



Financial Rights

LEGAL CENTRE

FACT SHEET



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WHAT CAN I DO IF MY CAR INSURANCE CLAIM IS REFUSED?

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

CASE STUDY

Sahar had an awful car accident. She was insured. She rang the insurer to report the accident.

BIG INSURANCE COMPANY has now produced an accident report and Sahar has received a letter saying her claim has been denied because her car was “unroadworthy”. The accident wasn’t even her fault!

This fact sheet is an overview of some common reasons why an insurer may refuse your claim. Get legal advice for your specific situation.

If the insurer has refused your claim this refusal must be in writing.

If the insurer telephones you and tells you your claim has been refused, ask them to put it in writing.

YOU HAVE FIVE OPTIONS ONCE YOUR INSURANCE CLAIM HAS BEEN REFUSED:

1. Complain in writing to your insurer’s Internal Dispute Resolution (IDR) Department
2. Complain to the Financial Ombudsman Service Australia (FOS) (they will usually require you to complain to the insurer’s IDR department first)
3. Apply to the appropriate tribunal for consumer claims if one exists in your state
4. Go to Court
5. Do nothing/Give up

If English is your second language you should consider using an interpreter to assist with completing the claim form or a complaint even if you speak some English. Remember that the insurance policy is a contract and the refusal of the claim is a legal dispute.

NOTE: Both the Financial Ombudsman Service (FOS) and the State consumer tribunals cannot accept claims over a certain monetary amount. If your claim exceeds the appropriate amount you will need to go to Court or reduce your claim to the maximum allowed at FOS or Tribunal. Note that there are no legal costs at FOS. Get legal advice before doing this.

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If your complaint to your insurer's Internal Dispute Resolution Department has been rejected, it is recommended that you then proceed with raising a dispute with the FOS because:

1. It is free
2. It is independent
3. It can make a determination that is binding on the insurer. This means if FOS decides the insurer has to pay then it has no choice.
4. You don't have to accept the determination if you don't want to. If the decision goes against you then you can still go to the Tribunal or Court to pursue your case.

If you want to give up get legal advice before you do so.

To lodge a claim call FOS on 1800 367 287 or visit their website www.fos.org.au to lodge a claim online.

IMPORTANT: YOUR TIME LIMIT TO LODGE A COMPLAINT IN FOS WILL EXPIRE ON THE EARLIEST OF;

- **2 years** from the date you receive a letter rejecting your claim from the insurer's Internal Dispute Resolution Department; or
- **6 years** from when you first became aware or should have reasonably become aware of your loss (e.g within 6 years from the date of the motor vehicle accident, theft or flood)

FOS generally will not grant the right to lodge a complaint outside this time frame without the agreement of the insurer. For more information on the complaints process, call FOS on 1800 367 287 or visit their website www.fos.org.au.

THE MAIN TYPES OF REFUSALS

There are four main reasons for refusal:

1. Non-disclosure – you have not disclosed information when you applied for or renewed the policy.
2. Exclusion clauses – the policy does not cover the loss.
3. Fraud – the insurer believes you have acted fraudulently in some way.
4. Policy cancellation

1. NON-DISCLOSURE

You are under a duty to disclose relevant information when you take out an insurance policy, or when you renew it. If you did not provide accurate or comprehensive information at the relevant time, the insurer may be able to reject your claim.

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Some common examples of non-disclosure are:

- Not telling the insurer about all your prior insurance claims
- Not telling the insurer about your driving offences (e.g. drink driving)
- Not telling the insurer about existing damage to your car.

There are two ways that you are required to disclose information:

1. When the insurer asks you specific questions.
2. When there is information you know, or should reasonably know, which would be relevant to the insurer's decision to accept the policy.

You are not required to disclose:

- Something you don't know
- Something that reduces the insurer's risk
- Something that is common knowledge
- Something that the insurer knows or ought to know
- Where the insurer has waived your need to comply.

The Insurance Contracts Act 1984 (Cth) limits the circumstances in which your claim can be denied as a result of disclosure:

- The insurer has a duty to clearly inform you of the nature and effect of your duty to disclose. If they have not done this they cannot rely on your non-disclosure to refuse a claim.
- If you failed to disclose something when the policy was taken out, or at renewal, the insurer cannot reject your claim unless it can show that it would have refused to provide you with insurance if it had known the missing information.

If, for example, the insurer would have given you insurance cover had it known about a previous driving offence, but would have charged a higher premium, then the insurer cannot reject on the basis of the non-disclosure (although it can still require you to pay a higher premium). The only way to find out if the insurer would have proceeded with the insurance is to get a copy of the insurance company's underwriting guidelines. Insurers may not want to disclose this. If so, you should complain to FOS who will require the insurer to prove it would not have provided you with insurance cover in the first place.

If you failed to notify the insurer of something that happened during the period of cover under the policy, the insurer can only rely on your non-disclosure to refuse or reduce your claim if it can demonstrate that it has been prejudiced by your non-disclosure.



IMPORTANT: The responsibility for proving that a non-disclosure allows the insurer to reduce or deny your claim, is with the insurer.

