



*When disaster strikes
- cyclones, storms and floods*

A guide to getting your insurance claim paid

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Disclaimer

This handbook has been written to help those affected by flooding and cyclones in Queensland during summer 2010/2011 and is intended to provide information only. If you have a legal problem, you should get legal advice from a lawyer.

Legal Aid Queensland believes the information provided in this guide is accurate as at March 2011 and does not accept responsibility for any errors or omissions.

What if English is my second language?

If you would like this publication explained in your language, you can contact us through the Translating and Interpreting Service (TIS) on 13 1450. TIS will organise an interpreter in your language and will connect you to Legal Aid Queensland. This is a confidential and free service.

Acknowledgment

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During the wet season (between December and March) many Queenslanders experience extreme weather conditions like excessive rain, which can cause flooding. Knowing more about your flood insurance rights is an important step in protecting your property.

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.

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 Financial Ombudsman Service (FOS), call 1300 78 08 08 or visit www.fos.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 www.fos.org.au/centric/home_page/about_us/codes_of_practice/general_insurance_code_of_practice.jsp.

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.

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 would include:

- making a list of damaged or destroyed items and any information about the date of purchase, model and make to support your claim
- photographing and/or listing floorings or other furnishings such as curtains which you have had to discard
- collecting documents that may be relevant to your claim such as receipts, warranties and credit card/bank statements showing your purchases
- gathering photos, DVDs or videos in which your items appear
- getting declarations from people who had seen the items.

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.

If your home or contents have been damaged by rainwater or floodwater, read the “How do I prove the cause of the damages?” section of this guide for information on the type of evidence you can gather to show how and when water entered your property.

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. 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. You should cooperate with them, but remember part of their role is to make sure all possible reasons for refusing a claim have been considered.

The assessor may interview you, neighbours, witnesses and review police reports. 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
- explain the order and timeline of events as you understand them
- 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.

Consumers have complained about assessors asking them to sign documents, which include a statement that the damage was caused by floodwater. These statements are of little effect in law, as the cause of damage is a factual issue, not a matter of opinion. You should not be discouraged from pursuing a claim because you have signed such a document.

What if I'm told to drop my claim?

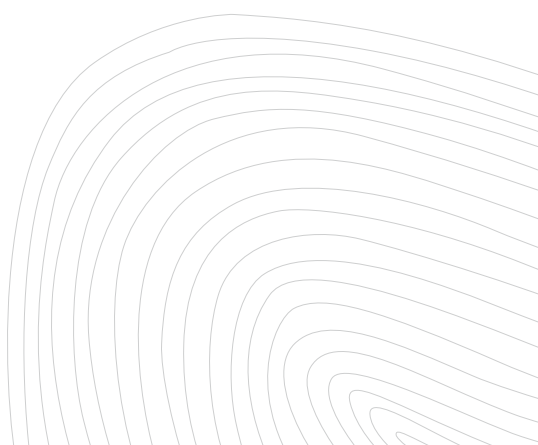
You should get urgent legal advice if the assessor wants you to drop your claim or is suggesting a version of events that is likely to end in your claim being refused or reduced.

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.

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 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.

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 web site www.codeofpractice.com.au.

If you can demonstrate to the insurer that you are in urgent financial need of the benefits you are entitled to under your policy, clause 3.7 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.

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 the Financial Ombudsman Service. Refer to the “Can't pay excess” sample letter on page 64 as a guide.



If you're having trouble paying your excess in full, contact your insurer immediately to talk through any payment options that may be available to you.

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 General Insurance Code of Practice (“the Code”) provides that where there is a disaster with a large number of claims, the insurer may not be able to meet all of the usual timelines (clause 4.3).

The usual timeframes under the Code (clause 3) (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.

If your claim becomes urgent (because of your finances or otherwise), let your insurer know in writing.

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 six months from the finalisation of your claim (if finalised within one month of the disaster) to ask for a review of your claim.

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 Financial Ombudsman Service. 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 3.1) 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:

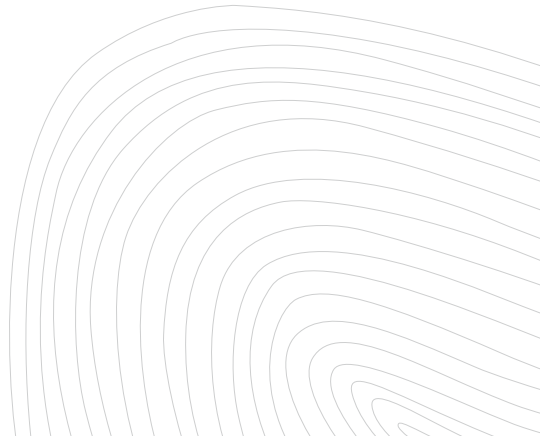
1. if any further information required
2. if a loss assessor needs to be appointed
3. an estimate of the time required to make a decision on your claim.

