

# Bushfires and insurance

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

If you have been affected by bushfire there are some things you need to know about your legal rights and how to make a claim for insurance.

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

Insurance companies will usually want to assess the damage to your property before any repairs are done, including emergency repairs. Many companies will also want to approve the repairer you are using. You should speak to your insurer if possible before you attempt or authorise any emergency repairs and ask for the insurer's written permission, this will protect you from undertaking unauthorised work that may not be covered by your policy.

If you do decide to go ahead with repairs before making a claim, make sure you have clear before-and-after photos and keep all receipts for the work that is done. It is also a good idea to take photos or video of the damage done to your property before you start cleaning up. Photograph or video any damage to the inside and outside of the house (roof, walls, veranda, flooring, kitchen, bathroom etc), any external structures like sheds or garages, as well as your furniture and other valuables. You can use these images to show your insurance company the extent of the damage caused to your property by the fire.

Many insurance policies will also require you to take reasonable steps to prevent further damage to your property after a natural disaster. This could mean putting a tarp over a damaged roof to prevent further damage from rain or storms, or moving undamaged valuable items to a secure section of the property where they will be safe. You may also remove and discard any damaged goods that pose a health risk and cannot be repaired, this could be carpets or soft furnishings, however, it is necessary to take photos and keep samples of the materials or fabrics to show the assessor.

If you have any questions about what you can or can't do, contact your insurer.

## Do I need a copy of my insurance policy to make a claim?

You do not need to have your insurance documents readily at hand to make a claim. Insurers keep records electronically and require only your name and address to find your policy. If your policy has been destroyed or damaged by the fire (or you can't find it), you can contact your insurer and ask them to send you a copy. You might also be able to access your policy online through your insurer's website.

If you have any trouble getting a new copy of your policy, contact the [Insurance Council of Australia](#) on 1300 728 228 for help.

## My policy is for "sum insured". What does that mean?

Insurance policies will either cover you for an agreed amount – known as "sum insured" – or for "replacement value", which covers the cost of replacing your property. If your policy is for a sum insured value, this is the maximum amount that your insurer will pay for any one insured event. The building sum should be enough to rebuild your entire home, including any sheds, driveways, patios or fencing; while the contents sum should be able to cover the full replacement value of your belonging, including window coverings and carpets. You will usually only

get the amount of money stated as the sum insured value on your policy. Some policies also include cover for items like emergency housing, cleaning or clearing up a site, or professional fees for architects etc. Ask your insurer about what other cover may be provided under your policy.

If your policy is for the property's replacement value, the insurer can choose between paying for your property's replacement building costs or giving you a lump sum cash payout to allow you to rebuild. The amount payable may also be limited by various caps in the policy depending on what needs to be replaced. The cash payout should allow you to rebuild your property to the same standard as before the fire, no better or worse. Many Australian homes are uninsured, this is caused by costs of rebuilding being higher than what the home is insured for, this leaving you as the homeowner to pay the difference at the time of claim. To avoid this, ensure that you accurately track and calculate the replacement cost of your home and its contents. If the insurer gives you a cash payout but it isn't enough to cover the cost of rebuilding, the insurer will need to reassess your claim.

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

If your policy recently lapsed or you only just took out insurance, you may still be covered. You should get legal advice about your situation as soon as possible.

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

Usually if your policy has not been renewed or you have not paid the premium, you will not be able to make a claim. Your insurer must let you know in writing that your policy is about to finish (lapse) at least 14 calendar days before any cancellation by your insurer for non-payment.

If your insurer did not do this, and you did not renew your policy, the policy will go on as if you had renewed for the period of the original policy. If your policy has recently lapsed and you have been a long-term customer of the insurer, you can ask that your insurance cover be continued for special reasons. You might be able to show that there were special circumstances that led to you not renewing your policy, for example, you might have been away overseas, or you might have been in hospital. But generally speaking, if you haven't paid your premium, you won't be covered.

