

Insurance claims after a disaster

Your questions answered



Disaster Response
Legal Service NSW

Legal Aid
NEW SOUTH WALES

Insurance claims after a disaster

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Disaster Response Legal Service NSW

If you've been affected by a bushfire, storm or flood, we can help you with everyday legal problems including insurance claims and disputes, financial hardship, tenancy, disaster grants and Centrelink.

Call **1800 801 529**

www.disasterhelp.legalaid.nsw.gov.au

This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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1. What to do straight away

Make sure you are safe.

Are you and your family safe? Stay away from danger and follow the directions of the authorities.

Check in with yourself and your family about how you are all feeling. Talk to your doctor or call Lifeline on **13 11 14** if you need support.

How do I claim on my insurance policy?

Call your insurer. Check your insurance policy to claim everything that you can. Your insurer can give you a copy if you don't have one. They can also give you your policy details.

If you don't remember who your insurer is the Insurance Council of Australia can tell you. Call them on **1300 728 228**.

Can I get emergency money?

If you are experiencing financial hardship your insurer can arrange to have emergency money put into your account within five business days (but most can do it the same day). They will deduct what they pay you when they pay your final claim.

Can I get emergency accommodation?

If you can't live in your home your insurer should help you arrange and pay for temporary accommodation.

There is generally a limit on how much the insurer will pay for temporary accommodation. For example, the insurer may only pay for temporary accommodation:

- if the total cost is not more than 10% of the whole amount that you insured your property for (for example—if you insured your property for \$300,000, your insurer will not pay more than \$30,000 for temporary accommodation), or
- for up to twelve months.

Can I start cleaning up my property?

Make sure your property is safe before you start cleaning up. You could be exposed to dangers that you may not be aware of. The Australian Red Cross has a booklet called [Cleaning up after an emergency](#). You can download this booklet from www.redcross.org.au

Talk to your insurer about what you plan to do before you clean up anything.

Take photos before and after you clean up in case you need to show what you did.

TIP

- You don't save money by staying with friends and family. Most policies give you temporary accommodation as an extra benefit. Speak to your insurer about this.
- Check if your policy covers the removal of debris (rubbish and rubble). Your insurer may pay professionals to do that for you.



2. What should I expect from my insurance company?

What must my insurer do?

Insurers need to follow rules, including the General Insurance Code of Practice (the Code). They must act professionally and be open and honest with you.

You can find the Code at www.codeofpractice.com.au.

If you think your insurer isn't following the Code you can call the Australian Financial Complaints Authority (AFCA) on **1800 931 678**.

Can my insurer process my claim if I haven't paid the excess under my policy?

Yes. They may let you pay the excess by instalments or take it out of any money they pay you at the end.

You can use the letter in **Section 5** called *Standard letter or email about financial hardship to ask for extra time to pay your excess*.

What happens if what I lost is more than my insurance cover?

If the value of what you lost is more than what you will get under your insurance policy, your claim will be dealt with as a "total loss". Under the Code, if your insurer accepts your claim as a total loss, they should not require you to provide proof of ownership or ask you for a list of everything you lost in the disaster. If the insurer asks for either of these, ask them why they are not following the Code.

Expert reports: what are they for and when should I ask for them?

Your insurer will get reports from different experts depending on the damage to your property. These reports help the insurer decide if your claim is covered under your policy. You should read them and make sure they are accurate.

If there has been major damage to your home the insurer will usually get an assessor, builder, engineer, or if there has been water damage, a hydrologist to assess the damage.

You should ask your insurer for copies of all:

- reports that were done by assessors or loss adjusters, and
- expert reports, including building, engineering, hydrologists and hygienist reports.

You can use the letter in **Section 5** called *Standard letter or email asking for copies of any reports*.

How long will it take the insurer to give me a report?

The Code gives the insurer 12 weeks to get an expert report. If the insurer has the report, they should give it to you no later than 10 business days after you ask for it.

What if the repairs the insurance company arranged aren't done properly?

If your insurer has arranged for the repairs to be done, under the Code, they are responsible for any problem with the quality of the work done or the materials used. Most insurance policies also give you a 'lifetime warranty on repairs'. Talk to your insurer if you have a problem with any repairs they arranged.

How long should it take for the insurer to decide my claim?

If the insurer needs more information from you, they should ask you for it no later than 10 business days after you lodged your claim.

