



# When disaster strikes — cyclones, storms and floods

A guide to getting your insurance claim paid



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## Disclaimer

This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at November 2024 and does not accept responsibility for any errors or omissions.

We are committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you would like this publication explained in your language, please telephone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland on 1800 998 980. This is a free service.



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# How can this guide help me?

This guide is designed to help Queenslanders with their insurance claims after a storm, cyclone or flood. This guide provides advice on home building and contents insurance policies; it doesn't provide advice on other types of insurance such as motor vehicle insurance policies. The Legal Aid Queensland website may provide information and advice regarding other types of insurance; please refer to our factsheets and legal information guides at [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au).

This guide can help you when dealing with your insurer, and presents arguments that may help you to have your claim paid. You can dispute an insurer's decision, without having to go to court, through an independent, effective and free alternative dispute resolution scheme called the Australian Financial Complaints Authority (AFCA). For more information, contact AFCA on 1800 931 678 or visit [www.afca.org.au](http://www.afca.org.au).

The law about home building and content policies is set out in federal legislation, the *Insurance Contracts Act 1984* (Cth) ("Insurance Contracts Act") and in court cases and ombudsman decisions made about insurance.

This guide refers to obligations that insurers have voluntarily agreed to in the General Insurance Code of Practice. For more information visit [www.insurancecouncil.com.au/cop](http://www.insurancecouncil.com.au/cop).

Please note that this guide does not deal with the liability of third parties such as local councils, land developers, mining companies or builders. Whether any third party should have to pay for the damage is an issue that will vary from case to case. You should get legal advice about the possibility that your losses are due to the actions of a third party. Be aware that time limits apply to cases against third parties.

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# How do I make an insurance claim?

## Step 1: Gather evidence

If you plan to lodge an insurance claim for damage to your home building or contents, it is important to gather as much information as you can to support your claim. You need to be able to prove your loss—this means that you need to provide evidence to prove what you owned. This may include:

- making a list of damaged or destroyed items and any information about the date of purchase, model and make to support your claim
- taking photos or video of the damage to your home and property
- collecting documents that may be relevant to your claim such as receipts, warranties and credit card/bank statements showing your purchases
- obtaining copies of videos or photos that members of your community may have taken during the event.

The amount of evidence required by your insurer will depend on the nature and value of your claim. For building claims, expert reports might be needed about the cause of the damage, the extent of the damage and/or the appropriate way of putting things right. This will usually only become relevant if there is a dispute over your claim.

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Even after lodging your claim it is worth thinking about what evidence you can gather to help fast track your claim.

## **Step 2: Lodge a claim**

If you need an interpreter to put your claim together, let your insurer know this and ask them to pay for this service.

Most claims start with a phone call to your insurer or lodging it online with your insurer. When making a claim over the phone, be brief and precise. Ask family, friends or support agencies for help to lodge your insurance claim as soon as you are able. It is worth making notes of any conversations with your insurer, including the time, date, who was there and what was said, as your claim progresses.

Once you have lodged your claim your insurance company may ask for more information. Seek legal advice if you cannot provide information or documents requested by the insurer.

## **Step 3: Visit by insurance assessors/adjusters**

Insurers employ assessors to investigate claims. The insurer may send an assessor or an adjuster to consider your claim. This will usually happen in large claims for home and/or contents insurance. Their role is to consider all relevant information to determine what happened and whether or not the event falls within your insurance policy. It is important to ask the assessor questions if you are uncertain about anything.

Do not wait for an assessor to attend your property before you start to clean up the damage. Take photos and video as you are cleaning up the damage so you can give these to the assessor.

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The assessor may interview you, neighbours, witnesses and review police reports. There is often video available in the community that shows what happened. If you feel you are being unfairly treated by the assessor you should seek advice or help—for example, you may want to ask for an interpreter, or a friend to sit in on any interviews. If you are unhappy about your treatment, write to the insurer about your concerns and outline what you want the insurer to do or change.

For example, you might disagree with the assessor’s version of events (ie the order and timeline of events that happened). Explain in writing:

- what you feel is wrongly understood
- the order and timeline of events as you understand them
- what you or your neighbours saw or heard at the time of the disaster
- why your version of events is more probable.

### **Do not sign any document until you understand what it means**

If an assessor asks you to sign a statement, ask them if you can take it away and look at it, rather than signing it on the spot. If you are unsure about signing it, get legal advice. Legal Aid Queensland can assist with free legal advice about documents your insurer asks you to sign such as an insurance release form.

### **What if I’m told to drop my claim?**

You should get urgent legal advice if the assessor wants you to drop your claim or is suggesting a version of events that is likely to end in your claim being refused or reduced.

### **What if my house needs emergency repairs?**

With a large scale disaster, there may be a general response from your insurer letting all those affected by the disaster know what your insurer expects you to do. Check with your insurer.

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If possible, talk to your insurer before touching or moving anything in your home after an insurable event (such as a fire, storm or theft). In the event of criminal activity (such as a break and enter) contact the police. If your home is exposed to further damage from the weather, or your premises can no longer be secured (for example, locks, windows or doors have been broken), only do what is necessary to prevent further damage or loss. Your insurer will want an assessor to examine the damage before making a decision in relation to your claim, and will want to approve a repairer.

If you go ahead with repairs it would be useful to take “before” and “after” photos of the house and its contents as evidence of repairs required. Keep any receipts of payment made.

## **What if my property and contents were damaged by water?**

If your house and contents were damaged by a deluge of water it is possible your insurance policy will not pay for flood damage, but it may pay for other types of water damage. Read your policy carefully. Read the “My home and contents have been damaged by water—what do I need to know?” section and subsequent sections of this guide before you put your claim together.

It may be important to prove to your insurer that your property was damaged by cyclone, rain and storm water before it was inundated by flood water. If you have any eyewitness accounts of what happened and when, you should record the order of events. This would include when the rain deluges occurred, what your neighbours saw, what you saw, when the water levels began to rise, and what height the water reached.

Insurance policies differ in their coverage of damage incurred by rainwater and/or flooding. If this affects you please read the “Rainwater versus floodwater — what does my policy cover?” section of this guide for more information on how to progress your claim.

It is important to take photos and/or video of your damaged property as you are cleaning up before throwing it out. This means you will have evidence of the damage.

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# I need urgent financial assistance — can my insurance payout be fast-tracked?

Yes. The General Insurance Code of Practice (“the Code”) says insurers must fast-track your claim if you are in urgent financial need. The Code sets out the guidelines that insurers need to follow when dealing with claims and complaints. You can find out more about the Code at the website [www.insurancecouncil.com.au/cop](http://www.insurancecouncil.com.au/cop).

If you can demonstrate to the insurer that you are in urgent financial need of the benefits you are entitled to under your policy, part 8 of the General Insurance Code of Practice requires the insurer to fast track the assessment and decision making process for your claim.

