

Insurance Case Study – PDS

Background:

Ella lived in a raised home, with a garage and storage space underneath. The storage space was entirely out of the weather, on a concrete slab, with purpose made storage cupboards. The area was enclosed by only three walls, leaving one side open.

Ella stored various household items under her home. These items were damaged by floodwater in the 2022 event affecting the Northern Rivers of NSW. The insurer denied Ella's claim for the contents.

Insurer's Position:

The insurer denied cover for the goods stored under the home, on the basis they were stored in the storage area which was deemed "open air" storage and excluded under the policy. This was based on a definition of open air that determined that an area was in the open air if it was not enclosed by four walls, a roof, and lockable door.

PDS Analysis:

The PDS provided for three levels of cover. The limitation relating to goods kept in the open air applied on the lowest level of cover. It imposed specific limits on loss or damage caused by certain insured events. The application of this limitation across the remaining two levels of cover was inconsistent.

The term *open air* was defined in the PDS dictionary. NRCLC contention was that the combined effect of the inconsistent application of the limitation across the three levels of cover and the placement of the definition at the end of the PDS, rendered the PDS confusing. NRCLC's submission was based on the principle that a PDS should be drafted with sufficient clarity to enable a retail client to understand their rights, obligations and the extent of cover provided under the contract (ASIC Regulatory Guide 163; *Fraser v NRMA Holdings Ltd* (1995) 15 ACSR 590).

Outcome:

Ella lodged a complaint with the Australia Financial Complaints Authority (**AFCA**). The insurer offered to settle the matter for a sum satisfactory to Ella.