

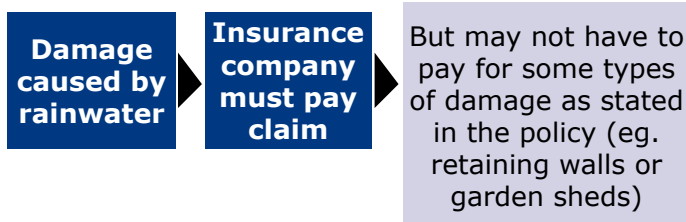
Storms, Floods, Insurance and you

A guide to getting your insurance claim paid

How insurance policies work

Will my insurance policy pay?

The insurance policy is your contract with the insurance company. It states when, how and what the insurance company must pay for. Most policies state that the insurance company **will pay for** damage caused by rainwater or stormwater, but **will not pay** for damage caused by floodwater.



What is the difference between floodwater and rainwater?

You will need to look at the definition in your insurance policy, but generally:

- **rainwater** generally means water falling from the skies that runs off over the surface of the land (and may include water overflowing from stormwater drains)
- **floodwater** means the covering of normally dry land by water escaping or released from rivers, lakes, channels, dams or canals

The insurance company cannot go beyond the words in the policy. For example, if the policy reads: "Floodwater is water escaping from a river or stream", and if the damage was caused by water running down gullies of a mountainside, it will not be defined as floodwater and the insurance company will be required to pay.

How do I know whether the water was floodwater?

Insurance companies obtain reports from experts (such as hydrologists) to determine whether damage was caused by rainwater or floodwater. These reports recreate the events that led to the damage. They may calculate what the maximum level the water in your house would have risen to if it was just rainwater and, if the water level is much higher than this figure, then they will argue that the water is partly floodwater.

Experts can get it wrong

Hydrologists' reports are a recreation of the events that led to the damage. They assess the direction the water flowed, whether the water came from a river or from stormwater runoff, and what level the rainwater would have reached on its own. Their findings are not conclusive, may be based on false assumptions or inconsistent with reliable eyewitness or video evidence.

What if my home was damaged by both rainwater and floodwater?

If your home was damaged by both rainwater and floodwater sometimes the insurance company will reject the claim. Sometimes the decision will be correct, but sometimes it may not. There may be arguments the insurance company has not considered:

1. **The rainwater came in first.** The water level in your house may have risen and then stopped. A second wave of water then entered the house. This may indicate that the first wave was rainwater and the second surge was floodwater. The insurance company has to pay for damage caused by the rainwater.
2. **There was floodwater, but only a little.** If the amount of floodwater was minimal/insignificant compared to the volume of rainwater, the insurance company may still be required to pay.

Standard cover

The insurance company didn't give me a copy of the policy

The law says that the insurance company is required to tell you:

- a) whether or not it is prepared to cover your home against flood damage; and
- b) it must do this before the policy is taken out or before it is renewed.

If this was not done, then the insurance company must pay for flood damage. This is called Standard Cover.

For example, Standard Cover will apply if you paid the premium at the office and the policy was mailed afterwards.

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Free legal advice is available from the following offices. See back for more contacts and resources.

Legal Aid NSW: (02) 9219 5000

LawAccess NSW: 1300 888 529

Combined Community Legal Centres: (02) 9212 7333

Insurance Law Service: 1300 663 464

Legal Aid
NEW SOUTH WALES

www.legalaid.nsw.gov.au

However, if you receive the policy document in the mail and a year later renew the policy, Standard Cover will not apply on renewal. You have received documents advising you that the insurance company did not cover you for flood before renewing the policy.

What can I do if my claim is rejected?

If your claim is rejected by your insurance company, you can have it reviewed for free by an independent body called the **Insurance Ombudsman Service (IOS)**. Any decision of the IOS will be binding on your insurance company but will not prevent you from taking other action if you are not happy with the decision.

The scheme has two steps:

1. Firstly, you need to apply to the insurance company for an internal review.

According to the current General Insurance Code of Practice, insurance companies will respond to your request for internal review within 15 business days if they receive all necessary information and have completed any investigation required. Insurance companies will also keep you informed of the progress of the internal review at least every 10 business days.