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 65 as a guide.

If your letter doesn’t result in a response from your insurer you can send a letter of complaint to Insurance Code Compliance. Refer to the sample letter “Complaint to Insurance Code Compliance” on page 66 as a guide.

A written complaint should assist in getting a response. However, if this is unsuccessful you could refer the matter to the Financial Ombudsman Service. Refer to the sample letter “Financial Ombudsman Service” on page 67 as a guide.

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



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

The most common area of dispute with insurers is whether the damage was caused by “flood” water or “rain” water. There are three possibilities. The damage could have been caused by:

- rainwater
- floodwater
- rainwater and floodwater that mingled or combined before entering the house.

Many insurance policies state the insurer does not have to pay for damage caused by floodwater. This exclusion may mean your insurer does not have to pay for damage caused by combined rainwater and floodwater.

However, you may be able to challenge decisions by insurers who reject your claim.

You could:

- check the policy wording (it may not exclude damage caused by floodwater in all situations or at all)
- establish rainwater is the effective or “proximate cause” of the damage and not the floodwater (find out more about proximate causes on page 26)
- use section 35 of the Insurance Contracts Act (where this applies, special rules require the insurance company to pay for loss caused by floodwater, irrespective of the actual policy wording).

For more information about these arguments, read the “Rainwater versus floodwater – what does my policy cover?” section and the “What caused the damage to my property?” section of this guide.

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.

If an insurer has failed to clearly inform you that floodwater damage is excluded under your policy, section 35 of the Act will 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.

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 this is clearly stated within the policy.

While many insurers will not pay for damage caused by floodwater, some insurers are now starting to offer flood insurance, including cover for flash flooding. The insurer can only refuse to pay if this is clearly stated in your insurance policy.

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.

Will the insurer pay for damage caused by rainwater?

A typical policy will say the insurer will pay for loss or damage caused by “rainwater” and that:

“Rainwater shall mean: rain falling naturally from the sky, including rainwater run-off over the surface of the land and including rainwater overflowing from stormwater drains and channels. It does not include water from flash flood.”

Some policies only cover damage in restricted circumstances and will not pay for all loss or damage caused by rainwater. For example, the insurer will only pay for rainwater that “entered the house through an opening made by the storm or cyclone”.

This definition is very narrow and restrictive; your insurer can refuse to pay a claim for damage caused by the sheer volume of rainwater entering a house through doors and windows, and will only pay where the storm or cyclone was violent enough to damage the house.

There may also be an exclusion for damage to fences or retaining walls.

To get a claim paid, you need to argue that the insurer should have specifically told you about the narrow definition in the policy, so that you could make an informed choice whether or not to buy such a 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.

Your insurance policy document will state specifically what risks the insurance company has agreed to pay for.

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Will the insurer pay for damage caused by floodwater?

Many insurance policies state the insurer does not have to pay for damage caused by flood.

A common definition of “flood” in insurance policies is:

“The covering of normally dry land by water escaping or released from the normal confines of a watercourse or lake, whether or not it is altered or modified. Flood also includes water escaping from the confines of any reservoir, channel, canal or dam.”

The most common dispute will be where the water came from. You can successfully argue that the insurer should pay the claim where the water was from a source outside the definition used in the insurance policy.

Case study: when water is not floodwater

In Decision 97–3892, the Financial Ombudsman Service (FOS) Panel had to decide if water that entered a house after flowing down gullies of a mountainside was “floodwater”. The insurance policy stated that “floodwater” was water escaping from a natural watercourse. The panel decided that as the gullies did not carry water except during heavy rain, they should not be regarded as a “watercourse”.

How do I argue about the water's source?

Where the insurer refuses your claim by saying the damage was caused by floodwater, you need to consider if the water that caused the damage was “floodwater” within the definition in the policy. The insurer (or their hydrologist) may assume that if the water was not obviously an overflow from stormwater drains, then it must have been floodwater. As seen in the case study on the previous page, this is not always the case.

