

## **Parliamentary inquiry into insurer responses to the 2022 floods – Submission Financial Counselling Victoria (FCVic)**

FCVic welcomes the opportunity to make a submission to the Parliamentary Inquiry into insurer responses to the 2022 floods, on behalf of financial counsellors working with flood impacted communities across Victoria.

FCVic is the peak body and professional association for Victorian financial counsellors.

Financial counselling is a regulated profession providing free, confidential and independent information and advocacy for people experiencing, or at risk of, financial hardship. FCVic builds sector capability, and advocates on behalf of financial counsellors and their clients, on systemic issues that cause and exacerbate poverty and financial hardship.

In January 2023, the Victorian Government funded the Flood Recovery Financial Counselling Program, which comprises 9.2 FTE financial counsellor positions to provide response and recovery services to communities including those that experienced catastrophic level flooding<sup>1</sup>. A further 5.1 FTE financial counsellor positions were diverted to support small business clients impacted by the floods from July 2023.

In preparing this feedback, FCVic has drawn on the experiences of financial counsellors supporting flood-affected communities, who are ensuring that residents access and receive financial support entitlements vital to ongoing recovery, including fair and reasonable outcomes to their insurance claims.

This submission aims to highlight the breadth of insurance-related issues encountered to date by financial counsellors, which have caused significant detriment and additional trauma to their clients following their experiences of the flood events.

### Insurance Issues

#### 1. Experiences of policyholders before, during and after making claims

Financial counsellors noticed an increasingly common decision of insurance companies was to cash settle a home insurance claim, rather than support the insured to rebuild, regardless of the preference of the policy holder. Anecdotally, this seems to be a more recent shift, correlating with the increasing length of time since the disaster and more recent additional damage to the property developing since the floods, such as extensive growth of black mould.

Financial counsellors commented, *“delays in making claim decisions may be advantageous to insurance companies, as clients fatigue then resign to accept a cash settlement offer, even if lower than they had anticipated – they don’t want to think about it anymore, they just want the pain to ease”*.

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<sup>1</sup> The program is delivered in the following service regions: Loddon, Western Melbourne, Goulburn, Mallee, Central Highlands and Outer Eastern Melbourne.

One financial counselling client had a 'Replacement Value policy'. The property damage was appraised by the insurer's assessor shortly after the October 2022 flood event, and he advised the insured that the damage was able to be repaired... Subsequently however, a total loss was internally determined. Following a lengthy delay in advising their customer, the insured found out in May 2023 that they would be unable to have their home replaced with a rebuild, and would have to cash settle as it was the insurer's preference. The client was distraught at having the risk passed on to them for the rebuild.

Financial counsellors cited numerous examples of extraordinarily low settlement offers that they were advocating on and attempting to overturn for fairer outcomes.

Case examples include:

- \$3,000 offer accepted by woman with brain tumour, on a building and contents policy, where significant damage had occurred.
- An elderly couple with building and contents cover accepted an offer of \$12,000 (to cover materials) as the man "thought he could repair the rest himself and didn't want to be a burden as he knew others were worse off". The financial counsellor claims it was blatantly obvious the man was not physically capable of managing the works, and she felt the *"insurance company failed to establish his capability or even allow a sufficient payout and just wanted a quick closure"*.
- In another case, \$24,000 was the initial offer on a building and contents policy, which after extensive advocacy by the financial counsellor was raised to \$193,000. The insured was an elderly man in poor health. Prior to the financial counsellor's intervention, the insured's son had been advocating with marginal success in getting an increase (was a competent business owner and had previous insurance claim experience with a bushfire). The son experienced re-traumatisation, becoming highly distressed at "being fobbed off" for what amounted to his unfamiliarity with insurance terminology, that he asserts is inaccessible to ordinary people, and was angry about the multiple barriers he encountered.
- Yet another case where \$55,000 was first offered on a contents policy claim and refused by the insured. After some persistent advocacy by a financial counsellor, this resulted in \$144,000 as the third offer by the insurer. The financial counsellor claims that the sheer inadequacy of the first offer (calculated on an incomplete assessment that omitted contents of two of the bedrooms) should have been obvious to the insurance company. The final offer only came about when the matter was referred to AFCA, who escalated internal dispute resolution, resulting in the third offer. The insurance company was also ordered to pay an ex-gratia amount of \$5000 on top of the claim as compensation. The company would not payout the temporary accommodation payment provision of the policy initially claiming it was because the insured was living rent free in (time-limited) temporary accommodation provided by the government. Further advocacy resulted in the insured receiving an additional \$67,000 from their insurer for a caravan to enable them to live on their property.
- Financial counsellors also advised that cash settlement "uplifts" were not routinely offered, and rarely known about by policy holders – and often had to be negotiated after the offer was found to be inadequate to complete the scope of works. Many policy holders found that the costings calculated by the insurance companies were significantly under the prices charged by local tradespeople, and for locally sourced materials. When uplifts (to bridge the cost gap between insurance company

