

La Niña declaration likely to herald rise in property claims

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AT A GLANCE

- The Bureau of Meteorology has declared a La Niña weather event for the 2021-2022 summer.
- These events notoriously result in cyclones and other natural disasters, often leading to tragic loss of life and billions in property claims costs.
- The current La Niña weather event undoubtedly will lead to a substantial increase in property damage and consequential business interruption claims.
- While insurers will want to meet social expectations about responding quickly following a weather-related disaster, it will be important to consider several coverage-related issues.

WHAT IS LA NIÑA

La Niña is a phase of the climate cycle resulting in heavy rainfall, tropical cyclones and cooler temperatures. The heavy rainfall tends to occur around the western Pacific Ocean, which means the eastern seaboard of mainland Australia lies in the firing line.

The Bureau of Meteorology's declaration of a La Niña weather event for the 2021-2022 summer, for a second year in a row, brings significant risks to people and property. It is also expected to again contribute to a steep uptick in claims and costs for the property insurance industry.

Some of Australia's more recent cyclones and natural disasters, including tropical cyclone Yasi and the Brisbane floods, occurred during a La Niña climate cycle. These events notoriously resulted in significant loss of life and billions in claims costs to the property insurance industry. The Brisbane floods alone were estimated to have cost insurers close to \$2.38 billion.¹



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WHY IT MATTERS NOW

The current La Niña weather event undoubtedly will lead to a substantial increase in claims made by insureds as a result of property damage and consequential business interruption losses.²

La Niña weather events, including severe storms, have already led to the Insurance Council of Australia declaring catastrophes in South Australia, Victoria and Tasmania. These events alone have given rise to approximately 69,000 insurance claims.³

It is expected that many more claims will be submitted over the next 6–12 months due to La Niña-related weather events.

SOME KEY LA NIÑA CONSIDERATIONS FOR PROPERTY INSURERS

With the declaration of La Niña, and the likely severe weather events and claims that will follow, property claims handlers and claim assessors should consider several potentially related factors when processing a high volume of claims.

Pre-existing damage and/or latent damage

Property insurers and assessors will be aware that pre-existing damage is usually excluded as an insured loss under most industrial special risk and commercial property policies.

While a devastating storm can make it difficult to identify pre-existing damage, insurers should consider reviewing an insured's claims history and any risk surveys undertaken where any pre-existing damage has been identified.

It is important for assessors to identify any pre-existing and/or latent damage early to allow insurers to properly account for the pre-existing damage by way of an apportionment adjustment to the insured's claim.

The chance of pre-existing damage being swept-up in a La Niña-related claim will be more prevalent in geographical locations that experience a higher than average occurrence of storms and severe weather events.

Relevant perils exclusions

Some of the standard 'perils exclusions' present in most ISR policies could come into play for claims made following a La Niña-related weather event.

Where the claimed damage is independent from the damage caused by an insured peril, such as a storm, the former may not be covered. Insurers and assessors should consider whether 'perils exclusions' have independently manifested at the same time as a La Niña weather event claim, such as wear and tear, temperature change damage and subsidence.

Flood Cover

History suggests that, on Australia's eastern seaboard, flood events are likely to follow weather events that occur during a La Niña situation. Accordingly, it will be important that insurers are across the flood cover in their respective policies.

Some useful questions to consider include:

- Does the policy provide for compulsory flood cover?
- Has the insured opted out of the standard cover?
- Does the policy apply a sub-limit to flood claims?

It will also be useful for assessors and claims handlers to be familiar with the terms of the standard definition for a 'flood' and how the courts have recently interpreted flood definitions in the high profile cases of *LMT Surgical Pty Ltd v Allianz Australia Insurance Ltd*, *Wiesac Pty Ltd v Insurance Australia Ltd* and *Landel Pty Ltd & Anor v Insurance Australia Ltd*. A link to our recent case alert discussing the *Landel* flood exclusion decision can be found [here](#).

Other issues to watch are the type of watercourse the damage-causing flood water emanated from and whether there was more than one cause of the inundation. If the inundation resulted from an excluded cause, there could be coverage challenges for the entire claim.

Renovations and building defects

Loss or damage that arises from water entering through incomplete renovations, construction works or defective or non-compliant building works are traditionally excluded losses. This issue has become more significant recently given heightened construction activity levels in the residential and SME business sectors during the COVID-19 pandemic.

Normally, damage arising from renovations or building defects will be detectable by experienced property damage assessors.

Insurers should also be aware that a write-back may apply if the insured did not reasonably know about the building defect. This could occur if the defect was not readily observable or if it did not appear on a recent pre-purchase inspection.



The potential for such damage to be uninsured should be canvassed with the insured early-on in the adjustment process to avoid complications at the claim settlement stage.

Asbestos Exclusions

There are commonplace exclusions concerning the removal of asbestos products from an insured's premises. The continued prevalence of asbestos, particularly in the roofing of older homes and warehouses, makes it quite likely that in a series of La Niña weather event claims, insurers will have to consider the scope and restrictions on cover for damage to building components containing the toxic mineral.

Where asbestos roofing has been damaged, specific issues arise. These include understanding whether there was a declaration of the asbestos materials in the risk survey, and if so, whether any endorsements impacting cover arise from the declaration.

The scope of any asbestos-related exclusion also needs to be considered. For example, if an asbestos roof that was damaged in a storm requires removal, the removal costs may not be excluded if the damage arises from an insured peril.

KEY TAKEAWAYS

The Bureau of Meteorology's recent declaration of a La Niña weather event is expected to lead to a substantial increase of property insurance claims. While the 2021-2022 La Niña may be more short-lived than earlier events, the chance of single catastrophic property damage events remains high.

While there is an onus on insurers to arrange assessments and issue coverage determinations quickly following weather-related disasters, they need to remain aware of the usual restraints and limits on cover.

If you have any questions about the potential impact of a La Niña weather event, please get in touch with us.

REFERENCES:

¹ Australian Government, National Recovery and Resilience Agency: <https://knowledge.aidr.org.au/resources/flood-queensland-2010-2011/>

² Insurance Council of Australia comment in: <https://www.afr.com/policy/energy-and-climate/rainy-summer-declared-for-second-year-in-a-row-20211123-p59bgi>

³ Insurance Council of Australia, Catastrophe 216: Severe Storms (SA, VIC & TAS) Data: <https://insurancecouncil.com.au/industry-members/data-hub/>

Need to know more?

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