



LEGAL AID

WESTERN AUSTRALIA

WA bushfires – insurance

This information sheet is for people with insurance queries who have been affected by bushfires. It explains your legal rights and options and has the contact details of organisations that may be able to help you.

This information sheet cannot replace legal advice. Getting legal advice about your individual situation is important.

My insurance papers have been destroyed and I don't know who my insurer is?

You can contact the **Insurance Council of Australia hotline on 1300 444 557** if your insurance documents have been destroyed or you are having difficulty finding your insurance documents or have a query about who your insurer is.

My home and/or contents is insured - what should I do first?

If you have insurance, you should contact your insurer as soon as possible to make a claim. It does not matter that your policy documents have been destroyed as your insurer can easily confirm any insurance you have with them.

Your policy may say that you need to tell your insurer as soon as possible of any damage. If you do not do this within a reasonable time, your claim may be refused. It is better not to delay.

You may be feeling shock and grief and you may be having trouble understanding information the insurer has sent you. Ask family, friends or support agencies for help to lodge your insurance claim as soon as you are able.

Do not sign any documents until you understand what they mean. Contact **Legal Aid WA's InfoLine on 1300 650 579** for information or a referral to an appropriate service.

You can ask for a review if you later find your estimates were wrong. Usually, after a disaster, you have one month from the time your claim is finalised to do this.

Does my insurance policy cover me for damage and/or loss from bushfires?

Whether you are covered for damages or losses from bushfires depends on what type of insurance you have and the extent of your cover. For example, you may have home building insurances, contents insurance, or motor vehicle insurance or life insurance.

What you are covered for depends on the wording of your particular policy. Bushfires may be covered as part of fire damage. Exclusions for fire related damage may also apply. It can be difficult to work out what is covered by your policy so if you are unsure, get advice from the **Insurance Law Service** on **1300 663 464** (a factsheet **Bushfire Insurance Guide** can also be downloaded at: <http://www.insurancelaw.org.au/fact-sheets/>) or you may be able to obtain a referral to an appropriate service from **Legal Aid WA** or your local **community legal centre**.

How does my insurance policy work?

The 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, accountants or planners. Check your policy or ask your insurer 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 the building 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 bushfires.

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.

Note: do not sign an insurance release form if you are not happy with it. Contact **Legal Aid WA's InfoLine** on **1300 650 579** for information and referral to an appropriate service.

Should I accept the repair/replacement option or a cash settlement/lump sum?

Often it will be the insurer's decision but under some policies you may be able to choose. If you can choose, think carefully about each option. 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 if you accept a lump sum payment, for example, the cost of removing debris, or the cost of permits. Check your policy carefully and talk to your insurer about this. Before agreeing to any settlement

of your claim, it is important you check to see if you are entitled to more than your sum insured through the existence of additional benefits cover.

If I rebuild, will my insurer cover extra costs from any 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 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 bushfires.

You may, however, have cover for any 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 planning laws.

I am in urgent need of money. Is there anything I can do to get the payout more quickly?

Yes. Insurers must fast-track your claim if you are in urgent financial need. This is in accordance with the General Insurance Code of Practice (‘the Code’), 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.codeofpractice.com.au/. The Code also says the insurer must pay you an advance payment if appropriate and within five days of you demonstrating financial need. Any advance payment will be taken off the total value of your claim. Talk to your insurer about your situation.

Contact the **Financial Ombudsman Service** on **1300 780 808** or **1800 337 444** (Natural Disaster Hotline and Information) if you cannot come to an agreement with your insurer.

If you are unable to pay the excess in full due to financial hardship you are experiencing, you may be able to apply to the insurance company seeking to pay by instalments or to postpone payment of excess.

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 insurance company, mortgage company or other financial institution, you may have a complaint against that institution for giving you inappropriate advice. Get legal advice about this.

You may be able to get financial help from the government. This may help cover the difference between the replacement cost of your home and the sum you were insured for.

I forgot/didn’t 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.

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 future bushfires. 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.

What can I do if my claim is rejected?

Try to negotiate with your insurer. The insurer should have its own dispute resolution processes. The **Financial Ombudsman Service (FOS)** can help you find out who you need to direct your complaint to within the insurance company.

If your claim is rejected by your insurance company, you may be eligible to have it reviewed for free by the **Financial Ombudsman Service**. Your insurance company must follow the FOS decision. You can still take action if you are not happy with the decision. The insurer must tell you if your claim is eligible for review by FOS (you can check this directly with the FOS).

The following are the steps to lodge a dispute with the FOS:

1. Contact your insurance company.
2. Explain your complaint or concern and ask for an internal review.
3. Check that the insurance company is a member of the FOS. This can be done by contacting the FOS or go to:
http://fos.org.au/centric/home_page/members/participating_financial_services_providers.jsp
4. If you are not satisfied with the response or do not hear back from your insurance company after 45 days, you can apply to the FOS. You have two years from the date of the internal review decision to apply to the FOS.

The FOS will investigate the complaint and gather relevant information to determine the dispute. The FOS can then recommend how the matter should be resolved. It will try to reach an agreement between you and the insurer. The FOS can also make a 'binding' decision (a decision that must be followed) on your case if an agreement between the insurer and you was not reached. For more information on the **Financial Ombudsman Service**, visit www.fos.org.au.