contractors and local contractors) were successfully negotiated, usually by the financial counsellor applying negotiation pressure, the percentage increases agreed to, varied considerably between policy holders and insurance companies for the same disaster event. Financial counsellors from one service provider advised that all of the people they had seen who were insured with a particular insurance company were flatly “refused uplifts as a policy decision”.

- One 85-year-old client with a daughter acting as a financial power of attorney, applied for an uplift to cover the cheapest quote obtained for building costs, but was refused by the insurer. The financial counsellor intervened and the figure was instantly raised by 20%.
- In another example, a financial counsellor’s client had a claim accepted for the insurer to repair the property, however after months of delay in commencement, and additional damage having surfaced, the insurance company refused to rebuild covering the arising damage, and the insured was forced to take a cash settlement based on the original assessment.

Financial counsellors also identified a practice, on more than one occasion, of insurance companies offering “hush” money (e.g. \$5,000) to divert customers from going to an external dispute resolution process with AFCA (where the fee imposed on the insurer can be up to \$9,000 for a complaint).

## 2. Timeframes for resolving claims

A growing trend reported by financial counsellors is that builders are refusing to warrant works due to the additional damage to properties that came about as a consequence of delays in insurance claims processing and other delays outside the insured’s control.

Financial counsellors observed that when damaged properties were assessed after the floods, floorboards had not been pulled up to determine the full extent of damage, and many issues are now arising at commencement of rebuilding, concerning the sub floor, soil clearance height, or stump damage, halting works and leaving residents concerned as to whether they will be able to rebuild.

## 3. Insurer communication with policyholders

Several cases were identified where financial counsellors felt that vulnerable clients were not well supported by their insurer. In one example, the insurance company “*did not provide a sensitive or appropriate response to my client who had experienced family violence. They forced my client to provide lock box access to trades to repair her property, despite the client advising them of her experience of family violence and that making a key available to her property made her feel unsafe*”. The financial counsellor felt that the insurer was more interested in rushing through the repairs to the property than treating this vulnerable customer with care and respect as they were paying emergency accommodation outside of the client’s policy limit.

Financial counsellors discovered cases where policy holders were compelled to sign a cash settlement confidentiality clause on a deed of release, and were not able to determine the reason for the provision, and were left “*wondering whether the insurance company wanted this concealed so it couldn’t be challenged*.”

A financial counsellor supported a case in which a man was told verbally by his insurer that he would receive a cash settlement of \$84,000 and advised to start looking for a caravan. When the funds did not arrive in the account, he enquired with the insurer who informed him that the offer was not authorised. The matter was settled several months later for only \$25,000.

Financial counsellors also worked on flood insurance cases where the insurance company was communicating with the insureds' mortgagee directly, to prioritise payment of the cash settlement to the bank, rather than dealing with and representing their own customers.

Financial counsellors had also been made aware of more than one insurance company advising policy holders that they *"would get a worse outcome if they engaged a financial counsellor"*.

