



# Financial Rights

LEGAL CENTRE

## FACT SHEET



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ABN 40 506 635 273

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## WHAT CAN I DO IF MY INSURER AGREES TO PAY SOME BUT NOT ALL OF MY CLAIM?

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

### TODD'S STORY

Todd's car was damaged in a car accident. Todd claimed on his car insurance for the damage with BIG INSURANCE COMPANY. He disagreed with the insurer's assessment of the extent of the damage.

## WHAT CAN I DO IF THE INSURER AGREES TO PAY SOME, BUT NOT ALL OF MY CLAIM?

There may be many reasons why an insurer may pay some but not all of what you perceive to be the full value of your claim. In general, the most common reason is where the insurer's assessment of the extent of damage differs to your assessment.

The type of problem will depend on the specifics of the claim, the nature of the insurance provided and also on the specific cover available under the relevant policy. In general, if the insurer refuses to pay some, but not all of your claim, you may do the following:

1. Request that the insurer provide you with written reasons for their decision. This is important because you need to determine what specific terms of the policy and what specific evidence they are relying on to not pay the entire amount you believe they are liable for.

**NOTE:** If your insurer refuses to provide policy documents, written reasons or reports see our [Factsheet: How to use your Product Disclosure Statement](#)

### HANN'S STORY

Hann's roof was damaged by a severe storm. Hann claimed on his home building insurance for the damage with BIG INSURANCE COMPANY. Hann a former builder, believed that the roof needed to be replaced and that the amount they were offering him was not sufficient to replace the roof. Hann requested BIG INSURANCE COMPANY provide him with written reasons for their decision, and a copy of the PDS. When Hann read the written reasons he saw that they were relying on an expert report that stated the roof could be repaired and did not need to be replaced.



2. Obtain a copy of the Product Disclosure Statement (your insurance policy contract) and your certificate of insurance if you don't already have copies by writing to the insurer's internal dispute resolution section.
3. Ask for a copy of any expert reports, quotes, or other evidence the insurer is relying on by writing to the insurer's internal dispute resolution (IDR) section. This is particularly important in car insurance and building insurance claims where the insurer relies on expert reports / quotes to argue about the nature, cause and extent of damage.

## TODD'S STORY (continued...)

Todd requested BIG INSURANCE COMPANY provide him with copies of the expert reports / quotes they were relying on. When Todd read the expert reports he found the expert reports were contradictory. The report that the insurer relied on failed to consider some of the damage identified by the other report.

Todd wrote to the insurance company's internal dispute resolution section pointing out the contradictions in the two reports and provided his own quotes and an independent report to support his argument that the insurer had underestimated the damage and cost of repairs.

4. If the insurer is relying on expert reports / quotes to support their position, you should read these reports and look for any flaws. Check the qualifications of the experts to check that they are qualified to provide an opinion on the issue in dispute. You should gather your own evidence in the form of quotes/expert reports which contradict the evidence on the extent of the damage provided by the insurer. This will be at your expense. If you cannot afford an expert report, lodge your dispute with the best evidence you can obtain.

**NOTE** Disputes between consumers and their insurers about the extent of damage will be resolved in favour of whichever party provides the most convincing evidence.

## HANN'S STORY (continued...)

Hann requested BIG INSURANCE COMPANY provide him with copies of the expert reports they were relying on. When Hann read the expert reports he found numerous inaccuracies. He wrote to the insurance company's internal dispute resolution section pointing out the inaccuracies in their report and attaching invoices, statutory declarations, and an independent expert report to support his argument that the roof could not be repaired and needed to be replaced.



5. If your insurer wishes to pay you out for some but not all of your claim and you wish to dispute it, you should not sign any documents stating that the payment is made in full and final settlement of the claim. If you sign to say that the claim is settled you cannot raise a dispute for further money later.
6. If you wish to have the insurer's decision reviewed you should make a written complaint to the insurer's Internal Dispute Resolution (IDR) section. Their contact details are available at [MEMBER SEARCH](#). In your complaint you should try to address all of the concerns and inconsistencies that the insurer has set out in their letter rejecting the claim and point out any statements of yours that have been taken out of context by the investigator.

If your complaint to your insurer's IDR Department has been rejected, it is recommended that you then proceed with raising a dispute with the Financial Ombudsman Service Australia (FOS) because:

- It is free
- It is independent
- 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.
- 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 Court to pursue your case (although this may be expensive).

If you have paid for expert evidence you should make this clear in your complaint, although there is no guarantee you will be reimbursed. If there is evidence you believe is important that you cannot afford to pay for, indicate what this is in your complaint.

To lodge a claim call FOS on 1800 367 287 (1800 FOS AUS) or visit their website [www.fos.org.au](http://www.fos.org.au) to lodge your claim online.

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**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)

**NOTE: If you have received a letter of rejection from the insurer's IDR department, the two year time limit will apply.**

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**NEED SOME MORE HELP?**

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

*Last Updated: February 2017*