It is important to check the wording in your policy, as this will vary between different insurers. Some insurers are changing their policies so they say “floodwater” includes run-off from stormwater drains. This makes it even harder for consumers to successfully claim.

Situations where it may not be obvious if the water was “rainwater” or “floodwater” include:

- where the insurer has assumed the watercourse is natural, but it was in fact built by the council as a stormwater drain
- where water escaped from a stream or creek that has had its boundaries significantly or substantially altered by human activity, eg to improve drainage. If so, then the watercourse is no longer natural.

You will need to show the original water path was altered dramatically and is not a modification to a watercourse, but the creation of a new artificial watercourse. Remember, as definitions of floodwater will vary from policy to policy, some policies may state “floodwater” is water that has escaped from a natural or artificial watercourse.

In some areas, councils may have developed drainage or retention basins near possible flood sites. You may argue that water escaping from such a basin is not floodwater as it is not escaping from a “natural watercourse, lake, reservoir, canal or dam”.

How do I argue the insurance policy does not exclude all damage caused by floodwater?

Sometimes the only cause of damage will be floodwater. In other cases, the floodwater will contribute to the damage. It is important to check the wording in the policy as it may only exclude damage where the floodwater is the only cause (or the main cause). If so, the insurer may be required to pay where floodwater contributes to the loss.

Some policies may state the insurer does not have to pay for “loss or damage by flood”. If so, it can be argued these words are narrow in effect and only exclude damage where the flood was the main cause.

Case study: The insurer had to pay the claim as the floodwater only contributed to the loss

In Decision 95–1369, the floodwater did not enter the house. However, it led to some rainwater being redirected from its usual channel or path and so contributed to the loss. The policy excluded “loss or damage by flood”. The panel decided this phrase was narrower in meaning than the words “loss or damage caused by flood”. The panel decided this only excluded damage from floodwater as the immediate cause of the loss, rather than a contributing factor. The insurer had to pay the claim.

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. You can claim for flood damage under these rules.

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 applies.

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.

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.

It is important you check the documents you have been given by your insurer. A copy of your policy is available from your 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.

When does a ‘standard cover’ contract apply?

Standard cover applies if you were not given written information that stated flood cover was not included before entering into the contract, and you did not find out about the flood exclusion in any other way.

It is important to consider if any written information was provided before or after the contract was entered into. 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.

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.

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.

Case study: Where the insurer did clearly inform the consumer

In Decision 97–5791, the consumer had made a claim under a home buildings policy. The consumer argued that a standard cover contract applied.

The panel saw the consumer had been provided with copies of the policy documents in 1991 and 1996. It decided the policy wording was clear and the policy had an index that made it easy to follow. The panel found the insurer had clearly informed the consumer of the restrictions under the policy and so standard cover did not apply. The insurer was able to reject the claim.

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.

If the insurance company failed to clearly inform you flood damage was excluded from your policy, you will be able to claim for flood damage under a ‘standard cover’ contract.

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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 be based on false assumptions and can be inconsistent with eyewitness events. If so, they may be challenged as incorrect.

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".

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. If both contribute to or are direct causes of the loss they will be considered “proximate causes”. For example, if the mixed waters are 55 percent rainwater and 45 percent floodwater, the insurer can deny the claim.

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).

Case study: Where the rainwater came in first

In Decision 94–997, the rainwater entered the house first and was followed by a surge of floodwater. The panel decided:

- the insurer had to pay for the damage caused by the rainwater
- the insurer could refuse to pay for any damage caused solely by the increase in the water level in the house after the initial rainwater by floodwater
- if it is not known which damage was caused by the floodwater or rainwater then the insurer should pay for the whole amount of the loss. This is important as it may be difficult to determine which part of the damage was done by floodwater after repairs have been made.

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 commonsense approach is taken to finding the proximate cause.

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

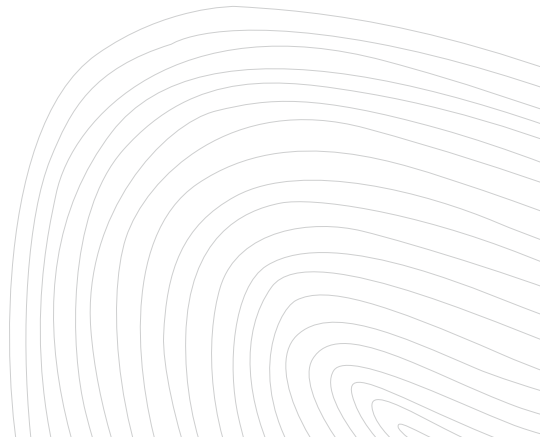
However, if some of the damage to the house can be specifically identified as having been caused by rainwater (eg damage to the roof or rainwater leaking into the walls or other parts of the house), then the insurer must pay for that damage

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.