The insurer must make an advance payment to help alleviate your immediate hardship within five business days of you demonstrating your urgent need.

Examples of urgent need include:

- money for alternative accommodation
- basic living requirements (ie a working fridge where you can access power)
- urgent electrical repairs to ensure medical equipment can work.

Any advance payment will be taken off the total value of your claim. Talk to your insurer about your situation. If you cannot come to an agreement with your insurer, read the sections “When will my insurer advise if my claim is accepted?” and “My insurance claim has been refused — what are my options?” for information on your options.

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## What if I can't pay my excess?

The excess is the amount you have agreed to pay (if any) if your insurance claim is successful.

If you are in financial difficulty, you may not be able to pay the excess. If this is the case, ask your insurer to take the excess out of any claim you are to be paid. Alternatively, you can ask to make payments by instalments. It is unreasonable for your insurer not to agree to do this. Your insurer cannot refuse your claim just because you cannot pay the excess up front.

If you think the insurer is being unreasonable, lodge a dispute about this issue with AFCA. Refer to the “Can't pay excess” sample letter in samples.



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# When will my insurer advise if my claim is accepted?

Your insurer may have further reasonable questions about your claim. If you can, answer them as quickly and completely as you can, or advise the insurer that you cannot help with their questions. Your insurer should let you know how long a fully completed claim will take to assess.

The usual timeframes under the Code (clauses 67–71) (unless there is urgent financial hardship) are:

- a decision to accept or reject the claim within 10 business days of a receipt of a complete claim once all assessment is complete or
- notification within 10 business days that a loss assessor/loss adjuster will be appointed or that further information is required. In this case, your insurer will also provide an initial estimate of the time required to make a decision on your claim.

Your insurer is required to provide an update on the progress of your claim at least every 20 business days.

It is perfectly acceptable to call your insurer to check on progress (keep notes of these calls) and to expect to be given updates on timelines.

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## **What if after my claim is paid I realise there is more to claim?**

If you received an insurance claim payment for damage caused by a catastrophe or disaster and then realise you have more damage to claim, you have 12 months from the finalisation of your claim (if finalised within one month of the disaster) to ask for a review of your claim (clause 90 General Insurance Code of Practice).

If the review is refused or partially rejected then you can complain about this to the insurer's Internal Dispute Resolution (IDR) department and then to the AFCA. Read the "My insurance claim has been refused – what are my options?" section of this guide for more information.

## **I still haven't received a decision from my insurer about my claim**

Sometimes you can get stuck in limbo waiting for your claim to be finalised, eg where you have submitted a claim but have not received an answer from your insurer, or you ring your insurer and they keep asking for more information or they are saying your claim is still being processed.

The Code (clause 68) states that an insurer must respond to a claim within 10 business days of receiving the claim. If your insurer requires further information or assessment then they must notify you within 10 business days of receiving your claim, and outline:

1. if any further information required
2. if a loss assessor needs to be appointed
3. an estimate of the time required to make a decision on your claim.

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If your insurer is not making a decision and not informing you if further information is required or why there is a delay, you could send a letter to your insurer. Refer to the sample letter “Delay” on page 55 as a guide.

If your letter doesn’t result in a response from your insurer you can send a letter of complaint to General Insurance Code Compliance Committee. Refer to the sample letter “Complaint to General Insurance Code Compliance” on page 56 as a guide.

A written complaint should assist in getting a response. However, if this is unsuccessful you could refer the matter to the AFCA. Refer to the sample letter “AFCA” on page 57 as a guide.

If you are concerned at any stage in this process, get legal advice.



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# My home and contents have been damaged by water — what do I need to know?

Many insurance policies provide coverage for damage to property caused by floodwater. If flood cover is part of your insurance policy, your claim should be paid. Some insurance policies allow you to opt out of flood cover.

If flood cover is not part of your insurance policy, get legal advice. If you wish to dispute the amount the insurer is paying you for your claim, get legal advice.

## What laws apply to insurers?

The Insurance Contracts Act (“the Act”) sets out the ways in which insurers must behave. The main aspects of the Act relevant to water damage claims are explained below:

a) Duty on the insurer to act in good faith.

Section 13 of the Act imposes a duty on both the insurer and you, the consumer, to act in the utmost good faith towards each other.

The duty of utmost good faith can help you by allowing you to argue that your insurer should:

- specifically advise you of any unusual parts of the policy (especially exclusion clauses that would allow the insurer to deny a claim)
- act quickly and reasonably in deciding any claim.

b) The insurer must pay for floodwater damage under a standard cover contract.

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If an insurer has failed to clearly inform you that floodwater damage is excluded under your policy, section 35 of the Act may help you establish that the insurer should pay for flood damage. Section 35 of the Act requires the insurer to notify you, as the customer, of any deviations from the minimum cover provided under standard cover contracts. For more information, read the “What if my policy is confusing or I didn’t get a copy?” section of this guide.

Apart from the Insurance Contracts Act, insurers are subject to the General Insurance Code of Practice. This guide refers to the Code where it can assist you with your claim.



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# Rainwater versus floodwater — what does my policy cover?

## Summary

### Why is my policy important?

The policy states the risks your insurer has agreed to pay for. The insurer cannot go outside the policy wording. It can only refuse to pay a claim for floodwater damage if flood cover is not included in the policy.

There may also be other exclusions in the policy that you should be aware of including no cover for damage to fences or retaining walls or no cover if you have failed to maintain your property.

Your insurance policy document will state specifically what risks the insurer has agreed to pay for. Your insurer will be able to give you a copy of your insurance policy document. It is important to check you have been provided with the right copy of your policy.

## Tip

Business contents insurance policies may provide cover for loss caused by floodwater. If you were working from home, you may have a business insurance policy and not a domestic building policy.

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Many, but not all, insurance policies provide cover for damage caused by a flood. You should seek legal advice if you are uncertain about whether you are covered, opted out of flood cover or disagree with the amount the insurer is paying you for your claim.

If your insurance policy does not cover for flood, the insurer is likely to ask a hydrologist to do a report to determine where the water came from which damaged your property.

You should get legal advice about your insurance claim once the insurer has determined where they believe the damage came from.



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# What if my policy is confusing or I didn't get a copy?

## Summary

Insurance contracts are complex documents. This section aims to explain some of the differences between insurance contracts and what to do if you have not received a copy of your insurance contract.

### What is a 'standard cover' contract?

A 'standard cover' contract requires the insurer to pay for flood damage. If the written policy excludes damage caused by floodwater and this was not clearly explained, you can make a claim under the standard cover contract. Special rules apply where the insurer has failed to clearly inform you of the risks covered in your policy. Insurers are allowed to provide policies that are different from standard cover contracts.

