

## Homes or Contents Insurance Claim Refused

This fact sheet is for information only and applies to **consumer home or contents insurance policies (policies for wholly or mainly personal or household use)**. It does not apply to business policies. You should get legal advice about your personal situation.

### Main ideas

- There are some valid reasons for an insurer to refuse a claim.
- If your insurer refuses your claim, you should check that it was refused correctly.
- You can complain to the insurer if you don't agree with their decision.
- If the insurer still refuses to accept the claim, you can complain to the Australian Financial Complaints Authority – a free and independent complaints service.
- You may need to get your own expert evidence to argue against the insurer's decision, and against any findings the insurer's assessor or expert has made.
- Get legal advice if you don't agree with the insurer's refusal.

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## Get details about why your claim was refused

To dispute the insurer's decision, you first need to know why they made that decision.

Ask the insurer to send you, in writing:

- The reason for rejecting your claim.
- A copy of any evidence they relied on in making their decision, such as assessor/expert reports or photos.
- A copy of your policy documents (your schedule and Product Disclosure Statement). Make sure you read the policy carefully to understand what you are covered for, and what you are not covered for. **Get legal advice if you're having trouble reading your policy**, or if you think the wording is unfair or confusing. [Read our Understanding your insurance policy fact sheet.](#)

## 4 options if your insurance claim has been refused

### 1. Complain to your insurer's internal dispute resolution (IDR) department

[You can find your insurer's complaints department details on the AFCA website.](#)

You can complain by email or letter, or phone. Keep a copy of any written correspondence and notes of any phone conversations (date/ time/ person you spoke to).

If your complaint is long or complex, it can be better to put it in writing so the insurer has a clear list of the issues you want them to investigate.

If English is your second language, consider using an interpreter. Ask the insurer if they can offer you an interpreter.

### 2. Complain to the Australian Financial Complaints Authority (AFCA)

If the insurer doesn't fix the problem in 30 days, your next step is usually to complain to AFCA. AFCA is a free and independent complaints service.

If AFCA decides the insurer has to pay your claim, then the insurer must pay it – if you accept AFCA's decision. But you don't have to accept the decision. If the decision goes against you, you can go to the tribunal or court to pursue your case (if you're still within your time limit to do so).

[Visit AFCA's website to lodge a complaint online.](#) If you can't lodge online, call AFCA on 1800 931 678. You only need to give a summary of your complaint – you can provide further arguments and evidence later. Read our fact sheet about [Insurance Complaints to AFCA](#). Time limits apply, so lodge as early as possible.

### 3. Apply to a tribunal or go to court

Some states have tribunals for different types of consumer complaints. [Visit our Useful Links page to find details of Legal Aid and community legal centres in your state or territory](#). Time limits apply.

Each tribunal and court will have time and money limits for considering complaints.

Get legal advice from a solicitor in your state about this option. There is a risk that you may have to pay the other side's costs if you lose or something goes wrong. You may have to pay the other side's costs even if you win your case. For example, if you rejected a settlement offer but did worse in court, the court may decide you should pay the extra court and legal costs that could have been avoided if you accepted the earlier offer.

### 4. Do nothing

You could give up and accept the insurer's refusal. It may not be worth the hassle of pursuing the matter. **Get legal advice if you're not sure what to do.**

## 4 reasons the insurer may refuse your claim

This fact sheet covers the 4 common reasons why insurance claims are refused, but there may be other reasons.

### 1. Non-disclosure

This section applies to policies taken out, or renewed, after 5 October 2021 – so should apply to most policies that are renewed yearly. Different laws applied before then, so get legal advice if your issue is about a claim on an earlier policy.

You must take reasonable care to avoid giving wrong information (making a misrepresentation) to the insurer. This applies when you take out a home/contents insurance policy, and when you renew the policy.

To show non-disclosure, the insurer must show:

- They told you about your duty of disclosure and the effect of non-disclosure.
- They asked you a specific question. For renewals, they may give you a copy of the questions they asked and the answers you previously gave. The insurer may ask you to tell them about any changes or updates.
- You made a misrepresentation in response to a question, or you didn't update information at renewal.

- This misrepresentation happened because you failed to take reasonable care when answering a question.
- The insurer was disadvantaged because of the misrepresentation. For example, they would have charged higher premiums or not offered cover if they had the correct information.

Examples of non-disclosure include:

- not telling the insurer about all your prior insurance claims
- not telling the insurer about how the property is used
- not telling the insurer about existing damage to the property.

When deciding whether you should have told the insurer, these factors are taken into account:

- The type of insurance and intended target market.
- Whether the insurer asked clear and specific questions.
- How clearly the insurer explained to you the importance of answering the questions, and possible consequences of not answering.
- Anything else the insurer knew or should have known about you. For example, you do not speak English well, or have problems with reading/literacy.
- Any documents or publications the insurer gave you.
- Whether you had a broker/agent acting for you.
- Whether it was a new policy or a renewal/variation/reinstatement.

You do not need to tell the insurer:

- something that reduces the insurer's risk
- something that is common knowledge
- something that the insurer knows or ought to know
- anything the insurer has said you do not need to tell them.

It is not a misrepresentation if you don't answer a question, or gave an obviously incomplete or irrelevant answer when you were asked a question.

If you are not sure whether you need to tell the insurer about something, the safest option is to tell them. This makes sure the policy you are paying for will cover you if something happens.

