

My car has been damaged by a natural disaster

This factsheet explains how to deal with issues that arise when your car is damaged by a natural disaster (such as a flood, cyclone, storm or bushfire), or when you are having trouble making your car loan payments due to a natural disaster.

My car has been damaged

If your car has been damaged in a flood, cyclone, storm or bushfire, follow these steps:

- If the car is insured and you know who the insurer is, then lodge a claim. Lodge a claim to ensure any damage is properly assessed.
- If you do not know who your insurer is, contact the Insurance Council of Australia on 1300 728 228, and ask them to find out for you.
- If your claim is rejected by your insurer, contact Flood and Cyclone Legal Help on 1300 004 924 for free legal advice.
- If you have a car loan, keep paying your loan (as best as you can).
- If you cannot afford to make full car loan or lease payments contact your lender and ask to make reduced payments due to financial hardship. See page 2 of this factsheet for more information about applying for a financial hardship variation.
- If the lender does not agree to change your payment arrangements, call 1300 004 924 and get legal advice immediately.
- Get legal advice before trying to sell your car if it is damaged or insured, or there is money owing on a loan or lease.

Making an insurance claim

What if my car is insured?

If your car is insured, you should lodge a claim with your insurer. A successful insurance claim may mean you are compensated for the loss of your car.

Your insurer will try to assess your claim as fast as possible, but it is likely to take some time. If your claim is rejected following assessment, you should ask for your claim to be internally reviewed under your insurer's internal review process. If the internal review process also rejects your claim, you may be entitled to lodge a dispute with an ombudsman within two years of the insurer's written review. Further information about the ombudsman schemes is provided below.

Paying your car loan

What if I am struggling to make car loan payments due to the natural disaster?

'Financial hardship' means you are having difficulty paying your car loan or lease. There is no question that having your property and possessions damaged by a natural disaster, or not being able to get to work because of the disaster, could lead to you having difficulty making your car loan or lease payments.

If you are experiencing financial hardship you will need to negotiate with your lender and agree to an affordable payment arrangement. There are many different solutions available depending on your circumstances. Depending on your loan type, you will be able to apply for relief from financial hardship on your car loan or lease either under the *National Consumer Protection Act 2009* and National Credit Code (NCC) (Credit Law), or under industry codes of practice that govern loans which fall outside credit law (such as a car loan for business purposes). The Codes of Practice are listed on page 3 of this factsheet.

If your lender refuses your application for a hardship variation to your loan, you may be able to complain to an external dispute resolution scheme via the Australian Financial Complaints Authority (AFCA), which provides free, independent services for consumers.

Australian Financial Complaints Authority

1800 931 678

www.afca.org.au

Can I get a financial hardship variation under credit law?

You need to meet these requirements to be eligible for a financial hardship variation:

1. You need to explain why you are having trouble making the loan payments. To do this you need to give a 'reasonable cause' (explanation) for the hardship (section 72(3) NCC). You can do this by explaining how the natural disaster is impacting on your ability to pay the loan.
2. You should provide a plan of how you will get the loan back on track (eg by increasing payments to cover arrears in the future or extending the loan). If your proposal isn't realistic the lender does not have to agree to it.

How do I apply for a financial hardship variation?

If you have received a default notice or court proceedings have started get urgent legal advice from Flood and Cyclone Legal Help (1300 004 924) and consider lodging a dispute with AFCA.

1. Before you contact your lender you should write a list of your income and expenses so you have details of your current financial position.
2. Consider how changing the loan would assist you to get back on your feet financially, for example:
 - extending the loan and reducing the repayments, or
 - reducing the repayments in the short-term and then gradually increasing the payments to make up arrears, or
 - reducing the payments and then paying a lump sum to catch up.
3. Prepare a proposal with figures detailing what you can pay now and what you can pay later.
4. Contact your lender or credit provider by phone or in writing.
5. If you contact your lender by phone, have a pen and paper ready and take notes of who you spoke to, what was said, what was agreed, and the time and date of the call.

6. Ask to speak to a 'hardship officer' or 'customer service' about a hardship variation, and tell them you have been affected by a natural disaster.
7. Ask to change your loan payments because of hardship (your right under s. 72 of the National Credit Code or the Code of Practice the lender belongs to) (see the Codes of Practice listed on page 3 of this factsheet).
8. Explain why you are struggling financially and what will improve your financial situation so you can get back on track (eg return to work, get a job, get well, increase your household income, decrease your household expenditure, receive an insurance payout or sell an asset).
9. In most circumstances, the lender must respond to you within 21 days with a decision or to ask for more information.
10. If the lender asks for more information to help them make a decision, you have 21 days to provide this requested information (but if their request is unreasonable get legal advice).
11. If your request for a financial hardship variation is refused, or the lender comes back with an unacceptable alternative, or the lender doesn't respond within 21 days, consider lodging a dispute with AFCA.
12. If your hardship request is accepted you should receive written confirmation of this request. The lender may make minor changes to your hardship variation request, eg acceptance of one or two late payments.
13. If your lender says they may start legal action against you, lodge a dispute with AFCA to get a fair hearing for your hardship variation request.

Codes of practice

You can find out if your lender belongs to a code of practice by visiting these websites and looking up which lenders belong to each code of practice.

