

# Consumer protection issues

Many people have been affected by the recent Queensland floods and cyclone in different ways.

The following information is for legal practitioners whose clients are seeking advice on consumer protection issues arising in the flood and cyclone recovery and reconstruction phase.

## Past acquisition of real estate

Some clients may feel aggrieved having purchased real estate in flood-prone areas. Representations about the cyclone proof standard to which a building is built may also have been made. If your clients are seeking advice about past acquisition of properties in flood or cyclone affected areas, you should first seek the following information:

- a copy of the sale contract and identify who provided conveyancing services
- details of representations or property information provided to the client at the time of the acquisition either by the seller or the seller's agent
- any special provisions in the contract which sought to limit reliance on representations, or made any other warranties in relation to possible flood or cyclone damage
- searches obtained at the time of the acquisition.

For more information on pending real estate contracts and clients' rights to possibly avoid contracts for the acquisition of flood affected properties, see the Property contracts factsheet at [www.legalaid.qld.gov.au/floods](http://www.legalaid.qld.gov.au/floods)

## Contracts for recovery and reconstruction

Clients may seek assistance about engaging a contractor for reconstruction works. The following key points should be kept in mind:

- Determine if any reconstruction requires construction approval. If approval is needed, plans and specifications will be required and these must be included in any contract.
- Advise the client to obtain detailed plans and quotes. Comparison quotes are helpful in determining if a particular quote is reasonable. Plans are an integral part of the agreement between the contractor and the client so check them carefully and, if necessary, obtain expert advice before advising the client to sign the plans. Any contractor's licence and registration details should be checked and copies should be made of any documentation.
- Recommend obtaining a fixed price for the work to be done. Ensure all domestic building work valued at more than \$3300 is covered by a contract that complies with the *Domestic Building Contracts Act 2000*.
- Encourage clients to ask as many questions as they can so they understand the timing and cost of works. It is important for clients to understand the circumstances under which time or cost of completing the works may change.

## Scams

Unfortunately, there is little assistance we can provide for clients who have been scammed. Advise any clients who have been approached to donate money to be wary of making any donations by email, websites, phone callers, or door-to-door collectors seeking funds.

The police and the client's financial institution should be contacted if any money has been donated to or stolen in a potential scam. If the financial institution has been notified and money has been subsequently withdrawn from the client's account without their consent, then the financial institution will be liable for this loss under the EFT Code of Conduct.

Many credit card contracts have a clause that allows for the 'charge-back' of money paid electronically via credit card. However, this may not apply if the client contributed to the loss. Credit card contract terms should be assessed to see if this option is viable. There are usually time limits on 'charge-back' facilities so act fast.

## Diaster relief

If you are unsure whether a client qualifies for assistance, call 1800 173 349 to find out about help available through the state government, or 1800 22 66 for information about federal government assistance.

## Government agencies that may be of assistance

- The Australian Competition & Consumer Commission (ACCC) deals with competition matters and provides information on consumer protection. This information includes employment laws and the new consumer guarantees that apply to most goods and services purchased from 1 January 2011. The ACCC also provides publications on Commonwealth competition and fair trading laws. The ACCC can take legal action against companies that breach Commonwealth legislation. For more information, visit [www.accc.gov.au](http://www.accc.gov.au)
- SCAMwatch is a website that provides information relating to scams and fraud. SCAMwatch is maintained by the ACCC with contributions by the Australian Consumer Fraud Taskforce. For more information, visit [www.scamwatch.gov.au](http://www.scamwatch.gov.au)
- The Office of Fair Trading receives complaints from consumers who have been poorly treated in Queensland; the office can begin legal proceedings against perpetrators. For more information, visit [www.qld.gov.au/law/fair-trading](http://www.qld.gov.au/law/fair-trading)
- The Queensland Building and Construction Commission provides assistance with a wide range of rebuilding issues and is providing additional building compliance units to determine whether properties are inhabitable after the floods. For more information, visit [www.qbcc.qld.gov.au/advice-tropical-cyclone-marcia](http://www.qbcc.qld.gov.au/advice-tropical-cyclone-marcia)
- The Real Estate Institute of Queensland provides information, template letters and contracts to use as a comparison when reviewing potentially biased real estate or business contracts. For more information, visit [www.reiq.com.au](http://www.reiq.com.au)

## Advice to business owners and operators

Avoid discussing pricing with competitors related to providing goods or services on a one-on-one basis, in groups or in industry bodies; it may amount to collusion for price fixing. Remember, price fixing is widely defined and is not limited to a discussion on the price itself; it could be achieved through a discussion on rebates, discounts or commissions.

Price fixing can occur through a contract arrangement or understanding; it does not have to be a legally binding agreement. In most price fixing cases it is not a case of fixing the price itself, but pricing patterns of behaviour. It is an offence to enter into a contract, arrangement or understanding that involves price fixing; it is also an offence to conduct price fixing activities.

Business owners or managers should be careful not to enter into agreements with suppliers that are exclusive dealings, as this may contravene the Consumer and Competition Act (formerly the Trade Practices Act).

The flood and cyclone recovery will impose great pressures on competition, supply and pricing and the ACCC will be keeping a close eye on practices during these times.

## Do you need extra help accessing our services?



We can organise for an accredited interpreter to help you. We are committed to making our services accessible to people from culturally and linguistically diverse backgrounds and people with disabilities.

If you would like this factsheet explained in your language, please phone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland. If you are deaf or have a hearing or speech impairment you can contact us using the National Relay Service. Visit [www.relayservice.gov.au](http://www.relayservice.gov.au) and ask for 1300 65 11 88 (our legal information line). These are free services.

## Your Local Legal Aid Queensland office:

### BRISBANE

44 Herschel St, 4000

### BUNDABERG

3rd Floor, WIN Tower,  
Cnr Quay & Barolin Sts, 4670

### CABOOLTURE

Ground Floor, Kingsgate  
42 King St, 4510

### CAIRNS

Level 2, Cairns Square Complex,  
42-52 Abbott St, 4870

### INALA

Level 1, Inala Commonwealth  
Offices, 20 Wirraway Pde, 4077

### IPSWICH

Level 7, 117 Brisbane St, 4305

### MACKAY

Ground Floor,  
17 Brisbane St, 4740

### MAROOCHYDORE

Ground Floor, M1 Building  
1 Duporth Ave, 4558

### MOUNT ISA

6 Miles St, 4825

### ROCKHAMPTON

Ground Floor, 35 Fitzroy St, 4700

### SOUTHPORT

Level 2, 7 Bay St, 4215

### TOOWOOMBA

1st Floor, 154 Hume St, 4350

### TOWNSVILLE

3rd Floor, Northtown  
280 Flinders St, 4810

### WOODRIDGE

1st Floor, Woodridge Place,  
Cnr Ewing Rd & Carmody St, 4114

For more information  
about our services visit  
[legalaid.qld.gov.au](http://legalaid.qld.gov.au)

or phone 1300 65 11 88  
or 1300 650 143 (Indigenous Hotline)