Once the insurer has all the information they need, they should make a decision about your claim within 10 business days.

If they are getting expert reports, it can take longer to make a decision, but they should decide no later than four months after you lodged the claim – unless there are good reasons for it to take longer.

You can use the letter in **Section 5** called *Standard letter or email asking how long it will take to process your claim*.

TIP

- Worried about the structure of your home? Ask the insurer to send a structural engineer to inspect the damage.
- Worried about mould? Ask the insurer to send out a hygienist (a mould expert).
- Sometimes the repairers will discover more damage. If this damage was caused by the same disaster the insurer will have to pay to repair the additional damage as well.

3. Has the insurer offered you a cash settlement?

Yes. What should I do?

Sometimes insurers offer you an amount of money to end (settle) all or part of your claim. If you have been waiting a long time you may want to accept this offer.

If your insurer offers you a cash settlement and there are other options available to settle your claim, your insurer has to give you a factsheet with information about what the insurer is offering you.

Before you accept a cash settlement you should make sure you can get your property insured. Many insurers will not insure a property that is damaged. You can:

- call other insurers, or
- ask your insurer to say in the settlement agreement (this is usually called a deed) that they will continue to insure you.

You can use the letter in **Section 5** called *Standard letter or email asking for details of the settlement offer* to ask the insurer for information about how they worked out the amount they offered you.

What else do I need to know before I decide to accept a cash settlement?

Before you accept a cash settlement think about these things:

Do you need temporary accommodation?

If you can't live in your home while it is being rebuilt or repaired, the insurer should give you money to live in temporary accommodation until you can return to your home. You should check if this is part of the cash settlement offer you have received.

You will be responsible for repairs

Once you accept a cash settlement, this will bring your insurer's involvement to an end. This means that you will be responsible for doing the repairs to your property and any problems with those repairs.

You will need to arrange repairers such as builders and make sure they have proper licences and insurance.

You should also get independent legal advice about the contract you sign with the builder.

You may find more damage to your property when you start repairing it. You may not be able to go back to the insurer if this happens. You should seek urgent legal advice.

Are you getting a good deal?

To find out:

- If possible, you should get quotes from at least two independent builders to make sure that the money you will get is enough for you to pay for the repairs
- ask the builders to include an extra amount for 'contingencies'. These are costs that you may have to pay for, that you can't know about before the work starts, and
- read through the builders' scope of works to check it includes everything that was damaged.

If the quotes from the builders are higher than the amount the insurer has offered you to settle your claim, you should negotiate with your insurer that they pay you the higher amount. Sometimes builders give insurance companies a low quote because they get a lot of work from the company.

I wish I hadn't settled my claim with the insurer. What can I do?

Usually, after you settle your claim, you can't change your mind.

However, under the Code, you can ask the insurer to cancel the settlement if you settled your claim in the first month after the disaster happened.

You must ask for it to be cancelled no later than 12 months after the date your claim was settled.

If you felt pressure to settle or you didn't know all the facts when you settled, you should get urgent legal advice.



4. I don't agree with the insurer's decision

What can I do?

If you don't agree with the insurer's decision you can ask them to look at it again. This is called asking for an internal review.

What is an internal review and how long does it take?

An independent person who works for the insurer who has the skill and expertise to understand your dispute will look at the decision again. They must complete the internal review no later than 30 days after you ask for one.

You can use the letter in **Section 5** called *Standard letter or email asking for an internal review* to ask for an internal review.

There was an internal review but I still don't agree with the decision.

If you still don't agree with the decision, or the insurer has not resolved your complaint within 30 days of you lodging it, you can make a complaint to the Australian Financial Complaints Authority (AFCA). This is called external dispute resolution (or EDR).

You must do this no later than two years from the date the insurer made their final decision.

AFCA provides a fair and independent dispute resolution service for consumers and insurers.

You can:

- visit afca.org.au
- email info@afca.org.au or
- call **1800 931 678**

How can AFCA help me?

AFCA can suggest what should happen. This is called a recommendation. For example:

- if the insurer has not processed your application within a reasonable timeframe, AFCA can recommend that the insurer pays you money to compensate you.
- AFCA can also recommend that your insurance claim should be covered by the insurance company.

What happens after I lodge a complaint with AFCA?

AFCA will ask the insurer to respond to your complaint no later than 21 days after you lodge your complaint. The insurer may contact you in this time and try to resolve the dispute with you. If you can't sort it out, the insurer will send their response to you and AFCA.

