



# LEGAL AID

WESTERN AUSTRALIA

## Floods – insurance claims

**This information sheet is for people with insurance queries who have been affected by severe storm related floods. It will explain some of 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.**

### Natural Disaster Hotline & Information

The **Financial Ombudsman Service** has established a dedicated hotline for all victims of natural disasters seeking help and information on insurance or other financial issues experienced as a result of floods or other natural disasters.

Call **1800 337 444** and your call will be put directly through to the FOS disaster helpline team. Alternatively you can email the team at [FOSdisaster@fos.org.au](mailto:FOSdisaster@fos.org.au).

### My insurance papers have been lost or 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 car are insured - what should I do first?

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 document until you understand what it means. Contact **Legal Aid WA's InfoLine** on **1300 650 579** for assistance.

You can ask for a review if you later find your estimates were wrong. Under the **General Insurance Code of Practice** ('the Code') if your property claim resulting from a disaster or catastrophe was finalised within one month of the disaster, you can request a review of your claim if you think the assessment of your loss was not complete or accurate. Your insurer must give you six months from the finalisation of your claim to ask for a review.

### **Will my insurance company pay?**

Maybe. Your insurance policy is your contract with the insurer and says when, how and what the insurance company must pay for. Check your policy wording. This is covered in the certificate of insurance and product disclosure statement

With some insurance contracts (eg motor vehicle, home building, and home contents) your insurer should clearly inform you in writing before entering into the contract with you or within the 14 cooling off period (if you received your documents later) if flood cover is excluded. If this was not done, then the insurance company must pay for flood damage.

For example, this will apply if you paid the premium at the office and the policy was mailed afterwards. However if you get the policy in the mail and a year later you renew the policy, this will not apply once you renew. This is because you got documents telling you the insurance company did not cover you for flood before you renewed the policy.

Even if your policy excludes flood damage, you may still have cover for events like storm damage or rainwater damage.

Many building and contents policies say that the insurance company will pay for damage caused by rainwater or stormwater, but will not pay for damage caused by floodwater. You may have taken out optional coverage for flood damage.

Comprehensive insurance for your car may cover loss or damage to your car caused by storms or floods.

If you are not sure if you are covered you may need to get legal advice.

### **What is the difference between floodwater and rainwater?**

Your policy will explain the difference.

Generally

- rainwater means water falling from the skies that runs off over the surface of the land (and may include water overflowing from storm water drains)

- flood water means the covering of normally dry land by water escaping or released from rivers, lakes channels, dams or canals

### **How do I know whether the water was floodwater?**

You don't need to decide. Insurance companies get reports from experts, such as hydrologists, to work out if damage was caused by rainwater or floodwater.

If you need your own report, as the reports are expensive communities should organise themselves and share this cost and information amongst themselves.

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

In this case, the insurance company may reject your claim. Sometimes the decision will be correct, but sometimes it may not. There may be arguments the insurance company has not considered, for example:

1. The rainwater came in first. The water level in your house may have risen and then stopped. A second wave of water then came into your house. This may show that the first wave was rainwater and the second surge was floodwater. The insurance company has to pay for damage caused by the rainwater.
2. There was floodwater but only a little. If the amount of floodwater was small compared to the amount of rainwater, the insurance company will have to pay.

You should get legal advice if your claim is rejected.

### **How does my insurance policy work?**

The cover will be for a 'sum insured' (the specific dollar amount you are insured for) or 'total replacement'. 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. Read 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 replacement so long as there are no improvements in quality or standards in the new building.

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 the time limits set out at the start of page 2 under the heading **My home and car are insured – what should I do first?**

Motor vehicle insurance policies are based on either 'agreed' or 'market' value. An agreed value policy has a set dollar value for your vehicle. Market value policies value your car based on the make, model and condition. The agreed value is usually higher than the market value.

**Note:** do not sign an insurance release form if you are not happy with it. Get legal advice. Contact the **Legal Aid WA's InfoLine** on **1300 650 579** for information or referral.

