



Financial Rights

LEGAL CENTRE

FACT SHEET



CALL THE
INSURANCE
LAW SERVICE
ON
1300 663 464

Financial Rights Legal Centre Inc.
ABN 40 506 635 273

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BUSHFIRE INSURANCE GUIDE

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

CASE STUDY

Barb and Leo had home building, home contents and comprehensive car insurance all with BIG INSURANCE COMPANY.

They are newlyweds who recently moved into a bushfire prone region. On a particularly devastating summer's day, while visiting her sick grandma in another part of the state, Barb heard news that her home town had been ravaged by bushfires. It was reported that the fires wiped out the whole town.

A phone call to the local relief centre confirmed Barb's worst fears. Her house and her car were all completely engulfed by the sudden onslaught of the bushfires. Fortunately Leo is safe but they have nothing left.

Barb & Leo will definitely claim under their existing insurance policies but don't know where to start or what to expect. They are too overwhelmed.

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PART 1: TYPES OF INSURANCE TO CONSIDER

If you have insurance, the damages and losses resulting from bushfires may be recoverable depending on what type of insurance you have and the extent of that cover.

Most commonly the policies you may have are:

- Home Building Insurance covering destruction or damage to building;
- Home Contents covering personal belongings and household possessions
- Motor Vehicle Insurance covering motor vehicles, and in some cases motorbikes, trailers, caravans
- Life Insurance covering injury, disability and/or death. It may be stand-alone insurance through a life insurer or as part of your superannuation benefits. If you have life insurance through your super, some policies will cover you even if you are no longer employed.
- Accident or Sickness policies, income protection and consumer credit insurance can also cover you if you are ill or injured

If you think you may have insurance but you can't remember which company it is with, ring the Insurance Council of Australia on 1300 728 228. When there has been a large scale disaster event there is usually also a dedicated Catastrophe Hotline 1800 734 621. Your superannuation fund can tell you about any insurance attached to your superannuation in the event that there has been a death or severe injury resulting in disability in the family.

PART 2: DOES MY INSURANCE POLICY COVER ME?

The first step is to contact your insurers and notify them about your claim. If you are unsure if your claim will be covered or not, you should claim and see what the insurer says. If you do not know who your insurer is ring the Insurance Council of Australia 1300 728 228 or 1800 734 621 in the event of a large scale disaster

Do not be concerned if your policy documents have been lost or destroyed, insurance companies keep records electronically and only require the policyholder's name and address in order to process a claim. Your insurer is obligated to send you a copy and may have them available online.

One of the first things you should look for is whether you are covered for the costs of temporary accommodation. More about this is found below in Part 4: Additional Benefits under your policy.

The insurer will appoint an assessor to come to your property to assess the damage and gather information to assess whether you are covered



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under the policy. This may take time during catastrophes like bushfires. You should in the meantime:

1. Take photographs of any damaged items and buildings and start making an inventory of your loss;
2. Do not dispose of any items unless you have to because it is a hazard – but before you do so, make sure you document everything and try to get the insurer's consent
3. Take reasonable steps to minimise your loss. If you can secure your property from further loss, for example, putting a tarp over your contents if they are exposed or moving it under shelter. Try and document this with photos, invoices and evidence of any directives from council or local emergency services.

If you do not do this, the insurer may reject any claims arising out of subsequent damage because of this.

You should be mindful of your insurer's rights to inspect your property or determine whether buildings or contents should be repaired/rebuilt/replaced and by who. You should talk to your insurer to try and get their consent before performing works.

NOTE: In the event of a major disaster event, some insurance companies may not expect you to itemise all of your contents if your home and everything in it has been totally destroyed – they may agree to just pay the full amount insured, particularly if the amount claimed seems reasonable for the size of the family and the size and value of the home insured.

Sometimes, in a large bushfire event, there may be the possibility that some person or entity will be found responsible for starting the fire. If there is a possibility that, for example, a large company, or the government, may be found to be liable for the event, and your insurance is insufficient to cover all your loss, you may want to gather such evidence anyway just in case there is court case, inquiry or other source of compensation.

If you are not sure what you are covered for, you should get a copy of your Product Disclosure Statement and Policy schedule and your Certificate of Insurance covering the date of the bushfire.

