

# Flood & cyclone legal help

Produced by the Queensland Legal Assistance Forum

## Need help getting an insurance claim paid?

### Storms, cyclones, floods, insurance and you

**This factsheet is for helping you to make an insurance claim even if your premiums were not up to date, or there are concerns the damage is not covered by the policy you have.**

**You should get legal advice to find out your options if your insurance claim is refused. For free legal information and advice, contact Legal Aid Queensland on 1300 650 143 or visit [www.floodlegalhelp.qld.gov.au](http://www.floodlegalhelp.qld.gov.au)**

#### How to make a claim

##### Prepare and lodge your claim

###### Step 1.

Gather as much information as possible about the claim, including:

- a list of the items you want to claim and when they were purchased
- a list of floorings or other furnishings, such as curtains, that you have had to throw away (an assessor will look at your house, but it will help if you can provide this information).

###### Step 2.

Make the claim as best you can, as clearly as you can. You may be feeling shock and grief at this time, which may make it difficult to understand information the insurer has sent you. Ask family, friends, support agencies and insurance representatives for help to lodge your insurance claim as soon as you can.

Your insurer may ask for other information. If they do not accept that you cannot provide this information (ie you are asked for documents which are lost or destroyed), you should get legal advice urgently.

The insurer may send out an assessor or an adjuster to examine your claim. The assessor may interview you, neighbours and witnesses, and review police reports. If you feel you are being unfairly treated by the assessor you should get advice or help. For example, you may want to ask for an interpreter or a friend to sit in on any interviews. If the assessor wants you to drop your claim you should get legal advice urgently.

Do not sign any documents until you understand what they mean. You should get legal advice about documents your insurer asks you to sign, such as an insurance release form.

##### **I'm in urgent financial need. Is there anything I can do to get my insurance payout faster?**

Yes. Insurers must fast track your claim if you are in urgent financial need. This is in line with the General Insurance Code of Practice — the guidelines insurers need to follow when dealing with claims and complaints. You can find out more about the code at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

The code also says the insurer must pay you an advance payment if appropriate within five days of you demonstrating financial need. Any advance payment will be taken off your claim's total value. Talk to your insurer about your situation. If you cannot reach an agreement with your insurer, follow steps 5 to 7 on page 2. You may also need to contact the Financial Ombudsman Service.

##### **When will my insurer let me know if my claim is accepted?**

###### Step 3.

Your insurer may have further reasonable questions that you can answer. Answer as fast and completely as you can or advise the insurer that you cannot help.

###### Step 4.

Your insurer should let you know how long a fully completed claim will take to assess and accept.

## What if I don't get a response or my claim is rejected?

### Step 5.

If you have not received a response within 15 days of making the completed claim, you should complain to the insurer by letter or email and ask for an internal review into why a decision was not made.

### Step 6.

If your claim is rejected, you should ask your insurer as soon as you can to internally review the decision.

### Step 7.

The insurer can take up to 45 days to internally review any decision or failure to make a decision.

## What if I'm not happy with my insurer's response?

### Step 8.

Complain to the Financial Ombudsman Service if you're not happy with your insurer, and respond to any requests from the ombudsman. Contact the Financial Ombudsman Service on 1800 367 287. You should also get free legal advice about your claim at this stage. You must complain to the ombudsman within two years of receiving the insurer's written response to your request for an internal review.

### Step 9.

Any decision the ombudsman makes will be binding on your insurance company if you accept the decision. If you do not accept the ombudsman's decision you can still take court action (at your own cost).

## What will my insurance company pay for?

### What does my policy cover?

Your insurance company will pay only what your insurance policy states. Your insurance policy is your contract with the insurance company. It states when, how and what the insurance company must pay for. Some policies state the insurance company will pay for damage caused by rainwater or stormwater, but will not pay for damage caused by floodwater.

Some insurance companies offer flood insurance. Check with your insurer to see if you are covered.