### How do I know if I have a 'standard cover' contract?

If the insurer failed to clearly explain or advise you that flood damage was excluded from your policy, you will have a 'standard cover' contract, which will cover a claim for flood damage. If you were not given a copy of the policy or if the wording is unclear or confusing, then a standard cover contract may apply.

If you used a broker then the broker may be responsible for compensating you for the fact that you may not have the cover you expected. If you used a broker to take out or renew your insurance policy, seek legal advice.

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If you were unaware your insurance policy did not include flood damage, you may still be able to make a claim through section 35 of the Insurance Contracts Act. Section 35 requires the insurer to clearly inform you of the restrictions and cover provided by the insurance policy before you enter into the contract. If the insurer does not do this, the penalty is that the contract will have effect according to law and this includes cover for flood.

## How does section 35 work?

The insurer has to prove standard cover does not apply. The standard cover provided by section 35 will apply unless the consumer was clearly informed and advised in writing of the risks covered and excluded (before the contract was entered into) or otherwise knew, or should reasonably have known, the risks covered by the contract.

The easiest way for the insurer to avoid standard cover is by:

1. providing all relevant information to you, before the contract is entered into and
2. ensuring this information clearly advised you that flood damage is not covered by the policy.

The documents that may advise you that flood damage is excluded from your insurance coverage are:

- the insurance policy, if given to you at the time you took out the policy
- the proposal form
- the notice showing payment, if this specifies that flood damage is not included
- notices/information provided at renewal, as each renewal is a new contract.

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It is important you check the documents you have been given by your insurer. You can ask for a copy of your contract from the insurer. Standard cover does not apply if the policy clearly states the insurer will not pay for flood damage, even if you did not read the policy or you assumed flood damage was covered.

It is important to consider if any written information was provided before or after the contract was entered into. This may affect whether you have been adequately informed about your insurance contract's terms. There are two situations where this might occur:

## **1. When the policy was taken out for the first time**

Usually, the policy will be entered into when the insurer accepts the consumer's offer (which often happens on the telephone). This happens after the insurer has disclosed to the consumer all relevant information about the insured risk. If the information about flood damage exclusion was only provided after this time, then standard cover will apply. If you paid the premium when at the insurer's or insurance broker's office and the policy was sent out in the mail afterwards, then you were not informed in writing at the time of entering the contract and standard cover will apply.

If you applied online for your insurance policy, you are responsible for reading the terms and conditions the insurer's website directs you to.

## **2. When the policy is renewed**

A new contract is entered into each year when your policy is renewed. If a policy has been sent to you in the mail and a year later the policy was renewed, standard cover would not apply. Written information about the flood exclusion would have been provided after the first policy, but before the renewal.

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However, insurers sometimes change the policy wording at the time of renewal. These changes may further restrict the circumstances in which the insurer will pay. For example, your insurer may change its definition of rainwater damage, by saying it will now only pay for rainwater damage where the rainwater entered the house through a hole in the roof. If these changes were not made clear prior to renewal, then standard cover could apply.

## **Was there a failure to clearly inform me?**

The insurer is obliged under section 35 to clearly inform you of the risks covered in your policy, so even if you received written information, a standard cover claim may still be possible.

## **What does the insurer pay for under a ‘standard cover’ contract?**

If standard cover applies, under the Insurance Contracts Regulations, the insurer must pay for loss from “storm, tempest, flood” for both building and contents insurance.

This can include:

- the total cost of damage to the house
- the costs of demolition and debris removal
- any money paid for emergency accommodation
- the cost of damaged household items.

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# What caused the damage to my property?

## Summary

### How is the cause of the damage and loss decided?

The cause of the loss or damage depends on each case's individual circumstances. If the cause was flood damage, and this is excluded under your policy, then the insurer can refuse the claim.

### What if the loss is caused by rainwater and floodwater?

There can be more than one cause of the damage, and if it was caused by combined rainwater and floodwater entering the house, then the insurer can still refuse to pay the claim.

### Do hydrologists always get it right?

Insurers usually obtain hydrologist reports to confirm if the damage was caused by rainwater or floodwater. These reports recreate the events and suggest the maximum level the water would have reached if it was only rainwater. These reports are not conclusive; they can sometimes be inconsistent with eyewitness events. It is important that hydrology reports are specific to your property as how the water behaved that affected your property can differ. If the reports are not conclusive, they may be challenged as incorrect.

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## What is a proximate cause?

Where your policy excludes liability for flood damage, it is necessary to establish the cause of any damage as there may not simply be one clear cause of the damage. Where something is a direct or immediate cause of the loss, it is referred to as a “proximate cause”.

If your policy does not cover flood damage the insurer can refuse to pay the claim where rainwater and floodwater are both found to be proximate causes. The courts have said that where a loss is the result of two proximate causes, one of which is insured against (rainwater) and the second is excluded (floodwater), then the insurer is entitled to deny liability.

However, each case will depend on its facts. It may be possible to get the claim paid where rainwater was the proximate cause and the floodwater’s effect was minimal or insignificant.

Proximate cause means the insurer can deny a claim when:

- the policy excludes damage caused by flood
- floodwater is found to be a direct or immediate cause (even if rainwater is also an immediate cause).

The principle of proximate cause is applied in the following ways:

1. the proximate cause is the “dominant, effective, immediate or direct cause”
2. the fact one cause is first or last in time does not determine the proximate cause
3. there may be more than one proximate cause
4. a common sense approach is taken to finding the proximate cause.

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The following principles apply to water damage:

1. where rainwater came before the floodwater, the insurer must pay for the damage
2. where rainwater came after the floodwater, the claim may be refused by the insurer (however, if some of the damage to the house can be specifically identified as having been caused by rainwater—eg damage to the roof or rainwater leaking into the walls or other parts of the house—then the insurer must pay for that damage)
3. where the loss is caused by rainwater and floodwater that have mingled together before entering the house, then generally the insurer can refuse to pay the claim.

## **What should I do if my insurer gives me an expert's report?**

Insurers often have reports from experts, such as hydrologists or builders, to try and determine the origin of the water that caused the damage or how the damage occurred. These reports try to reconstruct ways in which water levels rose and the source and direction of water flow during the storm or cyclone's course. These reports are not without flaws as they may rely on incorrect assumptions or information.

Insurers may provide you with copies of these reports and you should read them carefully. Get legal help if you do not understand the reports or how the insurer is using them.

You may challenge the report if it is contradicted by eyewitness accounts, or if the report has incorrect assumptions about when or how the water reached particular areas, and the time and height that water levels peaked. However, even if these assumptions are shown to be incorrect, you must still show the damage was caused by the rainwater.

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# How do I prove the cause of the damage?