Insurance policies vary in wording from policy to policy as to the types of risks or insured events they will cover, and what events or losses are excluded. It is very important you read your policy and understand what you are covered for, this will help you in ensuring you get all of the benefits you are entitled too as well as explaining why you may not get all of your losses paid

Many insurance policies cover bushfires as an insured event. There may however be limitations on whether or not fire damage includes bushfire damage and to what extent.

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Common limitations are:

1. bushfires within the first 48 or 72 hours of you first taking out the policy are not covered – though there can be exceptions (e.g. you just purchased or leased the property, or changed policies from another insurer without any break in the period of cover and for the same level of cover)
2. damage from scorching, burn marks or melting are not covered where there has been no flame, or where there was no burning building within 10 metres of your home
3. heat, soot, smoke or ash, unless your buildings or contents have caught on fire

The extent of your cover will ultimately depend on the wording of your particular Policy.

Many policies also impose a general obligation on you to take reasonable precautionary measures to prevent loss – for instance clearing your gutters to reduce the risk of leaves in the gutter catching fire from embers carried by the wind. This only requires reasonable measures - you should not risk your health or safety or disregard local planning laws. What is reasonable can be argued about, especially if the fire was sudden or of unavoidable ferocity.

An example of a precautionary clause is:

“You must at all times, and at your expense, take all reasonable precautions:

- *For the safety and protection of your building and the site,*
- *To prevent bodily injury or damage to property,*
- *To prevent damage to your building,*
- *To ensure compliance with all statutory obligations, by-laws or regulations imposed by any public authority, relating to the safety of persons or property.*

If you do not, we may reduce or refuse to pay any claim you may make.”

THINGS TO CHECK FOR IN YOUR POLICY

In relation to the extent of bushfire cover, some insurance policies:

- Have an embargo or time delay (e.g. 48 hours) after you’ve entered into the insurance contract for the policy to take effect in relation to bushfires. This is important because you will only be covered after this time delay but see the section on “Non Disclosure” below.
- Exclude cover where there has not been any actual flame damage (such as damage from scorching, melting, heat, smoke, ash or soot).
- Limit cover where you have not taken adequate precautions to prevent damage or loss.



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GOLDEN RULE: It can be difficult to work out what is covered by your policy so if you are unsure get advice from the Insurance Law Service 1300 663 464, or your private solicitor.

If the insurer advises you that your policy has been cancelled or has lapsed and you are not covered for the event you should seek legal advice immediately and read our fact sheet (insert link). You should ask the insurer to:

1. Provide you a copy of any correspondence about the cancellation;
2. Provide copies of any transcripts of telephone calls (if applicable).

PART 3: WHAT ARE TYPICAL ISSUES TO CONSIDER IN BUSHFIRE INSURANCE CLAIMS?

REPLACEMENT OR INDEMNITY COVER

If you have **indemnity cover**, your insurance policy will generally cover you for actual losses up to the sum/s you are insured for. If you have this type of policy, your certificate of insurance will state what amounts you are insured for – for instance “Up to \$400,000 for building, \$20,000 for contents”. There may be limitations – for instance if you choose not rebuild but sell the land, your policy could say that your insurer may only pay the value of the property.

If you have a **replacement cover**, your insurer should cover you for the amount it would cost to replace or repair damaged building/contents to the condition it was in just prior to the fires.

For either, you may also be entitled to other Additional Benefits under the policy, see below.

UNDERINSURANCE

Underinsurance is a problem with indemnity cover, where the amount you are insured for is not enough to cover your loss or damage. This is a major problem particularly in times of natural disasters such as floods or bushfires, as the cost to rebuild can easily rise due to the increased demand for builders and building materials.

Some insurers offer a safety net of protection, in return for you paying additional premiums, for instance: “*Safety net home protection – 25% extra of the home sum insured*”

Insurers are only obligated to cover you up to the amount you are insured for. However, your insurer has a duty to clearly inform you in writing that their liability is limited to a particular amount before the contract is entered into.

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The reverse side of this is over-insurance is where you are insured for more than the amount required to cover your loss or damage. **Over-insurance** can be one way of creating a buffer to make sure you are fully covered. However you need to be aware that you will not be entitled to an automatic payment of this higher sum. The insurer is entitled to reduce your payout to the amount of your actual loss, and you will not be entitled to any refund of the higher premiums you paid because you were over-insured.

IS IT THE INSURER'S FAULT THAT I AM UNDERINSURED OR OVER-INSURED?