What if I am not successful at the FOS?

If you are unsuccessful at the FOS you can still take your matter to court. You must start your claim within six years from when the claim arose. This may be six years since the date of the 'insured event' - that is, the bushfire that resulted in the claim.

Do I need a lawyer?

The FOS is designed for people who do not have lawyers. However, some bushfire insurance claims are difficult and you may need help from a lawyer. You may be able to get advice from Legal Aid WA or your local community legal centre about whether you need a lawyer. If your claim is at the FOS, the **Insurance Law Service** may also give you free advice and help. Contact it on **1300 663 464**.

Am I responsible if someone hurts themselves on my property?

You are not responsible for government contractors and volunteers from mainstream organisations (such as the State Emergency Service). These people are covered for any accidents that may happen when helping on your land by the government's or the organisation's own public liability insurance.

However, public liability insurance cover is included in your property insurance policy. If you accept a lump sum payout for the total loss of a property, your public liability cover may or may not stop once your payout is settled. This would be explained in the lump sum payout's letter of offer. If you suffered partial loss or damage, your public liability insurance usually keeps going. Check with your insurer.

You can get public liability insurance if you got a lump sum payment and are not covered. Contact the **Insurance Council of Australia** on **1300 728 228** for more information.

Other insurance cover

Superannuation

While it is rare to get superannuation early, you may be able to get part of your superannuation early on **compassionate grounds** if it is used to stop your lender selling your property or other specific special circumstances. You will need to contact your superannuation fund to see if they allow early release of superannuation under any circumstances. If they say yes, then you can apply through the Department of Human Services (Cth). You will need to meet the requirements and have the necessary proof.

Some people on certain Centrelink pensions can apply to get their superannuation early due to **severe financial hardship**. You can apply directly to your superannuation fund for early release. Centrelink's role is to respond to requests for confirmation of your income support payment status and has no

involvement in determining financial hardship, or deciding if superannuation benefits are to be released.

Contact the **Department of Human Services (DHS) Early Release of Superannuation Benefits Branch** on **1300 131 060** for more information on early release of benefits on compassionate grounds or go to the **DHS Centrelink** website at:

http://www.centrelink.gov.au/internet/internet.nsf/individuals/early_release_of_superannuation.htm for information on early release because of severe financial hardship and on compassionate grounds including mortgage assistance and to obtain the application form required in this case.

A financial counsellor can help you with applying in the first place.

You may have to pay tax on your superannuation if you get it early. Contact the **Australian Taxation Office** on **13 28 61** for an interview to find out how much tax you may have to pay.

Consumer credit insurance

You may have consumer credit insurance on your loan. This insurance covers you if something happens that means you are no longer able to meet the payments on your loan. This usually includes things like losing your job, having a sickness or accident, or if there has been a death.

Contact your loan provider. The **Consumer Credit Legal Service WA** may also be able to give you more information. Contact it on **(08) 9221 7066**.

Where can I get help?

- Contact **Legal Aid WA's InfoLine** on **1300 650 579** for information and referral
- Contact the **Insurance Law Service** on **1300 663 464** for free telephone legal advice to anyone in Australia on insurance law matters or disputes involving insurers. If you need an interpreter call **131 450**.
- Contact the **Financial Ombudsman Service Natural Disaster Hotline** on **1800 337 444** or email FOSdisaster@fos.org.au for help and information on financial hardship, insurance claims and other financial issues experienced as a result of extreme weather events
- Contact the **Insurance Council of Australia** on **1300 728 228**, Monday to Friday, 8.30am to 5pm, www.insurancecouncil.com.au/ for advice and assistance on insurance issues
- For advice and counselling on credit related issues contact the **Consumer Credit Legal Service WA** on **(08) 9221 7066** Monday to Friday, 9.30am to 5pm <http://www.cclswa.org.au/>
- For complaints about builders contact the **Building Commission's Dispute Resolution Service** on **1300 489 099**
- The **Australian Securities and Investment Commission's MoneySmart** website (www.moneysmart.gov.au) has information on



insurance including tips to help make sure you get the insurance you need

- For counselling and support contact **Beyond Blue** on **1300 224 636**, seven days, 24 hours a day, www.beyondblue.org.au
- Contact the **Department for Child Protection** on **1800 032 965** for information on help available for individuals and families

Natural disaster - government assistance

Australian and/or State Government assistance may be available if the impact of the floods meets the criteria to be declared an “eligible natural disaster” for the purposes of Natural Disaster Relief and Recovery Arrangements (NDRRA). For more information on this see **Information sheet 90 Bushfires – debt** which is available from any Legal Aid WA office.



LEGAL AID
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Legal Aid Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

55 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Fremantle Regional Office

Shop 7, Queensgate Arcade, William Street, Fremantle, WA 6160
(08) 9336 9100

Midland Regional Office

Landgate Building, 1 Midland Square
Cnr The Avenue and Old Great Northern Highway
Midland, WA 6056
(08) 9274 3327

Southwest Regional Office

Koombana Court, 141 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 7, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Christmas/Cocos Islands Office

Administration Building Gaze Road,
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This document is based on a Fact Sheet produced by Victoria Legal Aid. Legal Aid WA acknowledges the invaluable assistance provided by Victoria Legal Aid.

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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