#### 4. Experiences of internal dispute resolution processes

Financial counsellors had many cases where an initial "total loss assessment" decision was made, then later retracted after the policy holder, who wanted a repair, went to see a financial counsellor who initiated internal dispute resolution. In one case, following the financial counsellor's lodgement of an internal dispute, the "total loss" decision of the assessors was found on further inspection to be significantly excessive compared to the level of actual damage (*"nowhere near it"*).

Financial counsellors cited several cases where the scope of works detailed by the insurance company, forming the basis of offer of payment, were disputed for accuracy, challenged, and found to be wanting. Some clients have received between 4 and 8 scopes of works from the insurer and still have concerns.

Numerous insurance customers presented for financial counselling assistance where their claim was assessed as ineligible for cover, despite being insured for the event, due to assessor-identified alleged lack of maintenance. This potentially left them having to arrange and fund an alternative assessment to dispute the assumption of the root cause of damage (which policy holders believed was a direct result of the flood). Financial counsellors had cases where this had been obtained, the reports were at odds, and the insurer had then accepted the insured's report. In some cases, when the insurance company assessment documentation was requested by the financial counsellors, it was discovered that there was a lack of expert reports to back the insurer's decisions.

The use of the 'maintenance clause' to deny insurance claims was frequently encountered. Financial counsellors found the extent to which these assumptions were overturned when challenged by them or a legal representative was generally concerning, given most of the policy holders they saw lacked the skills to challenge decisions themselves and did not have personal contacts with qualified builders or were financially unable to fund their own expert assessment.

There are a number of financial counselling flood related cases in dispute related to cause of damage to stumps. Lack of maintenance on stump wear and tear is being cited by insurance companies as a reason for not proceeding with a rebuild of the rest of the property, where stumps are not covered in the product disclosure statement.

In one case, a previous insurance company had replaced the stumps in 2011 following a flood, and the client felt they were still in good order (no visible signs of deterioration

showing on the building) although noticed signs of them having moved as a result of the 2022 flood. The current insurer (relying on their engineer's report) is stating the structural damage was a result of some stumps not being replaced previously (unknown by the client), and had the works been completed correctly it was likely they would not have incurred the extent of damage in the recent flood event. This case is now in legal dispute about the insurance 'lifetime warranty on works'.

#### 5. Affordability of insurance coverage to policyholders

A policy holder in the Shepparton region had a building and contents policy premium of \$5,000 that included flood cover prior to the 2022 flood event. The following renewal with the same company was for \$26,000 for the same level of flood cover, or \$2,700 if they agreed to opt out of further flood cover. The client was on a pension of \$27,000 per year.

A small business financial counsellor worked with a business owner whose business insurance premium had been \$1,500 prior to the flood event. The renewal premium was quoted at \$17,000 if they wanted the flood cover provision. After negotiation by the financial counsellor, the company backtracked and said it was a mistake and should have been \$1,700 but without flood cover.

Financial counsellors saw residents with no insurance, or underinsurance, who explained that the cost to insure was prohibitive. Some residents felt it was better to cover for something rather than nothing and at least be able to afford to cover their mortgage loan. Others were aware that their property had pre-existing defects or required maintenance and were not in a position to pay to fix it, so they felt insurance on the building was a pointless waste of money.

#### 6. Types of insurance contracts

The financial counselling sector has concerns about insurance policy complexity and the literacy level required to understand a product disclosure statement being beyond many, and the ramifications this has on accessibility. One financial counsellor remarked: *"In whose interest is this? Our clients don't and can't understand the content". "The extensive amount of information and legalistic wording prevents them from being able to shop around with an informed approach"*.

Many clients were shocked that their claims were denied due to exclusionary policy provisions they had not been aware of, as it was not explained to them by the insurance company at time of signing.

A financial counsellor had a case of "over insurance" that was being contested by the insurance company. The sum insured, following the flood, was being denied and a cash settlement forced on the insured, reducing the expected payout from \$700,000 to \$300,000 (which included a reduction for some damage alleged to be pre-existing). What was perplexing about this case was that the original sum insured (and premium) had been calculated by the insurance company.