## What is the difference between floodwater and rainwater?

You will need to look at the definition in your insurance policy, but generally:

- rainwater means water falling from the skies that runs off over the surface of the land (and may include water overflowing from stormwater drains)
- floodwater means the covering of normally dry land by water escaping or released from rivers, lakes, channels, dams or canals.

The insurance company cannot go beyond the words in the policy. For example, if the policy reads: "Floodwater is water escaping from a river or stream", and if the damage was caused by water running down gullies of a mountainside, it will not be defined as floodwater and the insurance company will have to pay.

## How do I know if the water was floodwater?

Insurance companies obtain reports from experts (such as hydrologists) to determine if damage was caused by rainwater or floodwater. These reports recreate the events that led to the damage. They may calculate what the maximum level the water in your house would have risen to if it was just rainwater and, if the water level is much higher than this figure, then they will argue the water is partly floodwater.

## Can experts get it wrong?

Yes. Hydrologists' reports are a recreation of the events that led to the damage. They assess the direction the water flowed, whether the water came from a river or from stormwater runoff, and what level the rainwater would have reached on its own. Their findings are not conclusive, and may be based on false assumptions or be inconsistent with reliable eyewitness or video evidence.

## What if my home was damaged by rainwater and floodwater?

If your home was damaged by rainwater and floodwater, sometimes the insurance company will reject the claim. Sometimes the decision will be correct, but sometimes it may not. The insurance company may not have considered the following arguments:

### 1. *The rainwater came in first.*

The water level in your house may have risen and then stopped. A second wave of water then entered the house. This may indicate the first wave was rainwater and the second surge was floodwater. The insurance company has to pay for damage caused by the rainwater.

### 2. *There was floodwater, but only a little.*

If the floodwater amount was minimal compared to the rainwater volume, the insurance company may still have to pay.

## **Do I get to ask for a new house?**

The building policy will be for a 'sum insured' (the specific dollar amount you are insured for) or replacing the building.

Most policies are for sum insured. If your policy is for sum insured, usually you will only get the amount of money stated as the sum insured amount. However, some policies include other cover for items such as emergency accommodation, professional fees (for architects etc), compliance costs (changes to planning laws), and debris removal and clean up. These benefits will be on top of your sum insured and may apply even if you do not get the full sum insured for your claim. Ask your insurer about what other cover is provided.

If your policy is for replacing the building, the policy will let the insurer choose between paying for a replacement building or giving a cash payout. The cash payout must cover the full cost of replacement so long as there are no improvements in quality or standards in the new building. You should be able to recover the full cost of rebuilding your property to the same standard as before the disaster. If the insurer gives you a cash payout but this is not enough to cover the cost of rebuilding, the insurer needs to reassess your claim. You need to ask for a review within certain time limits — ask your insurer about how much time you have.

## **Should I accept the rebuild option or a lump sum payment?**

You may be able to choose either option but think carefully about each one. If you choose the rebuild option, this means you have the money to rebuild when you are ready. If you choose a lump sum payment, this can take care of financial issues you face now, but you could easily spend the money and then have less money later. Some policies also take away certain benefits, such as the cost of removing debris or cost of permits, if you accept a lump sum payment. Check your policy carefully and talk to your insurer about this.

## **If I rebuild, will my insurer cover extra costs from the new building codes?**

If your policy was for a sum insured amount, the insurer will not cover extra costs such as changes to planning laws unless there was a specific additional cover in the policy. In this case, your insurer will only repair or replace your house to the condition it was in before the floods. You may, however, have cover for the new building code costs if your policy cover was to replace your house 'as new' or with a replacement benefit. Most policies do include extra amounts for changes to the planning laws. Check with your insurer.

## **What if I don't agree with the insurance assessment?**

Try to negotiate with your insurer. The insurer should have its own dispute resolution processes that you can use.

The Financial Ombudsman Service can also help you find out whom you need to direct your complaint to within the insurance company.