The more detailed information you get about the deluge, the easier it is to establish the cause of the loss. You should try to gather the following evidence:

- eyewitness accounts about the time the water entered the house, the level it rose to, where it came from, how it first entered the house (eg through toilets and showers or over land) and if the water level increased in stages or at a steady and uniform rate
- the position of debris left after the inundation may help indicate the direction of the water flow. This may not be a reliable indicator as the water may have changed direction many times
- maps showing rainwater drains in the area (you can get a copy from council)
- maps from the council showing the areas that it views as flood prone
- contour maps of the district and the height of the house above sea level (you can get these from surveyor's reports)
- information from the Bureau of Meteorology about the time and amount of rainfall, and any local variations in the distribution of rainfall in the area
- information about when any river levels peaked
- eyewitness accounts about the water's appearance and colour that may indicate the water's source
- if your local council prepared its own report, get a copy
- photos, videos and other flood records, including home videos and news footage, if possible

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- where the property was near the sea, the influence of any wave action (eg waves caused by emergency rescue vehicles).

## **Working together can help progress your insurance claim**

Floods and storms tend to affect a large number of people in the same area. You could use this to your advantage and:

- combine information
- share expenses (eg for expert reports)
- ask the Australian Financial Complaints Authority (AFCA) to commission an independent hydrologist's report as part of reconsidering your community's insurance claim rejections.

If you don't agree with your insurer's expert you may need to obtain your own independent expert's report. These reports can be expensive so where possible communities should share this cost and share the information among themselves.

## **How should I negotiate with my insurer?**

### **When negotiating with insurers, it is a good idea to:**

- a) Make contact with a senior person within the insurer who has the power to decide the claims. This stops information being relayed from one person to another and ensures you deal directly with the senior person who is the decision maker.
- b) Arrange for reports from experts to be exchanged. Insurers are under a legal obligation to provide you with copies of any reports and explain why they have led to your claim being rejected or partially rejected. This information can help to identify the main points of dispute and help resolve matters quickly.

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# Understanding the reason for an insurance claim refusal

There are five main reasons for refusal of an insurance claim:

1. **damage not caused by disaster** — your insurance policy will only cover damage caused by an insurable event and not damage that was pre-existing
2. **non-disclosure** — you have not disclosed information when you applied for or renewed the policy
3. **operation of a condition or exclusion clause** — you have failed to comply with an insurer’s requirement or the policy does not cover the loss
4. **fraud** — the insurer believes you have acted fraudulently in some way
5. **policy cancellation.**

## 1. Damage not caused by disaster

It is your job to show that the furniture, fittings or buildings covered by your insurance were in fact damaged at the time of the event (such as storm or cyclone). If an expert has provided an opinion that suggests your property was already damaged or in a poor state of repair, it will be necessary to provide competing evidence (possibly expert evidence) to contradict this. Legal advice will help you sort out what evidence would help your case. For more information read the “What if I had a defect in my home I was unaware of?” on page 33 of this guide.

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## 2. Non-disclosure

You are under a duty to disclose relevant information when you take out your policy, or when you renew it. If you did not provide accurate or comprehensive information, your insurer may be able to reject your claim.

Some common examples of non-disclosure are:

- not disclosing all prior insurance claims (eg burglaries)
- not disclosing criminal offences (eg arson)
- not disclosing existing damage (eg existing roof damage).

There are two ways that you are required to disclose information:

1. when the insurer asks you specific questions
2. when you find out something you know, or a reasonable person in your position could be expected to know, is a matter which would be relevant to the insurer's decision to accept the policy.

You are not required to disclose:

- something you don't know
- something that reduces the insurer's risk
- something that is common knowledge
- something that your insurer knows or ought to know
- if your insurer has waived your need to comply.

The Insurance Contracts Act limits the circumstances in which your claim can be denied as a result of disclosure.

Your insurer has a duty to clearly inform you of the nature and effect of your duty to disclose. If they have not done this, they cannot rely on your non-disclosure to refuse a claim unless your non-disclosure was fraudulent. Renewal notices that

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you receive each year will normally inform you of your duty to disclose. If you fail to do so, the insurer may be entitled to refuse your claim.

If you failed to disclose something when the policy was taken out, or at renewal, your insurer cannot reject your claim unless it can show that it would have refused to provide you with insurance if it had known the missing information. If, for example, your insurer would have given you insurance cover had it known about your recent claims history, but would have charged a higher premium, then your insurer cannot reject your claim on the basis of the non-disclosure (although it can still require you to pay a higher premium). To find out if your insurer would have proceeded with the insurance, you should request a statutory declaration by the insurer's underwriter. If one is not provided, you should complain to the AFCA who will require your insurer to prove it would not have provided you with insurance cover in the first place.

If you failed to notify your insurer of something that happened during the period of cover under the policy, your insurer can only rely on your non-disclosure to refuse or reduce your claim if it can demonstrate that it has been prejudiced by your non-disclosure.

It is the responsibility of your insurer to prove that a nondisclosure allows the insurer to reduce or deny your claim.

So, if your claim has been refused on the basis of non-disclosure then you need to:

- a) First establish if you relied upon an insurance broker to take out the policy or renew it. If the broker is responsible for miscommunication, then your complaint may be about the broker and not the insurer and you need to seek legal advice urgently.

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- b) Write to your insurer and ask them to specify what information was not disclosed. You may wish to argue that you did in fact disclose the missing information, or that it was reasonable in the circumstances not to disclose because of something your insurer did or did not ask or tell you.
  - c) If you did not disclose the information, ask your insurer to provide a copy of its underwriting guidelines to show whether it would have provided you with insurance cover if you had provided them with the relevant information.

If you believe that your claim has been improperly refused you may:

- a) complain in writing to your insurer's Internal Dispute Resolution (IDR) department; if that does not resolve it then
- b) complain to the General Insurance Division of the AFCA (they will usually require you to complain to the insurer's IDR department first); if that does not resolve it then
- c) go to court. Be aware that going to court can be costly. If you take the insurer to court and lose, you will have to pay their court costs and legal fees.

## Remember

When you arrange an insurance policy over the phone, the call is often recorded. Your insurance company will therefore often have very good evidence about what was said at the time. Your insurer is required to send your policy information to you in writing within 14 days. Your policy information will usually contain a summary of what you have disclosed for you to check and correct if necessary.

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## 3. Operation of a condition or exclusion clause

Insurance contracts often contain conditions and exclusion clauses.

Examples of conditions include:

- you must maintain your house to ensure that it is in good condition
- you must have keyed locks on all windows and deadlocks on all external doors.

You need to check your policy to find out what the applicable conditions are.

Your insurer may refuse your claim if you have failed to comply with a condition. However, section 54 of the Insurance Contracts Act states that the insurer cannot refuse to pay a claim because of some act or omission, but they can reduce the amount paid to you to the extent their interests have been prejudiced by your actions or inactions. For example, if you have failed to install keyed locks on all windows and a thief enters your premises by smashing a window, or knocking down the front door, you may be able to argue that your failure to install or maintain the window locks has not prejudiced your insurer because it did not contribute to the loss or damage suffered as a result of the break in.