- **Code of Banking Practice**
Financial hardship – see s. 28
Responding to disputes – see part F
Visit: www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice
- **Customer Owned Banking Association (COBA) Code of Practice**
Financial difficulties – see s. 24
Dispute handling – see section 28
Visit: www.customerownedbanking.asn.au/consumers/cobcop
- **Mortgage and Finance Association of Australia (MFAA) Code of Practice**
Hardship applications – see s. 13
Responding to complaints – see section 11
Visit: www.mfaa.com.au

Accessing External Dispute Resolution (EDR) via the Ombudsman schemes

It is free to access AFCA who can make determinations in hardship disputes, so it is preferable to go to the ombudsman first rather than court.

If any of the following is happening, you should consider lodging a dispute with the ombudsman:

- negotiation with the lender has failed
- the lender is threatening legal action
- the lender has issued a summons or statement of claim or other legal proceedings.

After a court has made a judgment, the ombudsman cannot consider the dispute except in very limited circumstances. If you are concerned about imminent legal action or a statement of claim/summons has been served on you, then you should lodge a dispute with the ombudsman and get urgent legal advice.

If a lender rejects your hardship application or you don't receive a response from your lender within 21 days, you can immediately lodge a dispute with the ombudsman. If legal proceedings have started, you can also go to the ombudsman before a court judgment is obtained.

What if there is a shortfall between the insurance payout and my car loan debt?

An insurance payout may be less than you owe on a car or less than the car was worth. Your policy may allow the insurer to pay an agreed value for the car-this means if your insurance claim is approved, the agreed value amount specified in your insurance policy will be paid out to you. The insurer may pay the lender (if the car was security for a loan) directly.

In some cases this insurance payout amount will be less than the amount of money you owe on the loan. This occurs because cars depreciate and the loan will include interest and set up costs.

If you took out gap insurance when you got your car loan this may cover the shortfall.

If you are in financial hardship you may be unable to pay out this shortfall immediately. You should get legal advice if there is a shortfall.

If there is a shortfall your options include:

1. Negotiate a payment arrangement or hardship arrangement on the shortfall (as set out above). If the arrangement is refused you should consider making a complaint to AFCA.
2. Ask for the shortfall to be waived.
3. Do nothing. It is likely the debt will be sold to a debt collector and court proceedings and enforcement may follow. Your credit rating could be affected and some of your assets or income could be at risk.
4. Consider bankruptcy.

Insurance for car loan payments when you are not working

Check your insurance policies as you may have purchased the following insurance policies when you took out your loan:

1. Insurance for injury that is part of paying car registration.
2. Third party property insurance which covers damage to another vehicle.
3. Comprehensive property insurance covering your own car damage.
4. Consumer credit insurance (covering loan payments when you are out of work etc).
5. Gap insurance which aims to cover the shortfall between the car loan and an insurance payout.

You can always ask the insurer or your lender for details of any insurance contracts you took out when you got your car loan. If you ask in writing, your insurer must give you a statement containing all the provisions of the contract. The lender is also required to give you a copy of your loan.

If you are in any doubt about the type of insurance covering you and your car, you should get legal advice about your rights.

If the disaster has prevented you from going to work or you have been stood down or laid off, you may find it difficult to make payments on your loan. If you find yourself in these circumstances there are two things you should do:

1. Make a hardship variation application to your lender.
2. Make a claim against any insurance applicable to your circumstances, eg consumer credit, comprehensive or mortgage property insurance if you have it.

Making a claim against my consumer credit insurance

If you cannot attend work and have consumer credit insurance, you may be entitled to insurance payments to cover your loan payments for a set time period while you cannot attend work. Follow these steps to make a claim:

Step 1.

Read your loan and insurance documents carefully. If you are uncertain about any of your rights get legal advice.

Step 2.

Make sure you submit your claim to your insurer. In some cases an assessor or other employee of the insurer may tell you your claim is not covered by your insurance but an assessor or an employee of your insurance company is not always correct.

If you do not submit a claim to your insurer you have no right to access the review processes that are in place to protect consumers making insurance claims.

Step 3.

Ask for an internal review of your claim. If your claim is not accepted then you should ask your insurer to have your claim reviewed by its internal review process. In some cases the internal review process will reach a different conclusion to the initial assessment of the claim.

Step 4.

If the internal review process also rejects your claim, you can lodge a dispute with the relevant ombudsman scheme within two years. Contact Australian Financial Complaints Authority (AFCA).

Selling your damaged car

What if I want to sell my car?

If your car is being used as security for a loan, you cannot sell it without getting the lender's permission.

Some vehicles are described as statutory write-offs. They are not allowed to be registered and can only be sold for scrap.

Other cars may be assessed as uneconomical to repair (an insurer may have paid your claim on this basis). Such a vehicle will only be registered if it is repaired and passes a Queensland safety inspection. You would need to obtain a written-off vehicle inspection before selling it.

If an insurer has not notified the Department of Transport and Main Roads that a vehicle is written-off you may be obliged to do so.

Depending on what has happened you will have legal requirements to tell buyers about what has happened to the car.

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 and ask for 1300 65 11 88 (our legal information line). These are free services.

For more information

The Department of Transport and Main Roads

13 23 80
www.tmr.qld.gov.au

The Office of Fair Trading

13 74 68
www.qld.gov.au/law/fair-trading

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

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

