

Bushfires (WA) – insurance claims

If you have been affected by a bushfire in Western Australia, you may have insurance queries. This infosheet may help answer some of your questions.

It does not replace legal advice. It is important to get legal advice about your individual situation. Do this as soon as possible as limitation dates may apply which could affect your options.

Legal Aid WA and our partner organisations are committed to ensuring that all people affected by natural disasters (such as bushfires, floods and cyclones) receive legal help.

If you have been affected by a natural disaster, you should contact your insurance company.

My insurance papers have been destroyed or lost

If your policies have been destroyed or damaged by the bushfire (or you can't find them) and you do not know who your insurer is, contact the Insurance Council of Australia (ICA) Disaster Hotline on 1800 734 621 to find out. This hotline is activated during disasters. The answers to many frequently asked questions are also on the ICA website at:

<https://insurancecouncil.com.au/consumers/help-in-disasters/>.

Then contact your insurer and ask them to send you a copy of your insurance documents (for example, your product disclosure booklet and certificate of insurance). You might also be able to access your policies online through your insurer's website.

You don't need a copy of your policies to start your claim, but it is helpful to have read them carefully to understand exactly what you are covered for before making a claim.

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My home and car are insured – what should I do first?

If you have insurance, you should contact your insurer as soon as possible. Your policies 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 claims may be refused. It is better not to delay.

If you can no longer live in your house, when contacting your insurer check whether you have cover for temporary accommodation and for how long.

You may be feeling shock and grief and having trouble understanding information the insurer has sent you. Ask family, friends or support agencies for

help to lodge your insurance claims straight away. It is best to lodge your claim as soon as possible.

Do not sign any documents unless you understand what they mean. Contact Legal Aid WA's Infoline on 1300 650 579 for information or referral.

Insurance claims – review period

If your insurer is a member of the General Insurance Code of Practice ('the Code') and your property claim resulting from a natural disaster 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 allow you 12 months from the finalisation of your claim to ask for a review.

Can I clean up and make emergency repairs before making a claim?

Speak to your insurer before authorising repairs. Emergency repairs should only be undertaken to make the property safe.

Insurance companies will usually want to assess the damage to your property before any repairs are done. Many companies will also want to approve the repairer you are using.

If you do decide to go ahead with repairs before making a claim, make sure you have clear before-and-after photos and keep all receipts for the work that is done.

You should take photos or a video of the damage done to your property before you start cleaning up. Photograph or video any damage to the inside and outside of the house (roof, walls, verandah, flooring, kitchen, bathroom, etc), any external structures like sheds or garages, as well as your furniture and other valuables.

You can then use these images to show your insurance company the extent of the damage caused to your property by the fire. Store damaged or destroyed items somewhere safe. Do not throw away goods that could be salvaged or repaired.

Many insurance policies will also require you to take reasonable steps to prevent more damage to your property after a natural disaster. This could mean putting a tarp over a damaged roof to prevent more damage from rain or storms, or moving undamaged valuable items to a secure section of the property where they will be safe. If you have any questions about what you can or can't do, contact your insurer.

Speak to your insurer before authorising repairs. Emergency repairs should only be done to make the property safe.

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

Whether you are covered for damage or loss from bushfires depends on what type of insurance you have and the extent of your cover.

What you are covered for depends on the wording of your policy.

Bushfires may be covered as part of fire damage. But exclusions for fire related damage may apply. There may be limitations on whether or not fire damage includes bushfire damage and to what extent. Some policies do not cover damage caused by scorching, melting, heat, soot, smoke or ash unless your buildings or contents have caught on fire.

Your policy may impose a general obligation on you to take reasonable measures to prevent loss. What is reasonable can be argued about.

It can be difficult to work out what is covered by your policy. If you are unsure, get legal advice.

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?

Generally, the policy will be for a sum-insured cover (the specific dollar amount you are insured for and maximum amount that your insurer will pay for a claim), or total replacement cover (which covers the cost of replacing your property to the standard it was prior to the bushfire). Most policies are for sum insured.

There are variations of cover so read your policy to see what exactly you have.

If your policy is sum-insured, usually you will only get an amount of money up to the sum-insured amount. The property value is not the same as rebuild value. Check if your policy offers a 'safety net' or 'safeguard'. This means the insurer adds up to 30% to your sum-insured amount if there is a total loss.