### **How do I prepare my claim?**

Collect evidence about the cause of the damage. The more detail you get, the easier it may be to show the cause of your loss. You should try to gather evidence such as:

- Eyewitness accounts about the time the water came into your house, the level it rose to, where it came from, how it first came into your house, for example through toilets and showers or over land, and whether the water level increased in stages or at a steady rate.
- Maps showing rainwater drains in your area (you can get maps from local government).
- Information about when any river levels peaked.
- Photos, videos and other records of the flood, including home videos and if possible, news footage. It may also help if your photos or video shows any damage to neighbouring property. Try to get eyewitness accounts of what happened first to neighbouring properties.
- Your local government's report if there is one.

### **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 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 <http://www.codeofpractice.com.au/>. The Code also says the insurer must pay you an advance payment if appropriate and within five business days of you demonstrating financial need (Clause 6.1.4). 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) if you cannot come to 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.

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

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

### **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 floods.

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. The process outlined under the heading below **What can I do if my claim is rejected?** can be used if your insurance company refuse to assess your claim because you cannot pay the excess.

### **What if I need emergency repairs?**

If possible, talk to your insurer before touching or moving anything in your home after the storm or flood. If your home is exposed to further damage from the weather, or because the premises can no longer be secured (for example, windows or doors have been broken) you should do only 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 also want to approve the repairer.

### **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 (and 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://www.fos.org.au/centric/home\\_page/members/list\\_of\\_financial\\_ombudsman\\_service\\_members.jsp](http://www.fos.org.au/centric/home_page/members/list_of_financial_ombudsman_service_members.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](http://www.fos.org.au).

#### **Do I need a lawyer at FOS?**

The FOS is designed for people who do not have lawyers. However, some flood 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 National Insurance Hotline may also give you free advice and help.

#### **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 storm or flood that resulted in the claim.

#### **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 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.

### **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**

#### **Life insurance cover**

You or a family member may be covered in the event of a death. This insurance could be obtained as part of your superannuation benefits or through a life insurer. Check your policy.

### Superannuation

While it is rare to get superannuation early, you may be able to get it on compassionate grounds or if you are on eligible income support from Centrelink and are having severe trouble with money.

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](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.

### 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 more information?

- Contact **Legal Aid WA's InfoLine** on **1300 6540 579** for information and referral
- Contact the **Insurance Law Service** on **1300 663 464** Monday to Friday 9.30- 4.30 EST 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**. A fact sheet with information on *Flood Insurance* is available on line at:  
<http://www.insurancelaw.org.au/fact-sheets/>
- Contact the **Financial Ombudsman Service Natural Disaster Hotline** on 1800 337 444 or email [FOSdisaster@fos.org.au](mailto:FOSdisaster@fos.org.au) for help and information on financial hardship, insurance claims and other financial issues experienced as a result of floods or other extreme weather events or call 1300 78 08 08 to register a dispute about a financial hardship application. A dispute can also be registered online with FOS. A fact sheet: Natural disasters: are you experiencing financial difficulty can be downloaded at its website: [http://fos.org.au/centric/home\\_page.jsp](http://fos.org.au/centric/home_page.jsp)
- Contact the **Insurance Council of Australia** on **1300 728 228**, Monday to Friday, 8.30am to 5pm, [www.insurancecouncil.com.au/](http://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**
- For help regarding lost documents and water damaged possessions contact **Insurance Council of Australia** on **1300 728 228**, Monday to Friday, 8.30am to 5pm. It also has a brochure *Consumer Tips for Flood Insurance* which can be downloaded at its website <http://www.insurancecouncil.com.au/>
- The **Australian Securities and Investment Commission's MoneySmart** website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au)) has information on insurance including tips to help make sure you get the insurance you need
- For **counselling and support** call **Beyond Blue** on **1300 224 636**, seven days, 24 hours a day, [www.beyondblue.org.au](http://www.beyondblue.org.au)
- **More information on government assistance also may be available on the Australian Government Disaster Assist** <http://www.disasterassist.gov.au/www/disasterassist/disasterassist.nsf/Page/Home> or Australian Emergency Management <http://www.em.gov.au/> websites

### **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 84 Floods – debt issues which** is available from any Legal Aid WA office.



## 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](http://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 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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