains in force until —</p> <p>(a) it is revoked; or</p> <p>(b) it ceases to have effect under subsection (4).</p> <p>(4) A resolution of a strata company under subsection (2)(b) ceases to have effect if a proprietor at any time after the passing of the resolution serves notice in writing —</p> <p>(a) on the strata company; or</p> <p>(b) in the case of a two-lot scheme, on the other proprietor, that he requires that subsection (1) apply to the scheme.</p> <p>(5) While a resolution under subsection (2)(b) is in force —</p> <p>(a) whether there is insurance in respect of —</p> <p>(i) the share of a proprietor in any building in the scheme that is common property; or</p> <p>(ii) damage to property, death or bodily injury for which a proprietor of a lot in the scheme could become liable in damages as</p>
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the holder of a share in the common property;

(b) the occurrences to be insured against by a proprietor in relation to those matters; and

(c) the terms on which any insurance is obtained,

are at the discretion of the proprietor.

53D . Strata company's obligations where it has an insurance function in single tier strata schemes

(1) This section applies where —

(a) a determination is in force under section 53B(2); or

(b) in accordance with section 53C, a strata company has the obligations described in subsection (1) of that section.

(2) This section also applies where a strata company makes a determination to insure common property that it is not obliged to insure by reason of section 53C(2)(a).

(3) In those cases the strata company shall —

(a) insure and keep insured any building to which its obligation extends to the replacement value against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake; and

(b) effect and maintain insurance in respect of damage to property, death, or bodily injury for not less than \$5 000 000 or such other amount as may be prescribed in place of that amount.

Penalty: \$400.

(4) Section 54(2) and (3) apply to a strata company's obligations under subsection (3) as if they referred to that subsection.

54 Insurance of buildings and strata companies

(1) In this section —

		<p><i>strata company</i> means a strata company for a scheme other than a single tier strata scheme.</p> <p>(1a) Subject to subsection (4) and section 103J, a strata company shall —</p> <p>(a) insure and keep insured the building to the replacement value against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake; and</p> <p>(b) effect and maintain insurance in respect of damage to property, death, or bodily injury for which the strata company could become liable in damages in an amount of not less than \$5 000 000 or such other amount as may be prescribed in place of that amount.</p> <p>Penalty: \$400.</p> <p>(2) A contract of insurance entered into for the purposes of subsection (1a) may provide that, instead of the work and the payments specified in the definition of “replacement value” in section 53 being carried out or made upon the occurrence of any of the events specified in the policy, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy.</p> <p>(3) It is a defence to a charge of an offence against subsection (1a) for a strata company to prove that, despite having taken all reasonably practicable steps available to it to comply with that subsection, no insurer is willing to enter into a contract of insurance, on reasonable terms, that meets the obligation imposed by that subsection.</p> <p>(4) In the case of a survey-strata scheme, the obligation of the strata company under subsection (1a) applies only to a building that is common property in the scheme.</p>
SA	COMMUNITY TITLES ACT 1996 S103	<p>(1) A community corporation must insure—</p> <p>(a) the buildings and other improvements (if any) on the common property; and</p> <p>(b) in the case of a strata scheme—the building or buildings divided by the strata plan.</p> <p>Maximum penalty: \$15 000.</p> <p>(2) The insurance—</p> <p>(a) must be against risks that a normally prudent person would insure against and risks that are prescribed by regulation; and</p>

		<p>(b) must be for the full cost of replacing the buildings or improvements with new materials; and</p> <p>(c) must cover incidental costs such as demolition, site clearance and architect's fees.</p> <p>(3) In the event of a claim, any excess or shortfall resulting from under insurance must be met by the corporation</p>
<b>Tas</b>	STRATA TITLES ACT 1998 s99	<p>(1) The body corporate for a strata scheme must take out and maintain a policy of insurance for the buildings and other improvements (if any) on the site in accordance with this section.</p> <p>Penalty: Fine not exceeding 50 penalty units.</p> <p>(2) The policy of insurance—</p> <p>(a) must cover –</p> <p>(i) damage from fire, storm, tempest or explosion; and</p> <p>(ia) any other prescribed risks; and</p> <p>(ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of removing debris and the fees of architects and other professional advisers; and</p> <p>(b) must provide for the reinstatement of the buildings and improvements to their condition when new.</p> <p>(3) The body corporate for a community scheme must insure property in accordance with the requirements (if any) of the scheme.</p> <p>(3A) A body corporate may insure against –</p> <p>(a) loss from dishonesty, negligence or other wrongful conduct; or</p> <p>(b) other risks.</p> <p>(4) Despite any provision of the policy of insurance but subject to subsection (5), the body corporate (and not the owner of a lot) is liable to pay an amount payable, by way of excess, under the policy taken out by the body corporate under this section and any contribution that has to be made to the cost of reinstatement or repair because the insurance is not for the full replacement</p>



