

Floods affect your business? Know your insurance rights

**Maurice
Blackburn**
Lawyers

Since 1919

You will have seen the devastation in Queensland, New South Wales and Victoria from the recent floods and the problems about whether insurance companies will cover the losses. Some insurance companies are refusing to pay because their policies exclude flood damage. This highlights the problem people have with insurance generally and in particular in understanding the fine print. If you own a business that was flooded, or if you are leasing and your contents have been damaged, it is important to know your insurance legal rights.

What does my insurance policy cover?

All insurance policies are different. **Storm or rain damage** is covered in almost all building and contents insurance policies. This damage is caused by a storm, rain and wind and local run off from streets, gutters and storm water drains.

Some building and contents insurance policies (but not all) exclude **floods**. Each insurance company has its own definition for "flood" but it generally means water overflowing from rivers, creeks, dams, lakes or reservoirs that causes damage. Some policies that exclude flood damage do nevertheless cover damage caused by flash flooding which is where the damage was caused by a flood within twenty-four hours (or maybe up to 72 hours) of the downpour.

Building and contents insurance policies can be up to 40 or 50 pages long and hard to read. The things to look for are the "**definitions**" and the "**exclusions**" which will spell out what is covered and what is not covered.

Some other types of insurance policies may cover losses arising from the floods such as motor vehicle insurance, home insurance, life insurance, Total Permanent Disability (TPD) and income protection insurance.

If an insurer or insurance broker advised you on the fixed price cover amount and the amount did not cover all your losses, you may have a claim against the insurer or broker for the shortfall.

What is the difference between fixed price and replacement cover?

You will be covered for loss and damage **fixed** at a set amount, or for either the **replacement** or full **replacement value** of the damaged or lost items.

History shows that fixed price cover is often not enough to fully cover the losses or damage.

How do I claim?

Lodge a claim to your insurance company regardless of whether you think (or the insurance company tells you) you are covered.

Take photos to show the state of your business and the contents.

Draw up a list of the items lost or damaged in any way and give it to the insurer. If you leave off any items, you can add them later, even after your claim has been paid – perhaps for up to six months.

Make a copy of the claim and any papers you send in.

What happens next?

The insurance company will assess your claim, including whether the damage was due to a flood, a storm or flash flooding.

If your policy excludes flood damage, it is up to the insurer to prove that this was the cause.

The insurance company will process many claims arising from the floods so your claim may take some time but your insurer must **fast track** your claim if you are in urgent financial need.

If you haven't heard from the insurer within four weeks of lodging your claim, you should complain in writing to the insurer. This is called an **Internal Dispute Resolution (IDR)** complaint and the insurer then has forty-five days to pay the claim. If your claim is not accepted, you can lodge a complaint to the Insurance Ombudsman or sue the insurance company in court.

What happens if I am not covered for flood?

If you are not covered for flood damage, you may still be eligible for a pay-out if:

- you didn't get a copy of the policy within fourteen days of policy starting or being renewed;
- the flood exclusion is in the fine print and it is not clear; or
- the damage to your building or contents was caused by storm water or flash flooding (if covered) and not by flood.

Do I need to engage a hydrologist?

The insurance company may get an **expert report** from a **hydrologist** to decide where the water came from and whether they will pay you.

You can demand a copy of the report and get your own expert opinion to challenge their decision.

What are my legal rights?

If your insurance claim is rejected or if you have been mucked around, you can:

- lodge an IDR complaint to the insurance company to reconsider its decision,
- take your case to the Financial Ombudsman Service (FOS), or
- lodge a court case.

Get Help

It is really important to get expert advice and help with any insurance claim.

Maurice Blackburn provides free advice on insurance claims.

Call toll free **1800 031 124** for free advice.

Josh Mennen

Associate
Sydney

02 8267 0967

nswfloods@mauriceblackburn.com.au



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Sydney • Newcastle • Wollongong • Canberra

Freecall 1800 810 812

www.mauriceblackburn.com.au