Case study: Where floodwater was not a proximate cause

In Decision 95–1369, damage was caused by water that was a combination of rainwater and floodwater. The panel reviewed the facts and decided:

- the floodwater formed a small percentage of the water that entered the house
- the rainwater was sufficient to do the damage without the floodwater
- the floodwater's volume was too low to enter the house and would not have caused any damage
- the panel held that the floodwater was not a proximate cause of the damage to the house and that the insurer should pay the claim.



What should I do if my insurer gives me a hydrologist's report?

Insurers often have reports from experts, such as hydrologists, to try and determine the origin of the water that caused the damage. 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.

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.



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
- 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 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)
- organise committees to deal directly with insurers
- ask the Financial Ombudsman Service (FOS) 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 hydrologist you may need to obtain your own independent hydrologist's report. These reports can be expensive so where possible communities should share this cost and information among themselves.

How should I negotiate with my insurer?

Consumers should establish local committees to act as support and advice centres and to deal with issues and claims resulting from denied claims from insurers.

In Wollongong, following floods in August 1998, the community organised a Stormwater Action Group. It lobbied the NRMA, the major insurer in the area. As a result, the NRMA agreed not to rely on the distinction between floodwater and rainwater in paying claims.

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 no legal obligation to provide you with copies of any reports, but they are under an obligation to provide you with statements as to why your claim has been rejected. This information can help to identify the main points of dispute and help resolve matters quickly.

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 40 of this guide.

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 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 Financial Ombudsman Service (FOS) 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 non-disclosure 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.
- 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 Financial Ombudsman Service (FOS) (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.

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.

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.

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.

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

Most insurers do not cover damage caused by flood, or severely restrict the circumstances in which they will pay. Flood is usually defined as “the covering of normally dry land by water escaping or overflowing from a natural or man made watercourse” – in simple terms this usually means water overflowing from sources such as rivers, canals or stormwater drains. It is distinguished from damage caused by rainwater or stormwater, that is, “rain that accumulates on the ground because of the severity of the storm”.

If you were discouraged to put in your claim because your insurer says that your damage was caused by flood and flood is not covered by your policy then you should lodge a claim anyway. This is because your insurer may not be correct.

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

- a) sometimes the insurer agrees to pay claims anyway when many people are affected
- b) 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)
- c) 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.

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.

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.

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.

Under clause 3.4 of the General Insurance Code of Practice, insurers have agreed that they will only take into account “relevant information” when deciding on your claim. In the context of fraud this can be interpreted very widely and may include a request for information on your financial position to rule out any financial motive for a fraudulent claim. You should complain to your insurer if you think the information requested is excessive or irrelevant and/or the investigation is taking too long—refer to the sample letter “Delay” on page 65 which may assist with making a complaint about a delay. Try to be assertive but not rude or aggressive as this will only put your insurer and/or investigator offside.

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.

When a dispute is being decided by the Financial Ombudsman Service, one of their staff members called the Referee decides all disputes where fraud has been alleged. The Referee may request additional information from you or your insurer and, where appropriate, interview you or other willing witnesses in person.

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 Financial Ombudsman Service.

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 General Insurance Division of the Financial Ombudsman Service (FOS) (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.

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 Financial Ombudsman Service (FOS). 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 the FOS.
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 FOS. The insurer is allowed to take a maximum of 45 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.

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 Financial Ombudsman Service (FOS) as soon as you can. FOS can only hear complaints about insurers that are FOS members. Contact your insurer or FOS to find out if your insurer is a member.

The advantages of FOS are:

- The panel members who determine the claims are familiar with insurance law.
- FOS 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. FOS 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 FOS 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.

The scheme’s disadvantages are:

- FOS can only award limited amounts (generally less than \$3000) for consequential financial and non-financial loss. It may award interest where it considers the insurer was unreasonable in rejecting your claim.

What matters can FOS hear?

FOS 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 FOS or visit: www.fos.org.au.

FOS can hear the following matters:

1. Where the claim is for \$280,000 (or less), FOS 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.
2. Complaints by small businesses with less than 20 employees or 100 employees if a manufacturer.

FOS cannot hear disputes:

- involving a claim for more than \$280,000 (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 FOS.