Small business financial counsellors had cases where the business insurance cover recommended by brokers was found to be inadequate to cover current costs, and there was a reluctance by the brokers to take responsibility or support negotiation with the insurance company. In other cases, the policy holders were reluctant to pursue the broker as they were a local resident, known personally to them, and also impacted by the event.

## 7. Obstacles to resolving claims

Contrary to Part 9 (98) of the General Insurance Code of Practice, financial counsellors representing vulnerable people across the state reported widespread refusal by insurance companies to accept the 'National Financial Counselling Authority to Act' on a client's behalf, although it was signed by the insured. Despite the fact that refusing to deal with a vulnerable customer's representative is a breach of the Code, financial counsellors were forced to spend considerable time advocating for the signed authorities to be accepted by insurers.

In one case, the financial counsellor conveyed relevant information, provided a signed authority and a request for action to the insurance company, disclosing vulnerabilities of the insured. Despite this, the company continued to repeatedly contact the insured directly, resulting in an anxiety condition developing for the insured.

For policy holders in a state of trauma, complex cases are difficult to pursue. Insurance customers are likely to experience lengthy on-hold waits, going back and forwards to provide information and contact different representatives, only to receive conflicting messaging, and often then find it too hard to proceed.

Financial counsellors have supported numerous clients to lodge internal disputes or an external dispute with AFCA, and have noted a majority of these resulted in better outcomes for policy holders. However, financial counsellors have expressed frustration at the lack of sufficient funded legal expertise and capacity to support complex insurance matters that extend beyond a financial counsellor's remit (although they work well in a case management capacity when it is available). In cases where residents have a small business, irrespective of the level of income, there was no public funding for legal assistance for disaster related business/insurance issues and private costs were unaffordable if not available pro bono.

## 8. Recommendations

FCVic supports recommendations put forward by the Financial Rights Legal Centre<sup>2</sup>, in their report 2021 '*Exposed: Insurance problems after extreme weather events*', as these are still topical and relevant today as evidenced by the issues seen by financial counsellors working with disaster impacted clients.

- Insurers must communicate with consumers in a transparent manner, clearly informing them how their extreme weather event claim will be assessed and how their claim is progressing;
- Insurers need to take a proactive approach to progressing delayed claims, and identifying vulnerable customers for appropriate care;
- People affected by extreme weather events should be given the right to choose whether their claim is settled through a cash settlement or with a repair or rebuild managed by the insurer. They should also be supported with appropriate information to inform this decision;

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<sup>2</sup> Financial Rights Legal Centre, *Exposed: Insurance problems after extreme weather events* (July 2021), [https://financialrights.org.au/wp-content/uploads/2021/07/Financial-Rights-Exposed-Report\\_FINAL.pdf](https://financialrights.org.au/wp-content/uploads/2021/07/Financial-Rights-Exposed-Report_FINAL.pdf)

- Insurers should be required to base their cash settlement offers on genuine repair quotes, premised on the likely cost to the consumer, not the insurer;
- Insurers should carefully consider their obligations under the General Insurance Code of Practice when considering whether to offer cash settlements to vulnerable consumers;
- Insurers should not rely on defect, maintenance and wear and tear clauses to deny claims where there is compelling evidence the damage would have been caused irrespective of any reasonable efforts on the part of the property owner;
- Insurers should apply a fairness lens to defect, maintenance and wear and tear claims particularly for long-term or vulnerable customers;
- Insurers should be more proactive in raising issues concerning defects, maintenance, and wear and tear with their customers. Insurers should also implement initiatives to assist consumers to carry out maintenance where they have neither the resources nor the physical capacity to do it themselves;
- Insurers should be required to provide an estimate of an updated sum insured for home insurance consumers. This should be prominently displayed on a consumer's renewal notice along with the previous year's sum insured and the reason for any change;
- Debris removal and architectural fees should not be included in the sum insured but should be provided as benefits over and above the sum insured;
- An effective standard cover regime with standard definitions that are more in line with community expectations should be urgently introduced.