If your claim has been refused due to a lack of maintenance to your property or wear and tear to your property, it is important to get legal advice.

Most insurance policies also contain exclusions. An exclusion is a situation or event that is NOT covered by the policy. Some examples of events that may be excluded are:

- flood
- fair wear and tear
- damage arising from faulty construction/design
- subsidence, erosion and seepage.

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Some of the more common exclusions are discussed below.

To rely on an exclusion clause the insurer has to prove on the balance of probabilities that the exclusion clause applies. In some cases, your insurer may also have an obligation to bring the exclusion clearly to your attention, although this does not need to be done in person. It would usually be sufficient to include this information in the documentation sent to you when you took out the policy.

## **Flood**

If your claim is rejected because your insurer says it was caused by flood or any other exclusion, then you need to get legal advice because:

- a) if the damage is caused by both rainwater and flood then you may still be able to get your claim paid where, for example, the rainwater entered your house first or the damage was caused by rainwater coming through a hole in the roof (even if floodwater entered the house as well)
- b) if the water that entered your house and caused the damage was a combination of both floodwater and rainwater then the doctrine of “proximate cause” applies. This means that you are not covered at all (not even 50/50 if the water was half rainwater). The doctrine says that where damage is the result of two causes under the policy, one covered and one excluded, then the insurer does not have to pay the claim.

For more information read the “My home and contents have been damaged by water – what do I need to know?” section of this guide.

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## What if I had a defect in my home I was unaware of?

Insurers sometimes deny claims because they say that the damage was caused by a pre-existing defect in the property (for example, that the roof let water in because it was poorly constructed). Section 46 of the Insurance Contracts Act provides you with an argument against this. Section 46 states that if you were unaware of the defect when you entered the insurance contract (and a reasonable person in the circumstances would not have been aware of it) then the insurer cannot refuse the claim. The defect itself may not be covered under the claim, however the damage that occurred following an insurable event (eg damage attributable to flood or rainwater) may be covered.

## Wear and tear/damage over time

The insurance policy will often exclude “wear and tear” and damage caused by failure to maintain the home. For example, a storm may blow tiles off your roof. The insurer may refuse to pay the claim if your house was old and the tiles needed replacement anyway because of their age. Insurance policies are not a substitute for failing to maintain your home. If your insurer rejects a claim because of wear and tear then you need to try to get:

- evidence to show that the damage was caused by a storm or other event covered by the policy
- evidence of regular maintenance work and inspections
- evidence of the state of repair of the home generally.

The insurer may refuse to pay the claim if they can establish the damages have been occurring over a period of time. It is important to let your insurer know of the damages when you first become aware of them. You should not wait until a number of storm events have occurred and have caused considerable damages to your property. Even if you believe the initial damages to your property are not significant and not worth claiming, your insurer will be able to arrange for an assessor to review the damages and identify the cause, which will help in minimising future loss.

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## 4. Fraud

To establish fraud your insurer needs to prove that you intended to deceive the insurer or acted with reckless indifference as to whether or not your insurer was deceived.

If fraud is established by your insurer then it can reject your insurance claim and void your policy. This means you no longer have insurance cover. In serious cases, the matter may be referred to the police for investigation and you may be charged with a criminal offence.

Your insurer cannot rely on rejecting your claim on the grounds of fraud if the fraud was minor and it would be unfair for your insurer to reject the claim.

Insurers are always on the lookout for fraud. To avoid being investigated:

- be cooperative
- provide all relevant details
- provide evidence (eg witnesses, photos).

If you are being investigated for fraud, get legal advice immediately.

If you are being investigated by your insurer, some tips include:

- try to remain calm
- take your time to think through questions before answering them
- ask for a break if you need one
- if your interview with the investigator is being recorded, ask for a digital copy of the interview or transcript
- if English is not your first language, request an interpreter
- do not sign anything you are unsure of
- seek legal advice before and after the interview.

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## 5. Policy cancellation

Insurers sometimes cancel insurance policies in the middle of the period of insurance cover. This may be done in response to additional information provided by you that increases your insurer's risk to an unacceptable level. Another very common reason is that you have failed to pay the premium for the policy. This is particularly likely if you have opted to pay your premium in instalments via direct debit and your direct debit has failed.

If your insurer tells you that your policy has been cancelled, you should get advice about whether they had sufficient reason to cancel the policy and whether they took appropriate steps to inform you of the cancellation in accordance with their legal obligations. If you wish to dispute their decision to cancel the policy, or argue that they have not properly notified you of the cancellation, you can make a complaint to the AFCA.

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# My insurance claim has been refused – what are my options?

If the insurer has refused your claim this refusal must be in writing. If the insurer telephones you and tells you your claim has been refused, ask them to put it in writing.

Your options once your insurance claim has been refused are to:

1. obtain competing independent evidence which supports your claim and/or undermines the understanding your insurer has relied upon to reject your claim; and then
  - a) complain in writing to your insurer's Internal Dispute Resolution (IDR) department  
If that does not resolve your claim then:
  - b) complain to the AFCA (they will usually require you to complain to the insurer's IDR department first). If this does not resolve your claim then
  - c) go to court
2. accept the decision and do not challenge it.

If English is your second language you should use an interpreter to assist with completing any further response to your insurer.

Remember that the insurance policy is a contract and the refusal of the claim is a legal dispute.

If your claim is rejected we recommend that you ask your insurer to internally review the decision straight away.

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## Can I ask the insurer to review my claim?

If your claim is rejected, the insurer must give you access to an internal and an external dispute resolution process. You must try to resolve a complaint through the insurer's internal review process before approaching the external scheme — the AFCA. While the structure of the internal dispute resolution process varies with each insurer, it usually means the decision is reviewed by someone at a more senior level. This can be useful in two ways:

1. You can find out why your claim was refused. Insurers are required by the General Insurance Code of Practice to give reasons why they have rejected your claim. The insurer's complaint and response letter can be used to find out the reasons why your claim has been refused. You need to address these reasons if you want to take your complaint to AFCA.
2. More straightforward disputes may be resolved, or incorrect decisions may be overturned, when the matter is considered from a fresh perspective. You may also be given a more detailed explanation of the reasons behind the original decision, and understand the claim had been rejected correctly.

You can get contact details for each insurer's internal dispute scheme from AFCA. The insurer is allowed to take a maximum of 30 days for the internal review of any decision (or failure to make a decision) under the General Insurance Code of Practice, but if the matter is urgent, this time should be shortened.

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## What if my insurer still rejects my claim?