## **What preparation should I do before making a claim?**

If you live in an area that may have bushfires, it is important that you take videos and photos of your property and its contents before a fire comes. Having this information easily available to you when you need to make a claim can help you and the insurance company process your claim quickly, show what condition your property was in before the damage occurred, and easily lists what items you own. Protecting you from forgetting any important contents when trying to list items from memory.

If you do not have videos or photos that contain what your property looked like and what contents they had, before you begin the claim process, it is good to do some basic preparation. Write a list of all the items damaged or destroyed in the fire that you want to claim on insurance. Think about each room of your home and the items you had in those rooms – carpets, curtains, furniture, electronic equipment, air-conditioning, clothing – and make sure you include these items on your list if they were damaged. Don't forget to include items in sheds and garages. Include as much information as you can about the items including the make, model and date of purchase (if known) to support your claim. As we've already mentioned, photographs of damaged items will also help to support your claim.

## **Can I claim over the phone?**

Yes, you can make your claim over the phone. Have pen and paper ready to record the time of your call, the person you spoke to and the claim number. The call may be recorded so be accurate and don't answer questions that only an expert would know. It is okay to say what you saw and heard and let the insurer know you do not know all the answers. If you are ringing from a mobile phone, you can ask a staff member from your insurance company to call you back if you are concerned about call costs. You can also ask the insurer what emergency assistance they can provide if necessary.

## **I need money urgently. Can my insurer help?**

Yes. Under the General Insurance Code of Practice, insurers must fast-track your claim if you are in urgent financial need of the benefits you are entitled to under your policy, then your insurer will do either or both of the following:

1. Fast-track both their assessment of your claim and the process they follow to make a decision about your claim; and or
2. Pay you an advance amount to help ease your urgent financial need, of which your insurer will do within 5 business days after you

demonstrate your urgent financial need.

You could be in urgent financial need if you require money for:

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

When your insurer is assessing your request for Financial Hardship support, they will consider all reasonable evidence, this may include:

- evidence of serious illness that prevents you from earning income;
- evidence of a disability, including a disability caused by mental illness;
- if you are a Centrelink client, your Centrelink statements; and
- evidence of your unemployment.

You are encouraged by your insurer to tell them about your Financial Hardship so that they can work with you to discuss your situation and the options that are available to support you. If you tell your insurer, or they identify that you are experiencing Financial Hardship, your insurer will give details about how to apply for Financial Hardship support; and if appropriate, contact details for the National Debt Helpline: 1800 007 007.

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

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

When the insurance company makes the appointment for an assessor to visit you, ask for a list of questions to be sent to you in advance so you can provide the most detailed, considered answers. The assessor may interview you, your neighbours, and any witnesses and may also review police reports about the fire. When the assessor has finished looking at your property and doing interviews, ask them if they would provide you with a draft copy of the information they will be using to prepare their insurance report. This will give you the chance to correct any misunderstandings and provide more detail if required.

If the assessor asks you to sign a statement on the day, ask them if you can keep the document to read it thoroughly before signing it at a later date. Do not sign release documents, or agreements about the value of your loss until you have had a chance to consider and obtain independent advice. If you are unhappy about your treatment by the assessor, write to the insurer to explain your concerns. Tell them what you are unhappy about and what you want the insurer to do or change. For example, you might disagree with the order of events that the assessor is using for their report.

## How long will the claim process take?

The [General Insurance Code of Practice](#) requires insurers to respond within 10 business days of receiving a claim. If they need further information, they must contact you within 10 business days of receiving the claim to let you know what further information is required and to give you an estimate of the time they will need to make a decision. Your insurer will tell you about the progress of your application at least every 20 business days, and will respond to your routine enquiries about claim's progress within 10 business days. If you think the insurance company has delayed in making a decision about your claim, you can make a complaint to the [Financial Ombudsman Service](#).

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

Once the Scope of Work has been agreed, you may choose between rebuilding/repairing the damaged property, or taking a cash settlement so that you may manage the repair or rebuilding work yourself.