FOS 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.

What happens when FOS receives a complaint?

When FOS 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, FOS will encourage the insurer to provide you with copies of the reports from its hydrologist, if this has not been done.

FOS will try to resolve the dispute by mutual agreement. If a dispute cannot be resolved by mutual agreement, FOS 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 FOS issues a recommendation. If a recommendation is not accepted by either party, a determination can be made.

Determinations are generally 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 FOS, 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.

What should I include in my submission to FOS?

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 puts great 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 insurance claim resulted from a catastrophe or a disaster, you have six months from finalisation of your claim (if finalised within one month of the disaster) to ask for a review of your claim.

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.

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 45 business days if they receive all necessary information and have completed any investigation required. Insurers will also inform you of the internal review's progress at least every 10 business days (See clauses 6.6 and 6.8 of the General Insurance Code of Practice).

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 Financial Ombudsman Service's code compliance manager.

Time limits for submitting a complaint to FOS

Your time limit for lodging a complaint with FOS 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 FOS 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 FOS within two years.

FOS 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 (FOS 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 FOS. It is worth putting in a late complaint with reasons for the delay. Seeking legal advice about what to say is recommended.

Once FOS has received a complaint (called "lodging a dispute"), a decision is likely to be made within three to six months.

Time limit for taking complaint to court

If your matter is unsuccessful at FOS, 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 FOS have?

If FOS’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).

FOS’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.

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

Is legal aid available for insurance disputes?

While FOS 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 65 11 88.

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.

Case study: Where the Deed of release did not prevent further claims

In Decision 94–1143, the insurer agreed to pay a claim for water damage to the consumer’s carpet, but asked the consumer to sign a release, which stated the insurer was not liable for any further claim under the policy. However, the consumer made a further claim under the policy that was rejected. The consumer stated he had signed the deed because the insurer had withheld payment on the carpet’s replacement until he agreed to sign, and the smell from the wet carpet made his house unfit to live in.

The panel found the insurer could not rely on the release for two reasons. First, the later claim was genuine and was for damage not apparent at the time of the first claim. Secondly, the release was signed when the consumer was under considerable duress because of the pressure to get the carpet replaced as quickly as possible. The panel decided the insurer had to pay the later claim.

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 Building Services Authority 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.
- Under clause 3.13(a) 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.

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 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 lump sum payment?

You may be able to choose either option but think carefully about each one. 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. If you accept a lump sum payment some policies also take away certain benefits, such as the cost of removing debris or cost of permits. Check your policy carefully and talk to your insurer about this.

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.

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?

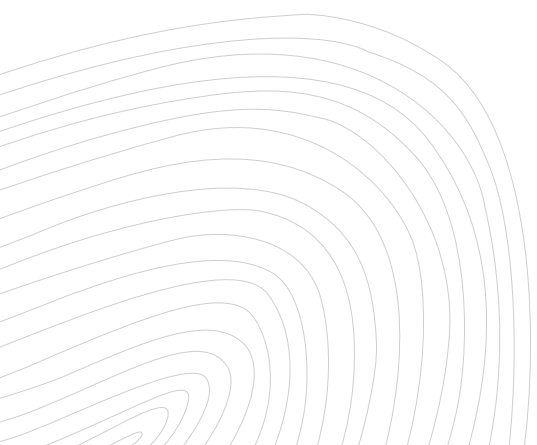
If a property is owned by two or more people and all part owners are named in the insurance policy, each person is entitled to get part of the insurance payout. The payout amount depends upon the interest each person has in the property. If the property is jointly owned, each person is entitled to get the full amount of the claim under the policy. 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.

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. Under the General Insurance Code of Practice, you usually have one month from the date your claim was finalised to do this. You have six months from finalisation of your claim (if finalised within one month of the disaster) to ask for a review of your claim if the claim resulted from a catastrophe or disaster.



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.

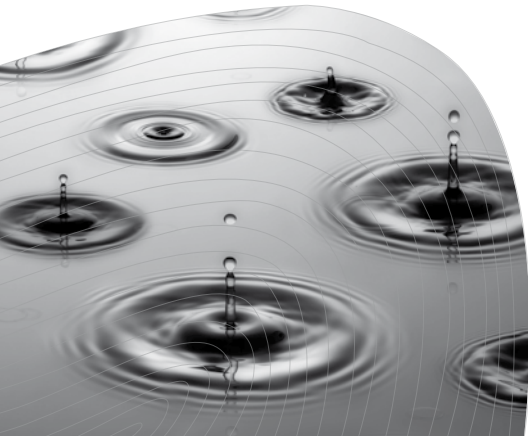
If your policy has lapsed recently and you have been a long-term customer of the insurer, you can ask that your insurance be continued for special reasons. This might include if you had the policy in place for many years and you had reasons that made you forget to renew your policy. Usually, however, you are not able to make a claim.

