

# Floods (WA) – insurance claims

This information sheet is for people with insurance queries who have been affected by severe storm related floods in Western Australia. 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.

## Disaster insurance hotline

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

For help with the claims process, or if you are unable to contact your insurance company, you can call the **Insurance Council of Australia (ICA) Disaster Insurance Hotline** on **1800 734 621**.

## My insurance papers have been lost or destroyed

If your insurance documents have been destroyed in the disaster and you know who your insurer is you should contact them to get a copy of your insurance papers (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 can contact the ICA Disaster Insurance Hotline on **1800 734 621** or the **ICA** on **1300 728 228** if you have a query about who your insurer is.

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

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.

You may need to check if you are covered for the costs of temporary accommodation.

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 claims as soon as you are able.

Do not sign any document until you understand what it means. Contact the Legal Aid WA Infoline on 1300 650 579 for information and referral.

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## Insurance claims – review period

You can ask for a review if you later find your estimates were wrong. Check if your insurer is a member of the [General Insurance Code of Practice](#) ("the Code"). Under the Code if your property claim resulting from a natural 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 12 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.

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

In some cases you may have a dispute about whether your insurer clearly informed you that you are not covered for flood.

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

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

## What is the difference between floodwater and rainwater?

Your policy will explain the difference.

There is now a standard definition of flood for home and contents insurance. Flood means the covering of normally dry land by water that has escaped or been released from the normal confines of:

- any lake, or any river, creek or other natural watercourse, whether or not altered or modified, or
- any reservoir, canal, or dam.

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

Check the definitions of “storm”, “rainwater” and run-off” in your policy to see what you are covered for.

## 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 a community may wish to organise themselves to share this cost and the information in the report.

## 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 for a 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 two 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.

**Do not** sign an insurance release form if you are not happy with it. Get legal advice. Contact the **Legal Aid WA Infoline on 1300 650 579** for information or referral.

## How do I prepare my claim?

Make an inventory of your loss. Also 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 of any damaged items and buildings, 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 urgent financial need. Any advance payment will be taken off the total value of your claim. Talk to your insurer about your situation.

Contact the free **Australian Financial Complaints Authority (AFCA)** on **1800 931 678** 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 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.

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.

## 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.

## 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 more 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 more 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 internal dispute resolution processes. AFCA 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 AFCA. Your insurance company must follow the AFCA 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 AFCA (and you can check this directly with AFCA).

The following are the steps to lodge a complaint with AFCA:

1. Contact your insurance company.
2. Explain your complaint or concern and ask for an internal review.
3. If you are not satisfied with the response or do not hear back from your insurance company after 45 days, you can apply to AFCA. You have two years from the date of the internal review decision to apply to the AFCA.

AFCA will investigate the complaint and gather relevant information to determine the dispute. AFCA can then recommend how the matter should be resolved. It will try to reach an agreement between you and the insurer. AFCA can also make a determination which is a “binding” decision (a decision that must be followed by your insurer if you accept the decision) on your case if an agreement between the insurer and you was not reached. For more information on AFCA, visit <https://www.afca.org.au>.

### Do I need a lawyer at AFCA?

AFCA 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.

### What if I am not successful at AFCA?

If you are unsuccessful at AFCA, 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. You should get legal advice before starting any court proceedings. You may not get the outcome you want and you may be made responsible for the insurer’s legal costs.

### 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.

### 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 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. Services Australia's role 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 with your application.

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**.

### Where can I get more information?

- Contact **Legal Aid WA's Infoline** on **1300 650 579** for information and referral.
- For complaints about builders contact the **Department of Mines, Industry Regulation and Safety** (<https://www.commerce.wa.gov.au/building-and-energy/building-service-and-home-building-work-contract-co>) on **1300 489 099** for information about its dispute resolution service.
- Contact the **Financial Rights Legal Centre Insurance Law Service** on **1300 663 464** Monday to Friday 9.30 – 4.30 EST 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 Flood Insurance Guide is available online at: <http://financialrights.org.au/factsheets/>.

- 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/>.
- The **Australian Securities and Investments 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.
- 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>.
- Contact the **Insurance Council of Australia** on **1300 728 228** (toll free) or **(02) 9253 5100**, Monday to Friday, 8.30am to 5pm (EST), [www.insurancecouncil.com.au/](http://www.insurancecouncil.com.au/) for assistance on insurance issues such as claims issues including when your insurer is not responding to your claim or the **ICA Disaster Insurance Hotline** on **1800 734 621** in the case of a large scale natural disaster.
- More information on government assistance is available on:
  - the **Services Australia** website for people directly affected by emergencies such as floods or bushfires in disaster declared areas. See under the heading [Help in an emergency](#).
  - the **Department of Fire and Emergency Services' website** under [Disaster Recovery Funding Arrangements Western Australia](#). If you need help in deciding if you qualify for any assistance email [drfawa@dfes.wa.gov.au](mailto:drfawa@dfes.wa.gov.au) or phone the numbers provided on the website.
- See also the **Legal Aid WA Information sheet: Natural disasters (WA) – debt issues** which is available from the Legal Aid WA website or any office.

# LEGAL AID WA OFFICES



**Infoline:** 1300 650 579



**Translating & Interpreting Service:** 131 450



**Website/InfoChat:**  
[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)



**National Relay Service:** 133 677  
(for hearing and speech impaired)

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## Midwest & Gascoyne

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273 Foreshore Drive  
Geraldton, WA 6530  
(08) 9921 0200

## West Kimberley

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

## Great Southern

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

## Goldfields

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

## East Kimberley Office

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

## Southwest

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61 Victoria Street  
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## Pilbara

28 Throssell Road  
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(08) 9172 3733

## Indian Ocean

Administration Building  
20 Jalan Pantai, Christmas Island  
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