

Andrew Horne's address to Insurance Watch meeting of MAS Members

5 November 2014

Andrew Horne is a partner of Minter Ellison Rudd Watts, a national law firm. He advises MAS from time to time in relation to its insurance policy wording.

Mr Horne made the following observations, summarising MAS' views of the meaning and effect of some key terms of the Goldshield policy:

Goldshield Policy is a payment policy

The policy entitles Members to choose either to:

- (a) Have MAS "*cover the costs of rebuilding or restoring the dwelling to a condition substantially the same as new, so far as modern materials allow*", provided those costs are reasonable and do not exceed the building area stated in the schedule;

Or:

- (b) Elect not to rebuild or restore the dwelling, in which case MAS will make a cash settlement of indemnity value.

Where a Member wishes to have MAS cover the costs of a rebuild or repair, MAS' obligation is to pay the costs of that work only as and when they are incurred. MAS is not obliged to pay the costs up front. The reasons for this include the following:

- The policy requires MAS to cover "*the costs*" of the work – not the *estimated* costs, and the actual costs will not arise or be known until they are incurred;
- The provision for cash settlement at indemnity value where a dwelling is not rebuilt or repaired is inconsistent with a co-existing obligation to pay a cash settlement at full replacement value in the same circumstances.

MAS therefore disagrees with the proposition that it is obliged to pay the costs of repair or reinstatement up front within a reasonable time of the loss being suffered, where the work has not begun.

In practice, MAS has offered, and may choose, in appropriate cases to go outside the terms of the policy and pay estimated repair or rebuild costs in a lump sum, but it is not obliged to do this.

Rebuilding or restoring to a condition substantially the same as new

- In a rebuild, this means the Member is entitled to build a new dwelling of the same size, style and standard as the original, using modern materials. The new dwelling must be equivalent to the old, but it need not be identical.
- In a repair, the Member is entitled to repair the damaged parts of the house to a condition substantially the same as new. This may result in some parts of the house looking new and the undamaged parts remaining as they were.

Obligations of utmost good faith

MAS and its Members each have common law obligations to act with “utmost good faith” toward one another. In the context of settling repair or rebuild claims this means that:

- MAS must act fairly towards Members by approving reasonable claims for repair or rebuild costs within a reasonable time; and
- Members must act reasonably and cooperate with MAS in that process and they must get on with the repair or rebuild work and not cause delays.

Betterment

There has been some confusion around what is meant by “betterment”. Some of this confusion arises because betterment is commonly used to mean two different things:

- **Insured betterment.** Where a dwelling is destroyed the Member is generally entitled to a new dwelling of the same size, style and standard as the original, using modern materials. This may be more valuable than the original. For instance, an outdated, 1960s house of relatively low value may be replaced with a comparable modern house which will be worth more. Similarly, repairs may increase the value of a house. This amounts to “betterment” for the Member but they are entitled to it because the policy is a replacement policy; and
- **Uninsured betterment.** A Member may wish to add some additional improvements beyond those required to construct a new dwelling of the same size, style and standard as the original. For instance, a Member may wish to increase the size of the dwelling or add some additional features. The costs of these additions are not covered by the policy and are referred to as uninsured “betterment”. This will also be the case where the Member attends to deferred maintenance or pre-existing defects to parts of the dwelling unaffected by the event causing the loss.

This summary is intended as a high level reference document that broadly summarises MAS’ approach to aspects of its Goldshield policy. It does not constitute, nor is it a substitute for, legal advice and neither Minter Ellison Rudd Watts nor Mr Horne owe or undertake any obligations in relation to it.