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 (including under additional benefits) or ask your insurer what other cover is provided.

If your policy is for replacement (for example, of the building) the policy may let the insurer choose between paying for your replacement building costs, or giving a lump sum cash settlement. The cash settlement 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 settlement but this is not enough to cover the cost of rebuilding, you may need to get the insurer to review your claim as outlined above under the heading Insurance claims – review period.

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.

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My insurance policy lapsed just before the fire/I took out insurance just before the fire. Am I still covered?

If your policy recently lapsed or you only just took out insurance, you may still be covered. Most bushfires within 48 or 72 hours of you first taking out the policy are not covered but there can be exceptions to this. You should get legal advice about your situation as soon as possible.

I am underinsured. What can I do?

Underinsurance is when the amount you are insured for is not enough to cover the costs of rebuilding or replacing your lost contents. Unfortunately, if you are ready to make a claim you cannot change the amount you are covered for or the events you are covered for. You can only take steps to improve your cover for the future.

If you cannot afford the costs to rebuild, and the sum insured was decided by your insurance company or mortgage company or other financial institution, you may have a complaint against that institution for giving you inappropriate advice. Get legal advice about this.

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

I forgot or didn't pay my insurance premium. Am I still covered?

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.

What preparation should I do before making a claim?

Before you begin the claim process, it is good to do some preparation. Write a list of all the major items damaged or destroyed in the fire or as a result of the fire that you want to claim on insurance. This list is more important if there is partial damage rather than total loss. Think about each room of your home and the items you had in those rooms – carpets, curtains, furniture, electronic equipment, air-conditioning, clothing – and make sure you include these items on your list if they were damaged. Don't forget to include items in gardens, sheds and garages. Include as much information as you can about the items including the make, model and date of purchase (if known) to support your claim. Photographs of damaged items will also help to support your claim.

Can I claim over the phone?

Yes, you can make your claim over the phone. Have pen and paper ready to record the time of your call, the person you spoke to and the claim number. The call may be recorded so be accurate. Don't answer questions that only an expert would know. It is okay to say what you saw and heard and let the insurer know you do not know all the answers.

If you are ringing from a mobile phone, you can ask a staff member from your insurance company to call you back if you are concerned about call costs. You can also ask what emergency assistance they can provide.

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

Under the Code, insurers must fast-track your claim if you are in urgent financial need. You could be in urgent financial need if you need money for:

- alternative accommodation
- basic living requirements (for example, money to buy a working fridge and access to power), or
- urgent electrical repairs to ensure medical equipment can work.

If you can show that you are in urgent financial need, your insurer has 5 business days from the time you prove this need to make an advance payment. Any advance payment will be taken off the total value of your claim. Talk to your insurer about your situation. You can find out more about the Code at

<https://insurancecode.org.au/resources/2020-general-insurance-code-of-practice/>.

Contact the Australian Financial Complaints Authority (AFCA) on 1800 931 678 if you cannot come to an agreement with your insurer. Let AFCA know you are a disaster-affected customer when you register your complaint.

If you are unable to pay the excess in full due to the financial hardship you are experiencing, you may be able to apply to the insurance company for financial hardship support. If the insurance company decides you are entitled to financial hardship support then it may be possible to have the excess deducted from the claim amount paid to you.

What should I expect from the insurance assessor's visit?

After you have lodged a claim the insurance company will probably organise to send out an assessor or an adjuster to examine your claim. While you should cooperate with them, you should also remember that their role is to make sure all possible reasons for refusing a claim have been considered.

When the insurance company makes the appointment for an assessor to visit you, ask for a list of questions to be sent to you in advance so you can provide the most detailed, considered answers. The assessor may interview you, your neighbours, and any witnesses and may also review police reports about the bushfire.

When the assessor has finished looking at your property and doing interviews, ask them if they would provide you with a draft copy of the information they will be using to prepare their insurance report. This will give you the chance to correct any misunderstandings and provide more detail if required. If the assessor asks you to sign a statement on the day, ask them if you can keep the document to read carefully before signing at a later date.

If you are unhappy about your treatment by the assessor, write to the insurer to explain your concerns. Tell them what you are unhappy about and what you want the insurer to do or change. For example, you might disagree with the order of events that the assessor is using for their report, or their conclusion is different to what you saw or heard.

How long will the claim process take?