Generally no. When you first take out a policy and at every renewal it is your obligation to review the amount of cover the insurer is offering to ensure that it meets your needs and expectations.

A renewal statement might read:

"Each renewal, we increase your sum insured to help keep pace with inflation and consequently your premium will increase. As always, you are free to choose a sum insured level which best suits your needs and we recommend you review the amount of your cover periodically, particularly if you have made changes to your assets."

If you are not satisfied with the amount of cover you are offered, you can negotiate with your insurer or shop around other insurers

The General Insurance Ombudsman (Financial Ombudsman Service) has made determinations saying that, "it would be unreasonable for a policyholder to treat an insurer as a home valuation provider." (Determination Referral No: 103 05 17370)

If you feel you have been clearly misled by your insurer into getting too little or too much insurance get legal advice.

CASH SETTLEMENT OR REPAIR/REPLACEMENT

Often the insurer is entitled to make the decision as to whether to repair, replace or cash settle a claim. Sometimes they may ask you how you would prefer to settle, and you can try to negotiate

Look for something like this in your policy,

"We will decide how we settle your claim

If your contents or valuable items suffer loss or damage, we will decide whether to

- *Repair an item*
- *Replace an item, or*
- *Pay you the cost to repair or replace the item."*



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You should also take the following into account in negotiations:

- a. If an insurer chooses to repair or rebuild, the insurer is responsible for work. This is provided under the General Insurance Code of Practice, which states that where your insurer has selected and directly authorised a repairer, they will:
 - accept responsibility for the quality of workmanship and materials (clause 7.20a); and
 - handle any complaint about the quality and timeliness of the work or conduct of the repairer (clause 7.20b).

Some policies will go further and provide for instance a “Lifetime Guarantee of Repairs”

If you agree to a cash settlement and engage your own repairer, any issues arising from the quality of repair will be an issue for you to sort out with your own repairer.

- b. Sometimes insurers tender jobs in a competitive environment after a disaster. If you elect to take a cash settlement the insurer may only offer you a cash settlement based on the lowest tender they received. You need to think carefully, and get your own advice and quotes, to decide whether this sum will be enough before you agree to a final amount
- c. Most insurers will have clauses about the standard of cover – for instance, matching of materials with what you had before, or “new for old”. Usually “new for old” has its own definition under the policy. You should read your policy to see what level of cover you have and the extent the insurer has to try and source the same materials you had before the event.
- d. In contents claims, the insurer may pay your claim not in cash but in store credit. The insurer may be able to do this if there is an express right to settle in the terms of the policy that they can pay your contents claims in this way. If you are not happy with store credit check your policy wording.
- e. If the policy is silent on a store credit you could ask for cash as an alternative. However, you should be aware that the insurer may reduce your cash settlement to a lower amount than the stated value of the store credit. This may be because the insurer has an arrangement with one retailer (such as a volume discount) which enables them to pay less for the credit than the dollar amount you are able to spend. Many insurance policies allow insurers to only indemnify you as to the cost the insurer would have to replace the item rather than the retail value. Policies vary so get advice if you are not happy with the arrangement and the policy is unclear.

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- f. You need to be clear on what you are settling, if it is the whole claim or only part of it eg. contents. You may have “Additional Benefits” on top of the amounts you are insured for building and contents.

SETTLEMENT AGREEMENTS

You need to be very careful about accepting a settlement agreement!

Before accepting a settlement, you should:

1. Read the policy, understand what you are entitled to
2. Get your own quotes to make sure the amount being offered is fair and realistic. Quotes that the insurance company obtains may not be the actual cost to you to repair/rebuild/replace
3. Get your own experts to give you advice about what works are required and how work should be performed. Your insurer may present you with a “scope of works” outlining what repairs or rebuilding they will do for you, or what they are paying you for. You should consider having your own builder or engineer review this for you to make sure it is appropriate and comprehensive
4. Be very clear about what you are settling – the whole claim including all additional benefits, or just a component of the claim
5. Get legal advice. Once the claim is settled, you may be prevented from asking anything further from the insurer. This will vary on a case by case basis and on the wording of the settlement.

MORTGAGED HOMES

If you have a mortgage over your home that has been damaged or destroyed the insurer may pay the amount of your claim directly to your home lender. In this case you will need to negotiate with your lender about the release of the funds for rebuilding or repair. If there is a problem with this process you should get advice about your options.