		<p>value of the insured property.</p> <p>(5) If an amount payable by way of excess under a policy of insurance taken out by the body corporate under this section arises from an event affecting only one lot, the owner of the lot is liable to pay the excess unless the body corporate decides, by ordinary resolution, that it would be unreasonable that he or she alone be required to pay the excess.</p> <p>(6) If an insurer of the body corporate accepts a claim by the body corporate based on an act or omission by an owner of a lot, the insurer has no right of subrogation in respect of the owner unless it is proved that the act or omission was wilful.</p> <p>(7) It is a defence to a charge for an offence against subsection (1) if the body corporate can show that, despite the body corporate having taken all reasonable steps available to it to comply with that subsection, no insurer is willing to enter into a policy of insurance, on reasonable terms, that meets the obligations imposed by this section.</p>
<p><b>NT</b></p>	<p>UNIT TITLES ACT S80</p>	<p>(1) Subject to subsection (3), a corporation shall insure and keep insured all buildings and other improvements on the parcel for their replacement value from time to time against all the following risks:</p> <p>(a) fire, lightning, tempest, earthquake and explosion;</p> <p>(b) riot, civil commotion, strikes and labour disturbances;</p> <p>(c) malicious damage;</p> <p>(d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus; and</p> <p>(e) impact of aircraft (including parts of, and objects falling from aircraft) and of road vehicles, horses and cattle.</p> <p>(2) Subject to subsection (3), a corporation shall insure itself and keep itself insured against liability in respect of:</p> <p>(a) death, bodily injury or illness; or</p> <p>(b) loss of, or damage to, property,</p> <p>occurring in connection with the common property as a result of an accident, for such aggregate amount of liability, being not less than the prescribed amount or, where no amount is prescribed, \$2,000,000 at any one time, as is determined by the corporation.</p> <p>(3) A corporation may, by unanimous resolution resolve that it will not insure against such of the risks referred to in subsections</p>

		<p>(1) and (2) as are specified in the resolution, and, in that event, the corporation is not required by this section to insure against a risk so specified.</p> <p>(4) Where a corporation has, under subsection (3), resolved that it will not insure against a particular risk, a proprietor or mortgagee of a unit may at any time serve on the corporation a written notice requiring it to insure against that risk.</p> <p>(5) 28 days after the receipt by the corporation of the notice, the unanimous resolution ceases to have effect in relation to the risk specified in the notice and the corporation shall, in accordance with subsection (1) or (2), as the case may be, insure against that risk.</p> <p>(6) As soon as is practicable after the receipt by the corporation of the notice, the corporation shall notify every member and every mortgagee of a unit:</p> <p>(a) of the particulars of the notice and the date of its receipt; and</p> <p>(b) of the date on and from which the risk specified in the notice is, or is to be, covered by insurance effected by the corporation.</p> <p>(7) Nothing in this section shall be construed as limiting the right of a corporation to effect such additional insurance as it determines.</p> <p>(8) In this section <i>risk</i> includes any liability referred to in subsection (2).</p>
<p><b>ACT</b></p>	<p>UNIT TITLES ACT 2001</p>	<p>s132 Building insurance by owners corporation</p> <p>(1) An owners corporation must insure and keep insured all buildings on the parcel for their replacement value from time to time against all of the following risks:</p> <p>(a) fire, lightning, tempest, earthquake and explosion;</p> <p>(b) riot, civil commotion, strikes and labour disturbances;</p> <p>(c) malicious damage;</p> <p>(d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;</p>

		<p>(e) impact of aircraft (including parts of, and objects falling from, aircraft) and of road vehicles, horses and cattle.</p> <p>(2) For all purposes related to any insurance taken out by it under subsection (1), an owners corporation is taken to have an insurable interest in the buildings on the parcel to the extent of their replacement value.</p>
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