The Code requires insurers to respond within 10 business days of receiving a claim. If they need more information, they must contact you within 10 business days of receiving the claim to let you know what other information is required and to give you an estimate of the time they will need to make a decision.

If you think the insurance company has delayed in making a decision about your claim, you can make a complaint to AFCA.

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

Often it will be the insurer's decision but some policies may allow you to choose. Sometimes the

insurer may ask you how you would prefer to settle and you can try to negotiate.

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 when you come to rebuild. Some policies also take away certain benefits if you accept a lump sum payment.

Before agreeing to any settlement, it is important you check to see if you are entitled to more than your sum insured through additional benefits cover.

Before accepting a lump sum payment, you should consider:

- If you have a mortgage over the property, your lender's approach (for example, bank, building society, etc). Your lender may ask for the cash settlement to be paid onto the mortgage to pay off or reduce the mortgage. This is because the asset that the mortgage was taken against – your property – has been damaged and the lender may want to protect their investment. If this happens, you may have to renegotiate your loan with your lender. Alternatively, the lender may ask that the cash settlement be paid to them so that they can manage the rebuild.

You will need to communicate with your lender about their approach to this before making a decision about a lump sum payment. Your insurer may require permission from your lender for you to keep the lump sum payment.

- Whether any cash settlement reflects what it would cost you to rebuild the property and not what it would cost the insurer.
- Whether you will still be covered for costs like removing debris from the property or for the cost of building permits.
- Whether your insurer will deduct the GST from your lump sum payment, potentially leaving you out of pocket when you rebuild.
- Some insurers will only provide a cash payment for the amount their builders would charge to do the work. In some cases, building prices

might increase in an area following a natural disaster because more people are needing to get work done. This could leave you out of pocket.

- If you take the rebuild option, all the repair and building work organised by the insurer for you is given a warranty by the insurer. If you take the lump sum payment and organise your own repairs this warranty does not apply.
- Whether building codes have changed between when a property was built and now. This might mean the property cannot be rebuilt on the property at all or can only be rebuilt in a different way. Or, it may be more expensive to rebuild a property because of the new requirements in a building code.

Check your policy carefully and talk to your insurer about these issues or get legal advice.

If I rebuild, will my insurer cover extra costs from any new building codes or regulations?

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.

What can I do if my claim has been refused?

The first step is to get the reasons for your claim being refused in writing. This will give you the chance to correct any errors or provide additional information to your insurer that may help them change their decision.

There are five main reasons for insurance claims being refused:

- **Damage not caused by disaster** – The insurer believes the damage to your property was not

caused by a disaster and existed before the fire. Many insurance policies only cover damage from “insurable events” and won’t cover damage they believe was already there.

- **Non-disclosure** – The insurer believes you did not disclose all relevant information to them when you applied for or renewed the policy.
- **Operation of a condition or exclusion clause** – You did not comply with one of the insurer’s requirements or the policy does not cover the loss.
- **Fraud** – The insurer believes you have acted fraudulently in some way.
- **Policy cancellation**

Once you’ve got the decision in writing and understand why your claim has been refused (or partly refused) your options include:

- Asking your insurer for an internal dispute resolution review of your refused claim. You should do this as soon as you can. To be successful with a review, you will need to present additional information to show why the insurer’s original decision was wrong. Extra information might include building or engineer’s reports, extra quotes, photos or video of your property before and after the fire, etc. You may be able to get legal advice to help you with this process.
- Lodging a complaint with AFCA. Your insurer must tell you if your claim is eligible for review by AFCA (you can also check this directly with AFCA). You have 2 years from when your insurance company refused your claim to lodge a dispute with AFCA. This is a free service and your situation will be reviewed by an independent ombudsman. Before AFCA will consider your dispute, your insurer must have been given an opportunity to resolve the dispute with you directly. If you are not satisfied with the response from your request for internal review or do not hear back from your insurance company after 30 days, you can apply to AFCA. Your insurance company must follow an AFCA decision, called a determination. You can still

take action if you are not happy with the determination.

- Accepting the partial claim or settlement offer.
- Taking your complaint to court. If you do decide to go to court, you need to think about:
 - if you lose, you might have to pay the insurer's legal costs, and
 - time limits apply for taking court action (you have 6 years from the date of the event).

What does AFCA do?