PART 4: ADDITIONAL BENEFITS UNDER YOUR POLICY

There may be additional benefits under your home building and/or contents policy which may cover you for emergency/alternative accommodation, removal of debris and demolition, architects, surveyor and legal fees etc.

These additional benefits can be in addition to your sum insured. Therefore, before agreeing to any settlement of your claim, it is important that you check to see if you are entitled to more than your sum insured through the existence of additional benefits cover.

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EMERGENCY/TEMPORARY ACCOMMODATION

If you can no longer live in your house, you should contact your insurer and check your policy to see whether you have temporary accommodation entitlements and for how long.

An example of a clause to look out for to determine whether or not you are covered for temporary accommodation is:

“We [the insurer] will pay the reasonable costs incurred by you for comparable accommodation for up to 12 months while your building is being rebuilt or repaired.”

If you have been relocated to emergency “community” accommodation, it is also worth contacting your insurer to determine whether you are eligible for emergency “private” accommodation. If you live in a remote area, there may be no private accommodation available. Contact your insurer to determine what is likely to happen in such cases.

THINGS TO CHECK FOR IN YOUR POLICY

In relation to temporary/emergency accommodation, insurance policies vary. Examples include:

- Specifically stating a percentage (e.g. 10%) of the value of the policy for which your insurer will cover you for in relation to temporary/emergency accommodation;
- Providing for a specific time period within which you will be able to claim in relation to such emergency accommodation;
- Providing for a “reasonable time”;
- Providing that your insurer will pay for “reasonable costs”

DEMOLITION AND/OR REMOVAL OF DEBRIS

The costs to remove such debris from your property and clear your land can be significant.

You need to carefully check what types of “debris” is covered. For instance, debris from trees, shrubs and plants may not be considered “debris” under the policy. This exclusion may be done through a series of clauses. Make sure you look out for these.

You might think you are covered for all types of debris when you read a clause such as the following:

“When the buildings and/or contents have been destroyed or damaged by any of the insured events covered by your policy, we will pay the reasonable cost of:

- Demolition and
- Removing buildings and contents debris from your risk address”

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However, if you see any clauses in your contact such as the following you will know you are not covered for trees and shrubs debris.

“What are not buildings: The following items are not buildings:

- Landscaping, trees, shrubs and plants;*
- What are not contents: The following items are not covered by this policy:*
- Trees, shrubs, plants growing outdoors in the ground”*

The above policy only covers the removal of debris to “buildings or its contents”, and because “trees, shrubs and plants” aren’t considered buildings or its contents, the removal of fire damaged trees and plants are not covered by the policy.

Reading a policy can be difficult, and you should contact us for specific advice if you need assistance.

ARCHITECTS, SURVEYORS AND LEGAL FEES

Most home building insurance policies provide additional cover for the costs of the services of architects, surveyors and legal fees in rebuilding and/or repairing damage to buildings.

If you are unsure whether you are covered for these, check to see if you have a clause in your policy similar to the following:

“We will pay the reasonable costs of architects, surveyors and legal fees when damage or loss occurs. We will pay up to 10% of your buildings sum insured.”

COSTS OF COMPLYING WITH NEW REGULATIONS

After significant event like bushfires, sometimes local councils will impose new regulations and fire safety standards for bushfire prone areas. New regulations may also have been introduced since your home was initially built.

Whether you are covered for these costs depends on your policy. An example of a clause to look out for is:

“We will also pay any additional costs required for your buildings to comply with government or local authority by-laws.”