1. When choosing to repair/rebuild, if your insurer is managing this, they will appoint a builder, arrange the contracts and notify you of the construction schedule. Your insurer will also manage any local council approvals as they are required.
2. Alternatively, you may accept a cash settlement, this could allow you to manage any repair or rebuilding work yourself. However, it is important that all council regulations and building codes are complied with, and that a licensed builder is used, to ensure that your home when rebuilt or repaired is insurable.

You must think carefully about each option when deciding what to choose. If you choose the rebuild option, you will have the money to rebuild when you are ready. If you choose a lump sum payment, it will mean you have money to take care of any current financial issues you are facing, but you could easily spend the money and have less funds available when you come to rebuild. Before accepting a lump sum payment, you should consider:

- whether you will still be covered for costs like removing debris from the property or for the cost of building permits;

- whether your insurer will deduct the GST from your lump sum payment, potentially leaving you out of pocket when you rebuild;
- whether your insurer will require permission from your lender (e.g. bank, building society etc) for you to keep the lump sum payment. Some lenders will require insurers to provide them with the lump sum payment to pay off or reduce your mortgage. This is because the asset that the mortgage was taken against – your property – has been damaged and the lender may want to protect their investment. If this happens, you will have to renegotiate your loan with your lender;
- that some insurers will only provide a cash payment for the amount their builders would charge to do the work. In some cases, building prices might increase in an area following a natural disaster because more people are needing to get work done – this could leave you out of pocket;
- that if you take the rebuild option, all the repair and building work organised by the insurer on your behalf is given a warranty by the insurer under the Insurance Code. If you take the lump sum payment and organise your own repairs this warranty does not apply. Check your policy carefully and talk to your insurer about these issues or get legal advice.

If your insurer offers you a cash settlement under a home building policy, under the [General Insurance Code of Practice](#), they will provide you with information to help you understand how a cash settlement works and how decisions are made on cash settlements.

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## If I rebuild, will my insurer cover extra costs so my home meets new building code requirements?

If your policy was for a sum insured amount, the insurer will not cover extra costs to bring your property into line with new building code requirements, unless there was specific additional cover in the policy for this purpose. If your policy covers rebuilding or replacing your property "as new", you may be covered for the costs of rebuilding to meet new building code requirements. Check with your insurer.

## My claim has been refused? Why?

There are five main reasons for insurance claims being refused:

- Damage not caused by disaster

The insurer believes the damage to your property was not caused by a disaster and existed before the fire. Many insurance policies only cover damage from "insurable events" and won't cover damage they believe was already there.

- Non-disclosure

The insurer believes you did not disclose all relevant information to them when you applied for or renewed the policy.

There are two types of non-disclosure, innocent and fraudulent. Innocent non-disclosures allow an insurer to change your cover to what they would have offered you if they had known the correct information, including refusing the claim and cancelling the policy. Alternatively, fraudulent non-disclosure requires your insurer to show that you have intentionally or recklessly made the misrepresentation, allowing your insurer to cancel the policy and reject any of your claims.

To show non-disclosure, your insurer must show:

- They told you about your specific duty of disclosure and the effect of non-disclosure.
- They asked you a specific question. For example with renewals, your insurer may give you a copy of the questions they asked and the answers you previously gave to them and ask you to make updates.
- You made a misrepresentation in response to a question or you didn't update information at renewal.
- This misrepresentation happened because you failed to take reasonable care when answering a question.
- The insurer was disadvantaged because of the misrepresentation, such as they would have not offered cover if they had the correct information.

If your insurer alleges fraud, seek legal advice immediately, as it may have other consequences.

- **Operation of a condition or exclusion clause**

Insurance contracts contain conditions and exclusion clauses. These explain the circumstances when you will not have insurance cover. If your insurer refuses your claim on these grounds, it may be because you did not comply with one of the insurer's requirements or the policy does not cover the loss. When your insurer claims that an exclusion applies, they must prove this on the balance of probabilities.