AFCA will investigate the complaint and gather relevant information to determine it. AFCA can help negotiate a settlement. Sometimes AFCA will hold a telephone conciliation conference with both parties. It can make a preliminary assessment. If these informal methods do not resolve a complaint, AFCA can make a decision on the merits of the complaint (also referred to as a determination). This is a 'binding' decision on your insurer (that is, a decision that must be followed) if it is accepted by the person making the complaint within 30 days of receiving the determination. For more information visit <https://www.afca.org.au/>.

If you are unsuccessful at AFCA, you can still take your matter to court as indicated above.

Do I need a lawyer at AFCA?

AFCA 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.

Other insurance cover

Aside from home building, home contents, and motor vehicle insurance you may also have life insurance or accident or sickness, income protection or consumer credit insurance that may help if you are ill or injured. Check your policy to see what you are covered for.

Superannuation

While it is rare to get superannuation early, you may be able to get part of your superannuation early on compassionate grounds to use to pay for mortgage arrears if your lender is threatening to repossess or sell your home. 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 Australian Taxation Office. You will need to meet the requirements and have the necessary proof.

Some people on certain Centrelink payments can apply to get their superannuation early due to severe financial hardship. You can apply directly to your superannuation fund for early release. The role of Services Australia (Cth) is to respond to requests for confirmation of your income support payment status. It has no involvement in determining financial hardship, or deciding if superannuation benefits are to be released.

Go to the Australian Taxation Office website at: <https://www.ato.gov.au/individuals/super/withdrawing-and-using-your-super/Early-access-to-your-super/> for information on early release because of severe financial hardship. 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 this service on (08) 9221 7066.

I want to make sure my property is adequately insured. 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. The MoneySmart website (<http://www.moneysmart.gov.au>) has information on insurance including tips to help make sure you get the insurance you need.

Where can I get more information?

- Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral.
- Contact the Financial Rights Legal Centre Insurance Law Service on 1300 663 464 Monday to Friday 10am-1pm EST or EDST for free telephone legal advice for consumers on insurance law matters or disputes involving insurers. If you need an interpreter, call 131 450. A fact sheet Bushfire Insurance Guide from the Financial Rights Legal Centre is available at: <https://insurancelaw.org.au/factsheets/>
- Call the National Debt Helpline on 1800 007 007 if you need to speak to a financial counsellor. It is a free confidential service for those with financial problems and queries.
- Call the Mob Strong Debt Helpline on [1800 808 488](tel:1800808488). This is a free nationwide legal advice and financial counselling service for First Nations people.
- Find your nearest financial counsellor on an interactive map on the Financial Counsellors' Association of WA website <https://financialcounsellors.org/> or call the National Debt Hotline on 1800 007 007.
- Contact the Australian Financial Complaints Authority (AFCA) on 1800 931 678 if you are a consumer to lodge a complaint about a financial hardship application, or another complaint that cannot be resolved with your insurer. A dispute can also be lodged online at <https://www.afca.org.au/make-a-complaint/>.
- For advice and counselling on credit related issues, contact the Consumer Credit Legal Service WA on (08) 9221 7066 Monday to Friday, 9.00am to 4.00pm (WST) <https://cclswa.org.au/>.
- For complaints about builders, contact the Department of Energy, Mines, Industry Regulation and Safety, [Building and Energy](#) on 1300 489 099 for information about its dispute resolution service.
- Australian Securities and Investments Commission's MoneySmart website: (www.moneysmart.gov.au) has tips on what to do if your home has been damaged or destroyed by a natural disaster.
- More information on government assistance is available on:
 - the Services Australia (Cth) website for people directly affected by bushfires or other natural disasters: <https://www.servicesaustralia.gov.au/natural-disaster>
 - the Department of Fire and Emergency Services' website <https://www.dfes.wa.gov.au/hazard-information/bushfire> under the heading Recovering from a bushfire.
 - See also the Infosheet: *Natural disasters (WA) – debt issues* which is available from the Legal Aid WA website or any office.
 - For counselling and support 7 days, 24 hours a day contact Lifeline WA on 131 114 or Beyond Blue on 1300 224 636.

LEGAL AID WA OFFICES



Infoline: 1300 650 579
Legal Yarn: 1800 319 803
(for First Nations callers)



Translating & Interpreting Service:
131 450



Website/InfoChat:
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National Relay Service: 133 677
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