If your claim has still been denied after an internal review, the next step is to complain to the AFCA as soon as you can. AFCA can only hear complaints about insurers that are AFCA members.

The advantages of AFCA are:

- The panel members who determine the claims are familiar with insurance law.
- AFCA takes into account “good insurance practice” and what is “fair and reasonable in all the circumstances” (which may lead to a higher standard of conduct for the insurer than a court may impose).
- There is no need for legal representation. AFCA procedures are generally simpler and faster than legal action. You can make a complaint in writing without having to appear in person.
- The scheme is free and there is no risk of you being ordered to pay the insurer’s legal costs if your complaint is unsuccessful.
- The decisions of AFCA will be binding on your insurer if you accept the decision.
- You still have the option of taking the dispute to court if you are not satisfied with the outcome.
- Costs will not be awarded against you if you lose.

The scheme’s disadvantages are:

- AFCA can only award limited amounts for consequential financial and nonfinancial loss. It may award interest where it considers the insurer was unreasonable in rejecting your claim.

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## What matters can AFCA hear?

AFCA has terms of reference that state which cases it can hear. These can be altered from time to time. For a copy of the terms of reference, contact AFCA or visit: [www.afca.org.au](http://www.afca.org.au).

### **AFCA can hear the following matters:**

Where the claim is for \$1,263,000 (or less), AFCA can make a final decision that is binding on the insurer about:

- whether a claim should be paid
- the calculated claim amount
- whether interest should be paid due to unreasonably delaying payment.

### **AFCA cannot hear disputes:**

- involving a claim for more than \$1,263,000 (but this cap is regularly reviewed)
- where you cannot take legal action because the case is too old (usually six years from the event that gave rise to the claim)
- about matters that do not relate to claim disputes (eg assessors' conduct)
- where there is a factual dispute that can only be resolved by choosing between the version of events given by different individuals (although this rarely applies to floods)
- if the insurer is not a member of AFCA.

AFCA may consider a dispute outside the terms of reference if the insurer agrees. You should approach the insurer about a claim outside the terms of reference to see if they will agree to the panel hearing it.

The maximum compensation AFCA can award is \$631,500.

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## What happens when AFCA receives a complaint?

When AFCA receives a complaint, it will write to the insurer asking it to provide a written response. The insurer can insist its written submission is confidential. However, AFCA will encourage the insurer to provide you with copies of the reports from its expert, if this has not been done.

AFCA will try to resolve the dispute by mutual agreement. If a dispute cannot be resolved by mutual agreement, AFCA conducts a detailed investigation and may offer an initial view on the merits of the dispute if it is likely to assist the parties to reach a resolution.

In most instances AFCA issues a recommendation. If a recommendation is not accepted by either party, a determination can be made.

Determinations are often made by a panel. The panel consists of three people:

- an independent chairperson
- a person with an insurance company background
- a person with a consumer interest background.

Generally, the panel's decision is based on written submissions and reviewing documents, rather than interviews with the people involved. In flood cases, the panel may visit the storm scene, inspect the area and speak to the people involved.

Like all decision makers at AFCA, the panel must make its decision based on what is fair and reasonable in all the circumstances, and in line with good insurance practice, the policy terms and established legal principles. This is broader than the issues a court would consider.

The panel's decision is binding on the insurer. However, you can choose whether to accept the decision. If your claim is still refused by the panel, you can reject the panel's finding and take the insurer to court.

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## What should I include in my submission to AFCA?

Your written submission should include:

1. The reasons why your claim should be paid. Your letter should address all reasons the insurer gave in refusing the claim.
2. Detailed information about what documents you received, when you received them and how the policy is unclear (if you are relying on a standard cover contract).
3. Any conflicting evidence between eyewitness accounts and the assumptions in a hydrologist's report. The panel is able to put weight on reliable first-hand evidence when it differs from reports provided by hydrologists. It has accepted that the modelling process adopted by hydrologists can only be a simplified reconstruction of events, and may not take into account variations from one street to another.

## What time limits apply for making a complaint?

Your policy may also say you need to let your insurer know about the damage as soon as possible. It may be a basis for refusing your claim, so don't delay.

### Applying for a review of your claim

If your property insurance claim resulted from a catastrophe or a disaster, you have 12 months from finalisation of your claim (if finalised within one month of the disaster) to ask for a review of your claim (clause 90 General Insurance Code of Practice).

If your insurer refuses to assess your claim because you cannot pay the excess, you should ask for an internal review and external review (if necessary). You may be able to argue that, under section 54 of the Insurance Contract Act, insurers cannot rightfully refuse your claim simply because you cannot afford to pay the excess in a lump sum.

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## Applying for Internal Dispute Resolution

If the review is refused or partially rejected then you can complain about this to the insurer's Internal Dispute Resolution department.

The General Insurance Code of Practice states insurers will respond to your request for internal review within 30 business days if they receive all necessary information and have completed any investigation required.

Each insurer designates senior officers to look at claims in an internal review and to make a final decision about the complaint.

If your insurer is not complying with their code obligations, you can contact the General Insurance Code Compliance Committee.

## Time limits for submitting a complaint to AFCA

Your time limit for lodging a complaint with AFCA will expire on the earliest of:

- two years from the date you receive a letter rejecting your claim from the insurer's Internal Dispute Resolution department or
- six years from when you first became aware, or should have reasonably become aware, of your property damage loss (eg within six years from the date of the flood).

If AFCA receives a complaint that has not been through the internal review, they will ask you to go back to the insurer for internal review. The insurer will then make a final decision that can be taken back to AFCA within two years.

AFCA generally will not grant the right to lodge a dispute outside this time frame without the agreement of the insurer. When you lodge your complaint (AFCA calls this a "dispute"), you will be asked to fill in a form called a "notice of referral". You must complete and return this form by the date specified or you may lose your right to complain to AFCA. It is worth putting in a late complaint with reasons for the delay. Seeking legal advice about what to say is recommended.

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Once AFCA has received a complaint (called “lodging a dispute”), a decision is likely to be made within three to six months but could take longer.

## **Time limit for taking complaint to court**

If your matter is unsuccessful at AFCA, you can still take it to court. You must start your claim within six years from when the claim arose (which may be six years from the date of the ‘insured event’—eg storm or flood—depending on what your policy says).

## **What power does AFCA have?**

If AFCA’s decision maker finds in your favour, it can make a decision ordering the insurer to pay:

- the claim amount
- interest in line with section 57 of the Insurance Contracts Act (if the panel considered refusal to pay was unreasonable).

AFCA’s decision makers have the power to order the insurer to pay legal costs (in very limited circumstances) or expenses—such as hydrologist reports—where it is appropriate to do so.

AFCA has limited power to order the insurer to pay damages.

## **Is legal aid available for insurance disputes?**

While AFCA is designed for people who do not have lawyers, some flood insurance cases are difficult and may need help from a lawyer.