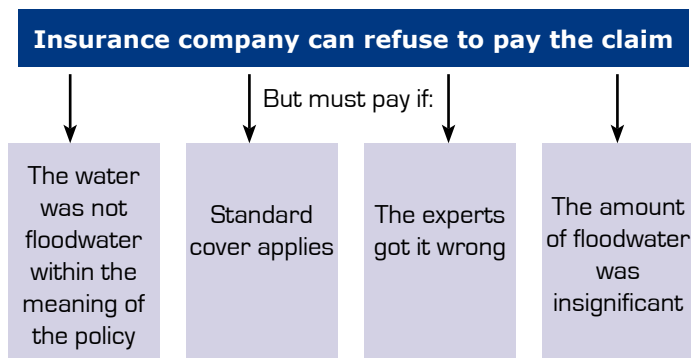
2. If the claim is still rejected after the internal review, you should apply to the IOS within three months of the internal review decision.

The IOS will investigate the complaint, gather the relevant information to determine the claim and will then refer the complaint to an Adjudicator (claims up to \$5000) or the Panel (claims up to \$280,000) for a final decision.

If you are unsuccessful at IOS you can still take your matter to Court. You must commence your claim within six years from when the cause of action accrues (which may be six years from the date of the 'insured event' – ie the storm or flood - depending on what your policy says).

Your policy may also say that you need to notify your insurer as soon as possible of the damage. It may be that a failure to notify an insurer within a reasonable time may be a basis for refusal of the claim – so it is better not to delay.

Summary



Getting organised:

Evidence about the cause of the damage

Collect detailed evidence about the damage. The more detail you obtain, the easier it is to establish the cause of the loss. You should try to gather evidence such as:

- 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 (for example, through toilets and showers or over land) and whether the water level increased in stages or at a steady and uniform rate.
- Maps showing rainwater drains in the area (copies may be obtained from councils).
- Information about when any river levels peaked.
- Photos, videos and other records of the flood, including home videos and, if possible, news footage.

Do I need a lawyer?

The IOS is designed for people who do not have lawyers. However, some flood insurance cases are difficult and may require the assistance of a lawyer. Legal Aid can provide further advice and will provide a lawyer to represent you if you meet our means and merit tests and come within our policy guidelines. The National Insurance Hotline may be able to provide free advice and assistance with running matters at IOS for people who are not eligible for legal aid.

Contacts

Free legal advice is available by appointment from the following Legal Aid civil offices. Please ring the office nearest to where the storm or flood damage occurred or our head office:

| | |
|-------------------------------|----------------------------|
| Bankstown (02) 9707 4555 | Liverpool (02) 9601 1200 |
| Campbelltown (02) 4628 2922 | Newcastle (02) 4929 5482 |
| Central Sydney (02) 9219 5000 | Nowra (02) 4422 4351 |
| Coffs Harbour (02) 6651 7899 | Parramatta (02) 9891 1600 |
| Dubbo (02) 6885 4233 | Penrith (02) 4732 3077 |
| Fairfield (02) 9727 3777 | Wagga Wagga (02) 6921 6588 |
| Gosford (02) 4324 5611 | Wollongong (02) 4288 8299 |
| Lismore (02) 6621 2082 | |

Other helpful information services:

Insurance Law Service: **1300 663 464**

Insurance Ombudsman Service (IOS): **National Toll Free: 1300 78 08 08**. Email: ios@insuranceombudsman.com.au; or web: www.insuranceombudsman.com.au

LawAccess NSW gives free information and referral, including information on community legal centres who may be able to assist on **1300 888 529**

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This brochure is a short summary of a more detailed guide called *Turning the Tide: Storms, Floods, Insurance and You*, which you can download from www.legalaid.nsw.gov.au/pubsonline
You can request a copy by ringing Legal Aid NSW Publications Unit on **9219 5028**.

To get a copy of the General Insurance Code of Practice visit: www.codeofpractice.com.au