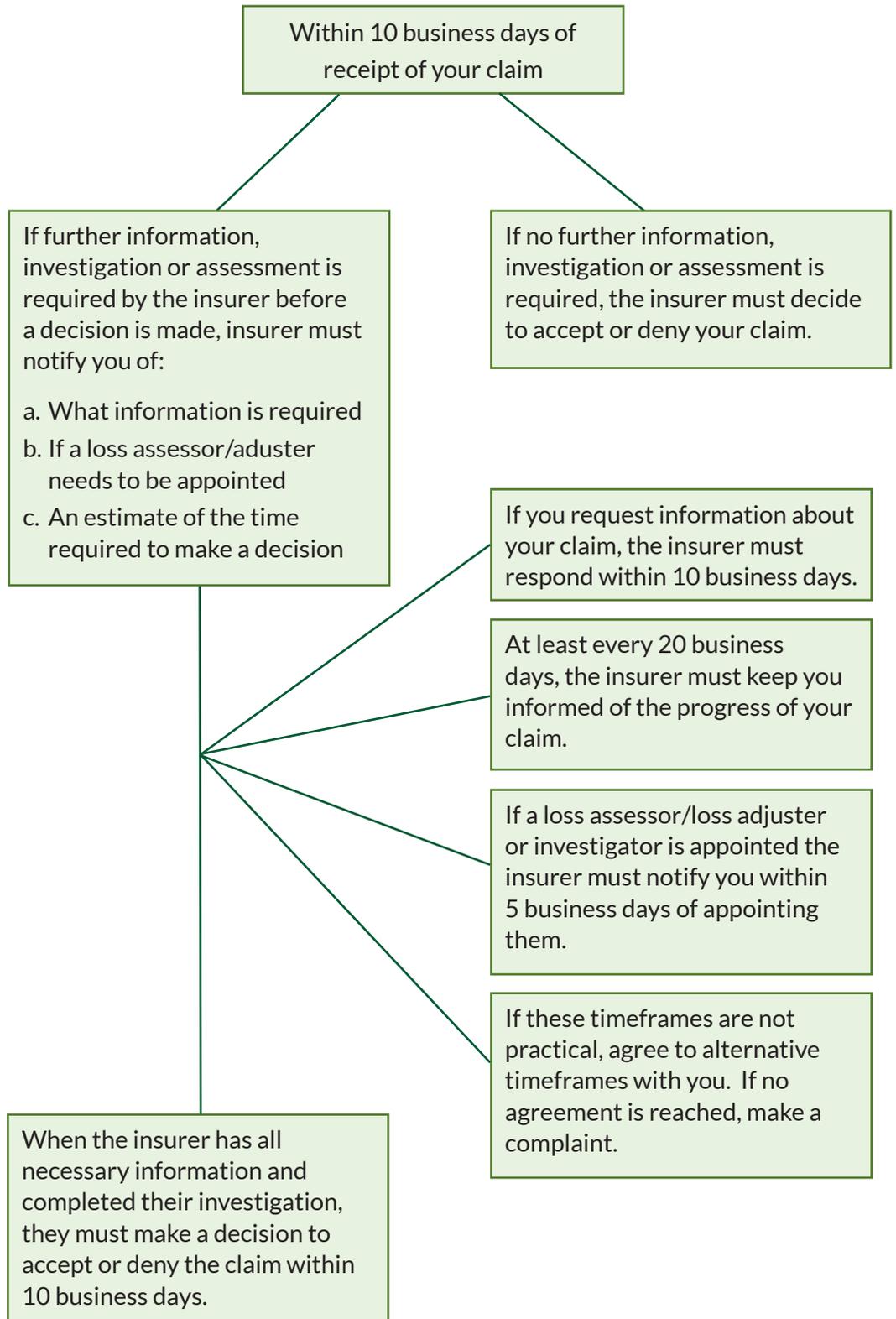
It is likely that you will be covered for additional compliance costs if your policy is to replace your property “as new” or if you have “total replacement cover”.

PART 5: THE CLAIMS HANDLING PROCESS – WHAT HAPPENS AFTER I LODGE MY CLAIM?

After you lodge the claim, the insurer will send out an assessor and possibly builders or engineers to inspect your property and help determine whether your claim is covered.



There are guideline timeframes insurers should follow in how long the claims process should take. This is outlined in the General Insurance Code of Practice.





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Generally the insurer should make a decision on your claim within a maximum of four months, unless exceptional circumstances apply. Exceptional circumstances include where there has been an extraordinary catastrophe or disaster declared by the Board of the Insurance Council of Australia. In these circumstances the maximum time to make a decision on a claim is 12 months, but you can complain to the Financial Ombudsman at any time if you are dissatisfied with the progress of your claim.

URGENT FINANCIAL NEED

This Code also obliges your insurer to fast-track your claim if you are in urgent financial need (Clause 7.7a) and to make an advance payment within 5 business days of you satisfactorily demonstrating your urgent financial need (Clause 7.7b). Any advance payment will be deducted from the total value of your claim.