If you have not been able to reach an agreement after trying to negotiate, send your complaint to the ombudsman and attach a copy of the final decision letter from the insurer. You must make the complaint within two years of receiving the final letter from your insurer reviewing your claim. The ombudsman will look at the conduct of the insurance as set out in the code but will also consider relevant law and what is fair and reasonable in your situation. The ombudsman will then try to reach an agreement between you and the insurer. The ombudsman can also make a 'binding' decision (a decision that must be followed) on your case if an agreement between the insurer and yourself was not able to be reached.

## **Are fences and debris removal and demolition included in my insurance cover?**

Fencing replacement will depend on your policy's type and location (eg whether it is for a business, home or farm). You need to check the policy to see if fences are included in the cover. This may not include full costs to replace it. You should have debris removal and demolition included in your insurance policy but sometimes this is an extra benefit. Check your policy.

The government is offering help for fencing and debris removal, clean up and demolition. If the cost of clean up and debris removal is included in your insurance policy, you should still think about using the government's free debris removal service. You may be able to use your policy entitlements to cover other losses.

## **What happens to insurance when a property is owned by two people?**

If a property is owned by two or more people and all part owners are named in the insurance policy, each person is entitled to get part of the insurance payout. The payout amount depends on the interest each person has in the property. If the property is jointly owned, each person is entitled to get the full amount of the claim under the policy. If the property is owned by each person as tenants in common, the payout amount will reflect the interest each person has in the property. Usually, an insurer will deal with all the people named in a policy at the one time. However, if one person is given the payout, then that amount is held 'in trust' for the other people named in the insurance policy. If you are named in a policy and are having trouble getting a payout that has been given to another person, get legal advice.

If you own a property with another person but your name is not on the insurance policy, the insurer can give the full payout to the person named in the policy. Get legal advice quickly if this applies to you.

## **I finalised my insurance claim but I think it was wrong. Can I have my claim reviewed?**

Yes. If you made a claim because of disaster and you think your loss assessment was wrong or incomplete, you can ask for a review. Usually, you have one month under the code from the date your claim was finalised to do this. You have six months to do this when your insurance claim is because the damage resulted from a disaster.

## **I am not insured or underinsured**

### **I am underinsured. Is there anything I can do?**

If you cannot afford the costs to rebuild, and the sum insured was decided by your insurance company, mortgage company or other financial institution, you may have a case for complaint against that institution for giving you inappropriate advice. Get legal advice about this. You may also be able to get financial help from the government. This may cover the difference between your home's replacement cost and the sum you were insured for.

### **I forgot or did not pay my insurance premium. What can I do?**

Usually, if your policy has not been renewed or you have not paid the premium, you will not be able to make a claim. Your insurer must let you know in writing that your policy is about to finish (lapse) at least 14 days before it does. If your insurer did not do this, and you did not renew your policy, the policy will go on as if you had renewed the policy for the period of the original policy.

If your policy has lapsed recently and you have been a long-term customer of the insurer, you can ask that your insurance be continued for special reasons. This might include if you had the policy in place for many years and you had reasons that made you forget to renew your policy. Usually, however, you cannot make a claim.

## **I want to make sure my property is properly insured from now on. Which cover should I choose?**

If you choose a replacement policy, this will cover the cost to rebuild. You will not be underinsured if you were to lose your house in a future disaster. If you choose a 'sum insured' or 'sum insured and replacement/additional amount' policy for a specific amount of money, this may not be enough to cover rebuilding if you were to lose your house again.

## **Other help available**

### **Can I access my superannuation?**

While it is rare to get superannuation early, you may be able to get it on compassionate grounds.

## **For more information, contact:**

### **Legal Aid Queensland**

1300 650 143 | [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

### **Financial Ombudsman Service**

1800 367 287 | [www.fos.org.au](http://www.fos.org.au)

### **Insurance Law Service**

1300 663 464 | [www.insurancelaw.org.au](http://www.insurancelaw.org.au)

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