Legal Aid Queensland can provide advice and some assistance for disputes with insurers. You can call Legal Aid Queensland on 1300 527 700.

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# Other issues to consider

## What if my insurer asks me to sign a Deed of release?

Sometimes an insurer will pay part of the claim but will ask you to sign a document releasing the insurer from any further liability. This is so you agree not to pursue any claims for further loss. The document is often called a Deed of release or a Release agreement. If your insurer asks you to sign a release, you should read it very carefully and make sure you are satisfied with the agreement before signing it. You should get legal advice before signing any legal document.

Depending on the circumstances in which you signed the release, you may still be able to pursue further claims under the policy. This would particularly be the case where the document was signed:

- in a situation where you thought you had no choice or it was the only way to get money when you needed it
- when you did not understand the effect of the document you were signing
- when extra claims were anticipated by the insurance company.

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## What should I do if I need to get repairs done?

This guide does not offer specialist advice about repairs. However, remember:

- You should be careful when selecting contractors to do repairs. Unlicensed and roving builders, roof painters and repairers can appear on the scene after a storm, cyclone or flood and offer their services. They may do an inadequate job that has to be fixed by another tradesperson or they may take money upfront and not do the job. The Queensland Office of Fair Trading or Queensland Building and Construction Commission should be able to let you know if a person is licensed.
- You should check with your insurer or get professional advice about repairs. Owners who begin to repair or replace damaged materials before their houses have properly dried may face higher costs later if some of the work has to be done again. For more information about repairs, contact the Insurance Council of Australia and ask them to send you a copy of their brochure.
- The insurer cannot insist that repairs wait until it has seen the damage or given approval. If the insurer refuses to allow repairs to be done, you should take photographs and make a written record of the damage before starting work. It may also be appropriate to ask your appointed builder to provide a report on the cause of the damage.
- Under clause 86 of the General Insurance Code of Practice, where an insurer has selected and directly authorised a repairer, they must accept responsibility for the quality of workmanship and materials. Consequently, it is often best to let your insurer authorise the repairs for your property.

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## 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 replacement of the building.

Most policies are for sum insured. If your policy is 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 housing, cleaning or clearing up a site, or professional fees for architects, etc. Ask your insurer about what other cover is provided.

If your policy is for replacement of 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 should read carefully the cash settlement factsheet that insurers are required to provide. 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 cash settlement?

When your claim is accepted your insurer will either pay you a cash settlement for the value of the damage to your property or rebuild the property for you.

There are a number of issues you should consider when deciding whether a cash settlement or having the insurer rebuild your property is the best option for you.

1. You will be asked to review a scope of works which sets out in detail all of the work needed to fix your property. If the

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insurer is fixing your property, the scope of works does not have to be perfect before works start because the scope of works can be adjusted when new damage is found.

2. However, if you are accepting a cash settlement to do the work yourself, you need to be sure the amount will cover the repairs to your property. You can only review the cash settlement down the track in very rare circumstances. This is because the cash settlement is a full and final settlement of your claim.
3. The insurer will guarantee works of builders it appoints to complete repairs. It will not guarantee works of builders that you appoint.
4. If you accept a cash settlement, you become the project manager for your repairs. That means you have to organise builders and tradespeople and ensure it meets your budget.
5. Generally it is easier and cheaper for insurers to source builders and materials than it is for consumers. Make sure any cash settlement amount takes this into account.
6. Make sure any scope of works you are given covers all the damage your insurance policy covers.
7. If you have a mortgage, make sure you talk to your lender about their policy when an insurance cash settlement is made.

## Temporary accommodation

You are entitled to temporary accommodation while your property is being fixed. Depending on the policy it will provide you with:

- (a) a lump sum amount to spend on temporary accommodation or
- (b) temporary accommodation for a period of time, eg 12 months.

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You should get legal advice if:

- (a) the property will not be fixed before your temporary accommodation entitlement runs out
- (b) the insurer or you cannot agree on suitable temporary accommodation
- (c) you would like to use your temporary accommodation entitlements in a different way to what is set out in the policy, eg buying a caravan.

## **If I rebuild, will my insurer cover extra costs from 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 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.

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

Fencing replacement will depend upon the type and location of your policy (for example, is it 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 of replacement. You should have debris removal and demolition included in your insurance policy but sometimes this is an extra benefit. Check your policy.

If a dividing boundary fence has been damaged following an insurable event (ie a fence that rests on the common boundary line of two or more properties),

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you are likely to be cash settled a percentage of the repair cost due to your neighbours being responsible for their share of the fence costs (eg 50 percent if the fence is shared with two properties).

After a natural disaster the government and councils may offer help for fencing and debris removal, clean-up and demolition. Check with your local council whether this help is available. 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 upon the interest each person has in the property. 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 which has been given to another person, get legal advice.

## **I own a share in a property but my name isn't on the insurance policy**

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.

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## **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 the assessment of your loss was wrong or incomplete, you can ask for a review.



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# What if 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 insurer, 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 the replacement cost of your home 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 are not able to make a claim.

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## **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.



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# Other help

## Can I access my superannuation?

Most people who have worked are members of a superannuation fund. Most superannuation funds allow people to obtain early access to their superannuation in certain circumstances including financial hardship, compassionate grounds or permanent incapacity. If you are struggling financially, it may be worthwhile talking to your superannuation fund to check your options.

## What about life or disability insurance cover in my superannuation?

Most superannuation funds also provide life or disability insurance cover. If a person has passed away or been seriously injured in the floods there are often generous insurance lump sums that can be claimed. You should get legal advice regarding your entitlements before making any decisions.

## Will an insurance payout affect my eligibility for government financial help?

In many cases you may still get the government's financial help even if you have already received an insurance payout. Your insurer may reduce your payout to reflect the amount that the government has paid you but some insurers will give payouts even if you received or can get government help. In some cases, if you get government help for a particular loss, your insurance coverage could be used for other losses. Speak with your insurer about these matters.

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Many insurance policies include extra benefits on top of the sum insured. These benefits are for emergency accommodation, professional fees (eg for architects), compliance costs (eg 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.

## **What should I do if I have problems with my insurance broker?**

Where the policy was arranged by an insurance broker (rather than you dealing directly with the insurer), other issues (apart from those already dealt with in this guide) may arise. If the loss was due to some negligent conduct on the broker's part, you may be able to pursue a claim against them.

Examples include where you:

- specifically asked the broker to organise insurance against flood and the broker failed to do so and did not let you know
- did not have an insurance policy covering you for loss due to an unreasonable delay by the broker, and you would have been able to claim under the policy if it was in place.

You can take complaints about insurance brokers to the AFCA, an alternative dispute resolution service which you can access for free.