REPAIRS TO PROPERTY

In disaster cases such as bushfires and floods:

1. Your insurer must respond to catastrophes and disasters in a fast, professional and practical way and in a compassionate manner. (clause 9.2)
2. If you have a property claim resulting from a catastrophe or disaster and your insurer has finalised your claim within one month of the catastrophe or disaster, you can request a review of your claim if you think the assessment of your loss was not complete or accurate, even though you may have signed a release. Your insurer will give you six months from the finalisation of your claim to ask for a review of your claim. Your insurer will inform you of:
 - This entitlement when they finalise your claim; and
 - Their complaints handling procedures. (Clause 9.3)

PART 6: WHAT CAN I DO IF MY CLAIM IS REFUSED, OR IF THE CLAIM IS TAKING TOO LONG? HOW DO I RAISE A COMPLAINT?

You can raise a dispute with the insurer's internal dispute resolution department ("IDR"). You can find the contact details by searching: [Member Search](#)

If your complaint is still unresolved, you can lodge a dispute with the Financial Ombudsman Service Australia (www.fos.org.au, 1800 367 287). FOS is a free and independent dispute resolution service. FOS cannot give you legal advice (see below for services that can).

You should gather as much evidence as you can and provide copies to your insurer. If your insurer is relying on expert evidence, you should consider obtaining your own independent expert report to support your dispute.

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You can also consider court proceedings, however you should speak to a private solicitor for advice first as court is risky and you may be made responsible for the insurer's legal costs.

PART 7: GETTING LEGAL ADVICE

GOLDEN RULE: It can be difficult to work out what is covered by your policy so if you are unsure, get legal advice.

You can call the Insurance Law Service on 1300 663 464 on Mondays through Fridays between 9:30am to 4:30pm. If you cannot reach us on this number and have an urgent bushfire inquiry, you can also reach us through the National Debt Hotline on 1800 007 007 from 9:30 to 4:30pm Mondays to Friday.

You can also contact us through our website inquiry form available at www.insurancelaw.org.au

Before calling, please have a read of our factsheets first, as these may answer your question:

1. What can I do if my home and/or contents insurance claim is refused?
2. What can I do if my car insurance claim is refused?

OTHER LEGAL SERVICES THAT MAY BE ABLE TO ASSIST ARE:

1. Legal Aid in your state
2. LawAccess 1300 888 529 (in NSW only)
3. Private Solicitor – contact your local Law Society for a referral
4. If you are a tenant affected by the bushfires either from having your possessions burnt or your rental property damaged or destroyed, please contact a Tenants Union in your state or territory for tenancy advice. NSW residents may contact Law Access on 1300 888 529 for a referral to your nearest Tenants Union.
5. Insurance Council catastrophe hotline: 1800 734 621

PART 8: KEEPING ON TOP OF FINANCES

DO YOU HAVE A MORTGAGE OR OTHER LOANS?

You should contact your lender immediately to ask for hardship assistance. This is most commonly provided in the form of reduced or postponed repayments, usually for 3 to 6 months at a time.

When catastrophes happen, some lenders may offer even more generous assistance and you should explore that avenue as well.

If you do not do anything, not paying your loan/s pending the outcome of



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an insurance claim will result in additional interest and enforcement fees being added to your loan and may result in legal action.

DO YOU HAVE OTHER DEBTS – WATER, RATES, ELECTRICITY, PHONE BILLS?

All utility companies and telecommunications companies have hardship policies, and can provide assistance by reducing or postponing your repayments. If you are experiencing difficulties negotiating with your provider you can contact the Telecommunications Industry Ombudsman on 1800 062 058 or www.tio.com.au for telecommunications or the Energy & Water Ombudsman in your state.

GENERAL FINANCIAL COUNSELLING AND/OR LEGAL ADVICE

If you are having problems reaching an agreement with your lender, you can contact the National Debt Hotline on 1800 007 007 for financial counselling and/or legal advice, or a referral to your nearest face to face financial counsellor and community organisations and charities that can provide assistance including food and emergency accommodations

There are also services such as the No-interest loans scheme (NILS) which can provide loans to low income earners on an interest free basis to pay for essential household items such as whitegoods.

PART 9: OTHER RELEVANT ORGANISATIONS

Department of Fire and Emergency Services WA (DFES) (Ph: 1300 657 209)

FACS on 1300 HOUSING (1300 468 746) – evacuation centres

Insurance Council of Australia on 1300 728 228 or www.insurancecouncil.com.au

NEED SOME MORE HELP?

See [Fact Sheet: Getting Help](#) for a list of additional resources.

Last Updated: February 2017

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