- **Fraud**

The insurer may believe you have acted fraudulently in some way. This is a serious allegation, you should seek legal advice immediately. Your insurer is required to prove that you intended to deceive or acted with reckless indifference as to whether the insurer was deceived. If your insurer proves you have been fraudulent, they can reject your claim and cancel your policy. They may also in serious cases refer your matter to the police where you may be charged with a criminal offence.

- **Policy cancellation**

Your insurer may cancel your insurance policy within your cover period for many reasons including lack of payment. If your insurer tells you that your policy has been cancelled, get legal advice and determine whether they had good reason to cancel the policy and that they took all steps to tell you about the cancellation.

## What can I do if my claim has been refused?

If your insurer denies your claim or does not pay it in full, they will tell you in writing:

1. the aspects of your claim that they do not accept
2. the reasons for their decision
3. that you have the right to ask them for the information about you that they relied on when assessing your claim
4. that you have the right to ask your insurer for copies of any Service Suppliers' or External Experts' reports that they relied on, and
5. about their Complaints process.

If you ask for information or for copies of the Reports that your insurer relied on, your insurer will give you that information or report within 10 business days

When you received the reasons for the claim refusal in writing, this may give you the opportunity to correct any errors or provide additional information to your insurer that may help them change their decision.

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

- asking your insurer for an internal dispute resolution review of your refused claim. This can be done by email, letter or phone; and should be done as soon as possible, you can get legal advice to help you with this process. Make sure to keep a copy of any written correspondence and notes of phone conversations you have. To be successful with a review, you will need to present additional information to show that your insurers original decision was wrong. This information may include:
  - building or engineer's reports
  - extra quotes

- photos or videos of your property before and after the fire.
- If your insurer does not fix the problem within 30 days, your next step may be to complain to the Australian Financial Complaints Authority (AFCA). AFCA is a free and independent complaints service. If you [lodge a complaint against your insurer](#) via the AFCA, and they decide the insurer has to pay your claim, then your insurer must pay it, but you do not have to accept the decision. If the AFCA's decision goes against you, you may go to the tribunal or court to pursue your case if it is within the time limit.
  - If you can't lodge online you can call AFCA on 1800 931 678, this will allow you to give a summary of your complaint and allow you to provide further arguments and evidence later.
- lodging a dispute with the [Financial Ombudsman Service \(FOS\)](#). You have two years from when your insurance company refused your claim to lodge a dispute with [FOS](#). This is a free, no-risk service and your situation will be reviewed by an independent ombudsman
- accepting the claim or settlement offer
- taking your complaint to court or a tribunal. If you decide to go to court or apply to a tribunal, you need to think about:
  - money limits for considering complaints
  - if you lose you might have to pay the insurer's legal costs, as well as if you win in some circumstances such as rejecting a settlement offer and receiving a worse outcome in court, and
  - time limits apply for taking court action. You have six years from the date of the event.

## Where can I get more help?

### Anglicare Financial Counselling

Phone 1800 007 007

<http://www.anglicare.org.au/>

### Salvation Army – Financial Counselling Service (Doorways Program)

Clarence 6244 4615 (Mon, Wed & Fri – 9:00am -2:00pm)

Hobart 6231 1345 (Mon – Fri, 10:00am – 3:00pm)

<http://www.salvationarmy.org.au/>

### Rural Financial Counselling Service Tasmania – (For Primary Producers [Farmers] and Agriculturally Dependent Businesses)

Hobart 6272 5992

Launceston 6334 2768

<http://www.ruralbusinesstasmania.org.au/Financial-Counselling-Services>

### Financial Ombudsman Service

Phone 1300 78 08 08

[www.fos.org.au](http://www.fos.org.au)

### Insurance Council of Australia

Phone 1300 728 228

<http://www.insurancecouncil.com.au>

### National Insurance Brokers Association

Phone 02 9964 9400

<https://www.niba.com.au/html/default.cfm>

### General Insurance Code of Practice Manager

<http://www.codeofpractice.com.au>

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.