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# Storms, floods, insurance and you: getting your insurance paid



## Will my insurance policy pay?

Maybe. Your insurance policy is your contract with the insurer and says when, how and what the insurance company must pay for. Most policies say 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?

Your policy will explain this difference, but generally:

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

For example, if the policy says floodwater means 'water escaping from a river or stream', but the damage was caused by water running down a mountainside then the insurer must pay because floodwater did not cause the damage.

## How do I know whether the water was floodwater?

You don't need to decide. Insurance companies get reports from experts, such as Hydrologists, to work out if damage was caused by rainwater or floodwater.

The hydrologist's report builds a picture 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. The report might not be conclusive as their findings may be based on false assumptions or be different to reliable eyewitness reports or video evidence.

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

In this case, the insurance company may reject your claim. Sometimes the decision will be correct, but sometimes it may not. There may be arguments the insurance company has not considered:

1. The rainwater came in first. The water level in your house may have risen and then stopped. A second wave of water then came into your house. This may show that the first wave was rainwater and the second surge was floodwater. The insurance company has to pay for damage caused by the rainwater.
2. There was floodwater but only a little. If the amount of floodwater was small compared to the amount of rainwater, the insurance company may still have to pay.

## What if the insurance company didn't give me a copy of the policy?

The law says that the insurance company must tell you:

- whether or not it will cover your home against flood damage, and
- 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 applies if you paid the premium at the office and the policy was mailed afterwards. However, if you get the policy in the mail and a year later you renew the policy, standard cover will not apply once you renew. This is because you got documents telling you that the insurance company did not cover you for flood before you renewed the policy.

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## What can I do if my claim is rejected?

If your claim is rejected by your insurance company, you may be eligible to have it reviewed for free by the Financial Ombudsman Service (FOS). Your insurance company must follow the FOS decision. You can still take other action if you are not happy with the decision. The insurer must tell you if your claim is eligible for review by FOS (and you can check this with FOS directly).

The scheme has two steps:

1. Firstly, you need to apply to the insurance company for an internal review. Insurance companies will respond to your request for internal review within 15 business days, if they get all necessary information and have completed any investigation needed. Insurance companies will tell you about the progress of the internal review at least every 10 business days.
2. If the claim is still rejected after the internal review, you can apply to the FOS within two years of the internal review decision. The FOS will investigate the complaint and gather relevant information to determine the dispute. The FOS can then recommend how the matter should be resolved. If necessary, FOS can make a decision that is binding on the insurer for claims up to \$280,000. The insurer can agree to FOS deciding the dispute even if the claim is over \$280,000.

If you are unsuccessful at FOS you can still take your matter 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' – i.e. the storm or flood that resulted in the claim).

Your policy may also say that you need to tell your insurer as soon as possible of the damage. If you do not do this, within a reasonable time, your claim may be refused. 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 get, the easier it is to show the cause of the loss. You should try to gather evidence such as:

- Eyewitness accounts about the time the water came into your house, the level it rose to, where it came from, how it first came into your house, for example, through toilets and showers or over land, and whether the water level increased in stages or at a steady rate.
- Maps showing rainwater drains in the area (you can get maps 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. It may also help if your photos or video shows any damage to neighbouring property. Try to get eyewitness accounts of what happened first to neighbouring properties.

### Do I need a lawyer?

The FOS is designed for people who do not have lawyers. However, some flood insurance cases are difficult and you may need help from a lawyer. Victoria Legal Aid can give you advice about whether you need a lawyer. If your claim is at FOS, the National Insurance Hotline may also give you free advice and help.

### Contacts

Free legal information is available from the Legal Information Service of Victoria Legal Aid by phoning:

**03 9269 0120 or 1800 677 402 (rural callers)**

### Other helpful services:

National Insurance Hotline: **1300 663 464**

Financial Ombudsman Service (FOS)

National Toll Free: **1300 78 08 08**

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

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