The report provides further recommendations for reform by government:

- Reform is required to ensure insurers cannot unreasonably avoid liability for damage caused by insured events because of defects consumers were not aware of, and could not reasonably have been aware despite appropriate due diligence on their part;
- People affected by extreme weather events should be provided greater support and community education to ensure they understand defect, maintenance and wear and tear clauses;
- Australian states should make local government data sets open and accessible to insurers and consumers to enable more automated data collection and to encourage disclosure of risks and facilitate better mitigation strategies;
- There should be better communication of the risks and costs of insurance to prospective property buyers;
- The Australian Government should accept and implement all the recommendations of the Australian Competition and Consumer (ACCC) Northern Insurance Inquiry;
- The Australian Securities and Investments Commission (ASIC) must take a proactive approach to its new claims handling oversight powers, providing robust guidance, active supervision and enforcement;

- Australian governments should determine how much risk individual homeowners should be asked to bear or whether society should share these costs more equitably;
- Direct premium subsidies to vulnerable residents in high risk areas should be implemented as the best way to assist citizens who face disproportionate risks because of their location.

#### 9. Case studies

This submission by FCVic can be read in conjunction with that submitted by Financial Counselling Australia, and the Victorian case studies provided therein.

FCVic wishes to emphasise that the complex insurance issues encountered by financial counselling clients are barriers to wellbeing recovery, and have been considered a worse experience than the trauma impact of the extreme weather event itself. Financial counselling services, in collaboration with community legal services and other case support services, are in contrast, vital enablers in the recovery journey – refer case examples of Frank and Kel, attached as appendices to this submission.

Thank you for the opportunity to make a submission to the Parliamentary Inquiry into insurer responses to the 2022 floods.

Please contact Tracey Blythe, Disaster Recovery Coordinator ([tblythe@fcvic.org.au](mailto:tblythe@fcvic.org.au)) if you have any questions about this submission.





<b>Code Name</b>	Frank
<b>Age</b>	81
<b>Occupation</b>	Aged Pensioner
<b>Education</b>	Unknown
<b>Location</b>	Rochester
<b>Family status</b>	Widower
<b>Nationality</b>	Australian
<b>Health</b>	Back injury, Respiratory
<b>Tech usage</b>	None
<b>Income</b>	Full Centrelink Pension

### Frank's Story

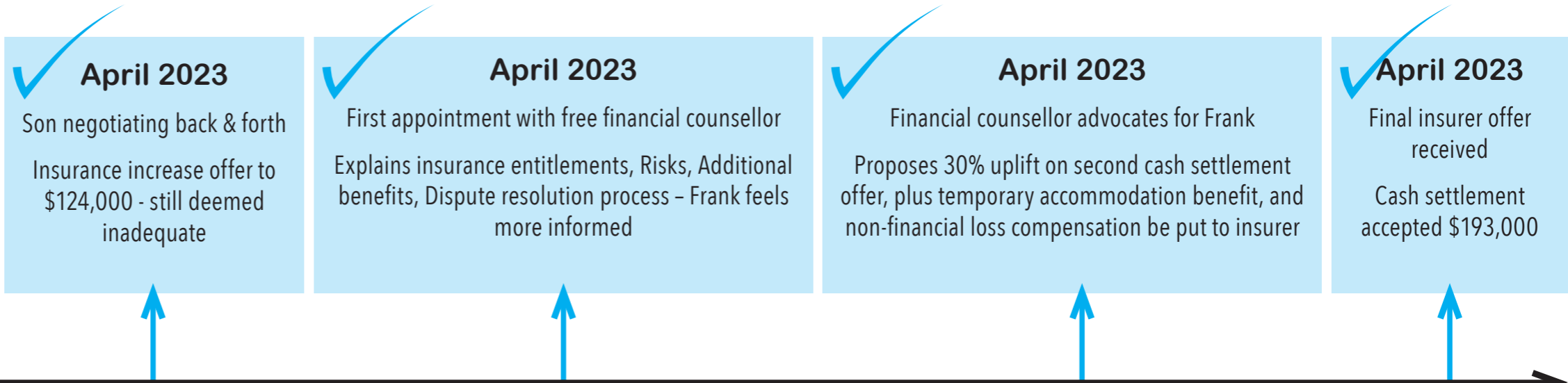
I was born and bred in Rochester and live there in my own home debt free. I had paid up house and contents insurance including flood cover. I am supported in practical ways by my adult children who don't live with me.