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.

To find insurers who offer flood or flash flood insurance, contact the Financial Ombudsman Service.

At the time of writing this guide Suncorp and GIO offered policies which included cover for flooding.



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.

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 Financial Ombudsman Service, an alternative dispute resolution service which you can access for free.

Sample letters

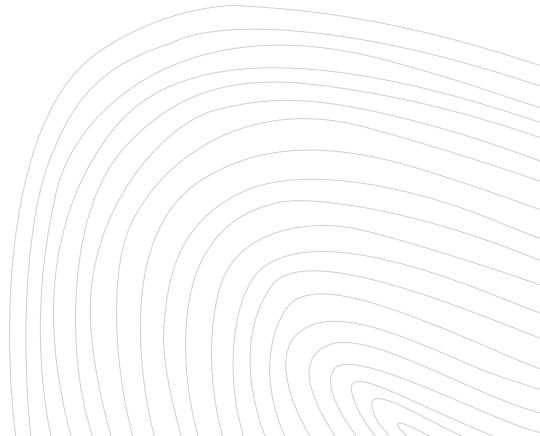
Sample 1: Can't pay excess

Sample 2: Delay

Sample 3: Complaint to 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.



Sample letter - 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]

Sample letter - 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.

Clause 3.1 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]

Sample letter - Complaint to Insurance Code Compliance

Code Compliance
Insurance Division
General Insurance Division
Financial Ombudsman Service
GPO Box 3
Melbourne VIC 3001

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.

Clause 3.1 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]

Financial Ombudsman Service
General Insurance
GPO Box 3
Melbourne VIC 3001

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 Financial Ombudsman Service (FOS) 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 45 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 45 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 and ASIC Guideline 165.

As the dispute remains unresolved, I request that FOS 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]

Useful contacts

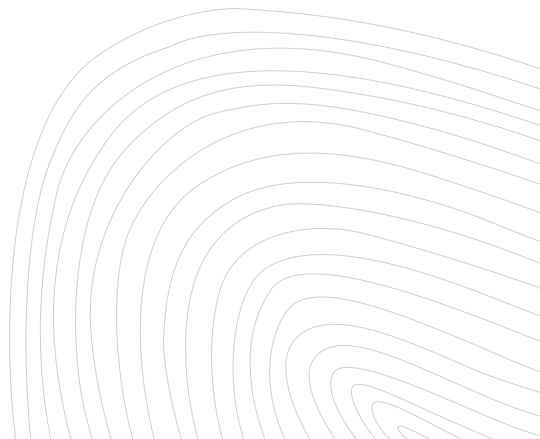
Your local Legal Aid Queensland office

See the office details on the back of this guide, visit 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
Website: www.insurancelaw.org.au
- **Financial Ombudsman Service**
GPO Box 3, Melbourne Victoria 3001
Phone: (03) 9613 7366 Fax: (03) 9613 6399
National Toll Free: 1300 78 08 08
Flood Disaster Line: 1800 337 444
Email: gidisaster@fos.org.au
Website: www.fos.org.au
- **Insurance Council of Australia**
PO Box R1832
Royal Exchange Sydney, NSW 1225
Phone: (02) 9253 5100 Toll Free: 1300 728 228
Fax: (02) 9253 5111
Website: www.insurancecouncil.com.au
- **General Insurance Code of Practice**
Website: www.codeofpractice.com.au

- **National Insurance Brokers Association**
Level 18, 111 Pacific Highway, North Sydney NSW 2060
Phone: (02) 9964 9400 Fax: (02) 9964 9332
Website: www.niba.com.au
- **Queensland Office of Fair Trading**
Department of Justice and Attorney-General
GPO Box 3111
Brisbane QLD 4001
Phone: 13 74 68
Website: www.fairtrading.qld.gov.au



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 Duporth 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

3rd Floor, Northtown
280 Flinders Street
TOWNSVILLE Q 4810

Woodridge

1st Floor
Woodridge Place
Cnr Ewing Road & Carmody St
WOODRIDGE Q 4114

1300 65 11 88

www.legalaid.qld.gov.au