So, if your claim has been refused on the basis of non-disclosure then you need to:

1. Write to the insurer and ask it to specify what information was not disclosed. You may wish to argue that you did in fact disclose the missing information, or that it was reasonable in the circumstances not to disclose because of something the insurer did or did not ask or tell you.
2. If you did not disclose the information, ask the insurer to provide a copy of its underwriting guidelines to show whether it would have provided you with insurance cover or not if you had provided them with the relevant information.
3. File your complaint with FOS before any time limit expires, in case the insurer does not respond in time or delays in providing you with a copy of the underwriting guidelines.

REMEMBER: When you arrange an insurance policy over the phone the call is often **recorded**. The insurance company will therefore often have very good evidence about what was said at the time. The insurer is also required to send your policy information to you in writing within 14 days which will usually contain a summary of what you have disclosed for you to check and correct if necessary.

2. OPERATION OF A CONDITION OR EXCLUSION CLAUSE

Insurance contracts contain exclusion clauses, stating when the insurer will not cover you against loss or damage. They will also usually have conditions such as that you must ensure that your vehicle is in roadworthy condition. Some common examples of when a claim may be refused as a result of a condition or exclusion are:

- The driver is under 25 years old or does not hold a licence.
- The car was unroadworthy
- You had modified the car without the insurer approving or authorising these changes (for example, putting on mag wheels or spoilers).
- Mechanical failures
- Damage from normal wear and tear
- Driving under the influence of drugs or alcohol
- Wilful damage (e.g. kicking your car)
- Using the car for business when this was not disclosed
- Drag racing



To rely on an exclusion clause, or your failure to comply with a condition, the insurer has to show:

1. That the relevant clause applies (for example, the insurer may have incorrectly recorded the date of birth of the driver and so believes, wrongly, that the driver was under 25 years old).
2. That the condition or exclusion is relevant to the loss or, to put this another way, that there is a connection between the conduct or circumstances specified in the conditions and exclusions and the loss or damage suffered. This requirement is contained in Section 54 of the Insurance Contracts Act.

Section 54 states that the insurer cannot refuse to pay a claim because of some act by you unless the insurer's interests have been prejudiced by that act.

Some examples of where you may be able to rely on Section 54 are:

- Car tyres became unroadworthy. The car was involved in an accident where you were run into from behind. The insurer cannot rely on the unroadworthy nature of your tyres to avoid paying because the car tyres did not contribute to the accident.
- A car had been vandalised in a car park. The insurer refused the claim because the car had been modified and the insured had not notified the insurer of the modifications. The insurer still has to pay the claim (but may not have to pay for the replacement of the modified parts if they cost more than the standard parts and accessories for the vehicle).

3. FRAUD

Fraud is a serious allegation and the onus of proof is on the insurer to prove the allegation. Read our [Factsheet: What can I do if I am investigated on an insurance claim?](#)

To establish fraud the insurer needs to prove that you intended to deceive the insurer or acted with reckless indifference as to whether or not the insurer was deceived. If fraud is established by the insurer then it can reject your insurance claim and void your policy. This means you no longer have insurance cover. In serious cases, the matter may be referred to the police to investigate and you may be charged with an offence.

The insurer cannot rely on fraud if the fraud was minor and it would be unfair for the insurer to reject the claim.

Insurers are always on the lookout for fraud. To avoid being investigated:

- Be cooperative
- Provide all relevant details
- Provide evidence (e.g. witnesses, photos)



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If you are being investigated for fraud, get legal advice immediately.

Under section 7.3 of the General Insurance Code of Practice, the insurers have agreed that they will only take into account “relevant information” when deciding on your claim. In the context of fraud this can be interpreted very widely. You should complain to the insurer if you think the information requested is excessive or irrelevant and/or the investigation is taking too long. Try to be assertive but not rude or aggressive as this will only put the insurer and/or investigator offside.

If you are being investigated by the insurer, some tips include:

- Trying to remain calm
- Taking your time to think through questions before answering them
- Asking for a break if you need one
- If your interview with the investigator is being recorded, asking for a digital copy of the interview or transcript
- Not signing anything you are unsure of
- Seeking legal advice before and after the interview
- And download our [Know Your Rights Checklist: Insurance Interview](#)

In FOS, a Referee decides all disputes where fraud has been alleged. The Referee may request additional information from you or the insurer and, where appropriate, interview you or other willing witnesses in person.

4. POLICY CANCELLATION

Insurance companies sometimes cancel insurance policies in the middle of the period of insurance cover. This may be done in response to additional information provided by you that increases the insurer’s risk to an unacceptable level. Another very common reason is that you have failed to pay the premium for the policy. This is particularly likely if you have opted to pay your premium in instalments via direct debit and your direct debit has failed.

If your insurer tells you that your policy has been cancelled, you should get advice about whether they had sufficient reason to cancel the policy and whether they took appropriate steps to inform you of the cancellation in accordance with their legal obligations. If you wish to dispute their decision to cancel the policy, or argue that they have not properly notified you of the cancellation, you can make a complaint to FOS.

NEED SOME MORE HELP?

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

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