My home was completely flooded in October 2022. I chose to remain in my home despite the damage. My son was helping me with my insurance claim and we were shocked with how low their offer was. I could not have rebuilt and replaced the furniture I lost.

After a lot of negotiation, and a second unsatisfactory offer, we saw a free financial counsellor who gave us guidance.

I got a final offer that was nearly \$170,000 more than their first, I couldn't believe it!

**"I was worried, due to my age, if I left, I would never return"**  
- Frank



**"We were surprised and pleased to get what was needed... there might even be money left after the rebuild!"**  
With the information, directions of a financial counsellor in one day - just 24 hours, the insurer has agreed to pay another near \$70,000"

**"Dad now has money to pay for accommodation while the house gets rebuilt. It was in the policy but they never mentioned it!"**  
- Frank's son

**Early 2023**  
Low settlement offer  
Insurance offer \$24,000 for house & contents cover

**April 2023**  
Communication  
6 human errors were identified across the claim



<b>Code Name</b>	Kel
<b>Age</b>	32
<b>Occupation</b>	Hairdresser
<b>Education</b>	Secondary + TAFE
<b>Location</b>	North Eastern Victoria
<b>Family status</b>	2 children under 5 + defacto partner
<b>Nationality</b>	Australian
<b>Health</b>	Decline in mental wellbeing since flood
<b>Tech usage</b>	Good
<b>Income</b>	Small business (not GST registered), Centrelink FTB/ Wage

### Kel's Story

Prior to the October 2022 Victorian floods, I had a successful business with a turnover of under \$75,000 and no previous financial hardship in my business or personal life.

Two months prior to the flood, I moved the business premises from town to my personal property for family reasons. I updated my business insurance and was advised by the broker there was flood cover as part of the business insurance pack.

In the 2022 floods, my place of residence and the business space were inundated by water over 1 metre from the floor. It was left uninhabitable.

Since then, I have spent tens of thousands of dollars to reinstate the business premises. Added to this, after the business was flooded, the insurance broker advised he had made a mistake, and I was not covered for the business loss in case of flood.

Our family are currently living in a single-room shed, which is the fourth relocation since the floods. My claim for house insurance is in dispute regarding the scope of work needing to be fixed, so rebuilding won't begin in the foreseeable future. Insurance states cover for the subfloor and stumps is excluded from what they will pay.

**“Trying to negotiate with two different insurers after such a stressful event was making an already hard time even worse”**

**July 2023**  
 ✓ Kel engages with a free financial counsellor  
 House & contents claim negotiation by financial counsellor: insurance settlement figure increased by \$15,000 plus 20% uplift

**Aug-Sep 2023**  
 ✓ Broker code breach: financial counsellor seeks legal advice on broker misrepresentation of flood cover for business  
 Financial counsellor lodges complaint over stalled house & contents insurance with AFCA, plus second seeking penalty interest, compensation for non-financial loss

**October 2023**  
 ✓ House & contents claim offer: full payout offer for house and contents – an increase of \$80,000 on first offer, plus \$3,000 compensation  
 Business premises broker claim pending

**Jan-Feb 2023**  
 Scope of works received and disputed: inaccuracies; requested reassessment  
 Engineers report received: advised insurance exclusion for payment of subfloor & stumps for house

**Apr-Jul 2023**  
 2nd to 5th scope of works: further inaccuracies; requested reassessments  
 Kel experiencing a decline in her mental wellbeing due to stress

**September 2023**  
 Business claim lodged, refused: Advised no flood cover in policy (due to broker error from 12/10/22)

**“I wish I'd had earlier contact with my Small Business Financial Counsellor to understand my entitlements and have support negotiating with insurers”**