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# Sample letters

**Sample 1:** Can't pay excess

**Sample 2:** Delay

**Sample 3:** Complaint to General Insurance Code Compliance

**Sample 4:** Financial Ombudsman Service

**Do not photocopy the sample letter and send it. Use the letter as a guide and include information relevant to your own situation.**

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## Sample 1: Can't pay excess

[Write date here]  
Insurance Company  
Address

Dear Sir/Madam,  
RE: Insurance Type:  
Policy Number:

I refer to the above policy.  
I confirm that you have agreed to pay my claim if I pay an excess of \$\_\_\_\_\_.

I am in financial hardship and I am unable to pay the excess in full. I am in financial hardship because (give reasons and some details, eg unemployment, illness, low income).

I am therefore writing to you to request that you pay my claim following receipt of this letter and that you (delete the option that is not applicable):

1. have the excess deducted from the claim to be paid to me
2. agree that I can pay the excess in instalments of \$\_\_\_\_\_ per month.

My request is made pursuant to the General Insurance Code of Practice, Section 54 of the Insurance Contracts Act, and your duty of utmost good faith (Section 13 of the Insurance Contracts Act).

I look forward to your confirmation in writing within 14 days, that the above proposal is acceptable.

Yours faithfully,

[Full name]  
[Insert your contact details]

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## Sample 2: Delay

[Write date here]  
Insurance company  
Address

Dear Sir/Madam,  
Re: Home and/or contents insurance claim  
Policy number:

I refer to the claim I made on \_\_\_/ \_\_\_/ \_\_\_ (by telephone/in writing). To date, I have not received a reply.

Part 8 of the General Insurance Code of Practice requires that you respond in 10 business days.

I seek a decision on my claim, or a detailed statement of any further information required to decide the claim and an indication of the time it will take to decide.

I look forward to your urgent response in writing.

Yours faithfully,

[Full name]  
[Insert your contact details]

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### Sample 3: Complaint to General Insurance Code Compliance

General Insurance Code  
Compliance Committee  
info@codecompliance.org.au

Dear Sir/Madam,  
Re: Home and/or contents insurance claim with [insurer]  
Policy number:

I made a claim with [insurer] on \_\_\_ / \_\_\_ / \_\_\_ (by telephone/in writing).

I have tried to follow up my claim on the following occasions [give details].

I have received no confirmation that my claim has been accepted. I believe this delay is unreasonable.

Part 8 of the General Insurance Code of Practice requires that the Insurer respond to my claim within 10 days. I contend that [insurer] has breached the Code.

Please investigate the issues raised.

Yours faithfully,

[Full name]

[Insert your contact details]

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## Sample 4: Australian Financial Complaints Authority

Australian Financial Complaints Authority

Dear Sir/Madam,

Re: My home and contents insurance claim with [insurer]

Policy number:

I have a claim dispute with [name of insurance company] relating to my home and/or contents insurance.

I request that the Australian Financial Complaints Authority (AFCA) consider the dispute on the basis that it is an unresolved dispute between [name of insurance company] and me.

I made a claim on [date].

I have been waiting on a decision from [name of insurance company] for over [must be over 30 days] and despite calls I have not received a response. OR

I have given all information as requested by [name of insurance company] and it has been [must be over 30 days] since I provided the requested information and I still don't have a decision from [name of insurance company]. OR

[Name of insurance company] rejected my claim on [date] and referred me to its internal dispute resolution process. I agreed to undertake this process but it has been over [must be over 30 business days] and I still don't have a final decision.

[Name of insurance company] has not acted in accordance with its dispute resolution obligations under the General Insurance Code of Practice.

As the dispute remains unresolved, I request that AFCA investigate the dispute. I look forward to receiving a Notice of Referral to be completed by me.

Yours faithfully,

[Full name]

[Insert your contact details]

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# Useful contacts

## Your local Legal Aid Queensland office

See the office details on the back of this guide, visit [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au) or call us on 1300 65 11 88.

## Other useful contacts

### **Insurance Law Service (Consumer Credit Legal Centre (NSW) Inc.)**

PO Box 538, Surry Hills NSW 2010  
National Toll Free: 1300 663 464  
[www.insurancelaw.org.au](http://www.insurancelaw.org.au)

### **Australian Financial Complaints Authority**

GPO Box 3, Melbourne Vic 3001  
Phone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
[www.afca.org.au](http://www.afca.org.au)

### **Insurance Council of Australia**

Toll Free: 1300 884 934  
[www.insurancecouncil.com.au](http://www.insurancecouncil.com.au)

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## **General Insurance Code of Practice**

[www.insurancecouncil.com.au/cop](http://www.insurancecouncil.com.au/cop)

## **National Insurance Brokers Association**

Suite 4.01B, Level 4, 31 Market Street, Sydney NSW 2000

Phone: (02) 9964 9400

Email: [info@niba.com.au](mailto:info@niba.com.au)

[www.niba.com.au](http://www.niba.com.au)

## **Queensland Office of Fair Trading**

Department of Justice

GPO Box 3111, Brisbane Qld 4001

Phone: 13 74 68

[www.qld.gov.au/law/fair-trading](http://www.qld.gov.au/law/fair-trading)



# Your local Legal Aid Queensland office

## **Brisbane**

44 Herschel Street  
BRISBANE Q 4000

## **Bundaberg**

3rd Floor  
WIN Tower  
Cnr Quay & Barolin Streets  
BUNDABERG Q 4670

## **Caboolture**

Ground Floor  
Kingsgate  
42 King Street  
CABOOLTURE Q 4510

## **Cairns**

Level 2  
Cairns Square Complex  
42-52 Abbott Street  
CAIRNS Q 4870

## **Inala**

Level 1  
Inala Commonwealth Offices  
20 Wirraway Parade  
INALA Q 4077

## **Ipswich**

Level 7, 117 Brisbane Street  
IPSWICH Q 4305

## **Mackay**

Ground Floor  
17 Brisbane Street  
MACKAY Q 4740

## **Maroochydore**

Ground Floor  
M1 Building  
1 Duport Avenue  
MAROOCHYDORE Q 4558

## **Mount Isa**

6 Miles Street  
MOUNT ISA Q 4825

## **Rockhampton**

Ground Floor  
35 Fitzroy Street  
ROCKHAMPTON Q 4700

## **Southport**

Level 2  
7 Bay Street  
SOUTHPORT Q 4215

## **Toowoomba**

1st Floor  
154 Hume Street  
TOOWOOMBA Q 4350

## **Townsville**

Level 4  
Northern Securities Building  
22 Walker Street  
TOWNSVILLE Q 4810

## **Woodridge**

1st Floor, Woodridge Place  
Cnr Ewing Road and  
Carmody Street  
WOODRIDGE Q 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 (Aboriginal and Torres Strait Islander Information Line)