If you don't agree with the insurer's response AFCA may try to help resolve your dispute by:

- holding a conciliation conference
- contacting you and the insurer and trying to negotiate a resolution, or
- giving their opinion about how strong your complaint is (called a 'preliminary view').

What is a conciliation conference?

This is a joint telephone call between you and the insurer. It is arranged by AFCA. An independent person called a conciliator helps you and the insurer to:

- put forward your points of view
- get a better understanding of the issues, and
- come up with options to resolve the dispute.

You can find more information in the **AFCA Guide to Conciliation Conferences** at www.afca.org.au or by calling AFCA on **1800 931 678**.

What if I can't resolve the dispute through conciliation or negotiation?

If conciliation or negotiation doesn't work, AFCA can:

- ask for more information if they think that this would help sort out your dispute, or
- give you their preliminary view about how strong each side's case is. If AFCA gives you their preliminary view over the phone, ask them to send it to you in writing.

If you and the insurer still can't agree, AFCA will decide what will happen. This is called a determination.

What happens when AFCA makes a determination?

AFCA will look at what the law says and also what is fair. A determination is final. You cannot ask AFCA to review it again.

You have 30 days to either accept or reject the determination. If you accept it, you and the insurer will have to follow the decision.

If you don't accept it, the insurer won't have to follow it and you may be able to take other action against the insurer, including going to court. You should get legal advice before you go to court.

The insurer cannot accept or reject the determination.

TIP

- If you make a complaint to AFCA before the insurer has finished its internal review the insurer will still have 30 days to complete the review.



5. I need help writing letters to my insurer

Standard letter or email about financial hardship

Insurance Company

Address 1

Address 2

NSW

Dear Sir/Madam

Financial hardship request under Part 10 of the General Insurance Code of Practice

Claim number/Policy number

I am unable to pay my excess because I am in financial hardship.

Please [choose one]

- take my excess out of any cash settlement at the end of my claim.
- allow me to pay my excess by instalments of [] a month for [] months.

I look forward to hearing from you within 10 business days.

In the meantime please confirm that you will continue to process my claim without delay.

Yours sincerely

Standard letter or email asking for copies of any reports

Insurance Company

Address 1

Address 2

NSW

Dear Sir/Madam

Request for reports under Part 12 of the General Insurance Code of Practice

Claim number/Policy number

Please provide me with copies of the documents listed below:

1. Assessors' reports
2. Scopes of Works
3. Builders' reports
4. Engineers' reports
5. Hydrologists' reports
6. Geotechnical reports

I look forward to receiving these documents within 10 business days.

Yours sincerely

Standard letter or email asking how long it will take to process your claim

Insurance Company

Address 1

Address 2

NSW

Dear Sir/Madam,

Request for time frame under clause 68(c) of the General Insurance Code of Practice

Claim number/Policy number

Please give me an estimate of the likely timeframe and process for making a decision about my claim.

I look forward to hearing from you within 10 business days.

Yours sincerely

Standard letter or email asking for details of the settlement offer

Insurance Company

Address 1

Address 2

NSW

Dear Sir/Madam,

Request for details of settlement

Claim number/Policy number

I refer to the offer of settlement that you have made to me.

Please give me details of the settlement offer.

In particular please provide me with any reports, documents and calculations that you have relied on to calculate this offer of settlement.

I look forward to hearing from you within 10 business days.

Yours sincerely

Standard letter or email asking for an internal review

Insurance Company

Address 1

Address 2

NSW

Dear Sir/Madam

Referral to Internal Dispute Resolution under Part 11 of the General Insurance Code of Practice

Claim number/Policy number

[Write a summary of things that you are unhappy about]

Please refer the matter to your Internal Dispute Resolution Process.

I look forward to hearing from you within 10 business days.

Yours sincerely

6. Where can I get more help?

If you think the insurer isn't following the rules, or you want more information or advice, you can contact:

Disaster Response Legal Service NSW

If you've been affected by a bushfire, storm or flood, we can help you with everyday legal problems including insurance claims and disputes, financial hardship, tenancy and Centrelink.

1800 801 529

www.disasterhelp.legalaid.nsw.gov.au

Insurance Law Service

Free advice about insurance problems.

1300 663 464

www.insurancelaw.org.au



Notes

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 **1800 801 529**

www.disasterhelp.legalaid.nsw.gov.au