Within 14 days of applying for the policy, you should get your policy documents including a certificate or schedule setting out the questions the insurer asked and answers you gave. Make sure you check that everything you have disclosed is on there, and that all information is correct. If not, **contact the insurer immediately** to fix it.

## What happens if there is non-disclosure?

There are 2 types of non-disclosures:

1. **Innocent non-disclosure** – the insurer can change your cover to what they would have offered you if the insurer had known the correct information when you took out the policy. If they **would** have covered you for the same or a lesser amount, that is what the insurer needs to pay. If they **would not** have insured you, the insurer can refuse the claim and cancel the policy.
2. **Fraudulent non-disclosure** – the insurer has to show you intentionally or recklessly made the misrepresentation. In this case, the insurer can cancel the policy as though it never existed, and reject any claims. If the matter goes to AFCA, they will also consider whether it would be fair overall for the insurer to cancel the policy entirely, looking at the overall situation and what harm was caused to the insurer. **Get legal advice immediately if your insurer alleges fraud**; committing fraud can have other consequences.

## What to do if your claim has been refused because of non-disclosure

If your claim has been refused because of non-disclosure, write to the insurer and ask for:

1. **Details about what information they think was not disclosed.** You may be able to argue that you did 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.  
When you buy an insurance policy over the phone, the call is often recorded. Ask for a copy of the recording.  
If you applied for a policy online, ask the insurer to provide a copy of the exact questions and answers you gave.
2. **Details about how they explained your duty of disclosure to you,** and for a copy of your policy documents.  
Usually the policy booklet (Product Disclosure Statement) is available as a link when you purchase the policy. The booklet and your certificate of insurance must be sent to you within 14 days, and usually is done by email for online applications.
3. **Written evidence that the insurer would have charged a higher premium,** or not have insured you. Insurers have detailed written policies about who they will insure or not, and on what terms (called 'underwriting guidelines'). Often the insurer will have an underwriter sign a statutory declaration that the guidelines were followed, or provide a small section of those guidelines as it applies to you. You can also ring the insurer anonymously to check if they do follow those underwriting guidelines.

When you have the information, work through the '4 options if your insurance claim has been refused' (above).

## **2. A policy condition or exclusion clause**

Insurance contracts also usually have conditions you must keep to maintain insurance cover, such as:

- you must maintain your house in good condition
- you must have keyed locks on all windows and deadlocks on all external doors.

The insurer may refuse your claim if you have failed to comply with a condition. However, the insurer cannot refuse to pay a claim unless the insurer's interests have been hurt (prejudiced) by what you did or failed to do (section 54, *Insurance Contracts Act*). For example, if you do not have keyed locks on all windows and a thief enters by knocking down the front door, you could argue that not having the locks did not harm the insurer.

Insurance contracts contain exclusion clauses. These explain the circumstances when you will not be covered by the insurance policy. Events that may be excluded include:

- [Flood – read our fact sheet about Flood Insurance.](#)
- Wear and tear or lack of maintenance (see below).
- Faulty construction/design defects.
- Subsidence, ground movement or erosion.

The insurer must prove it is more likely than not that the exclusion applies.

### **Fair wear and tear, and damage over time**

The insurance policy will often exclude 'wear and tear' and damage caused by not maintaining the home. Insurance policies are not a substitute for failing to maintain your home. For example, in a storm claim where rain entered your home, your insurer may refuse to pay the claim if your roof has cracked or missing tiles, and this caused much more water entry and water damage than if you had a well maintained roof.

If you only had minor wear or tear or other issues that had little or no impact on the amount of damage, you should be covered.

If the insurer rejects a claim because of wear and tear then try to get:

- Evidence to show the damage was caused by a storm or other event covered by the policy. You may need to engage your own experts to argue against expert reports the insurer has. This can be expensive. Also ask your expert to comment on any signs of wear and tear, and whether this had any impact on the extent of the damage.

- Evidence of regular maintenance work and inspections.
- Evidence about the general state of repair of the home.

### **What to do if your claim has been refused because of a policy exclusion or condition**

If your claim has been refused because of a condition or exclusion, you might be able to argue:

- the insurer was wrong in applying the condition or exclusion
- the condition or exclusion did not cause the loss (or only part of it) or the insurer wasn't disadvantaged by it (section 54, *Insurance Contracts Act*)
- the exclusion does not apply to the whole claim
- you had to take action to protect someone's safety or safeguard property
- the wording of the exclusion was ambiguous, or unclear, or was unfair in how it applied to your situation.

For more information about whether something excluded caused the loss, [read AFCA's approach to section 54 of the Insurance Contracts Act](#).

Get legal advice if you don't think the exclusion should apply.

## **3. Cancelled policy**

Insurance companies sometimes cancel insurance policies in the middle of the cover period. This can happen if you don't pay monthly premium instalments, for example, because your direct debit has failed.

Insurers may also cancel your policy if you give information that makes their risk unacceptable. For example, if you start using your home for business use. You need to tell your insurer – if you don't, you may be paying for cover that doesn't exist. Your insurer can reject your claim if they find out and they would have cancelled your policy if they had known.

### **What to do if your policy is cancelled**

If your insurer tells you that your policy was cancelled, check they had good reason to cancel the policy and ask about what steps they took to tell you about the cancellation.

**Get legal advice.**

[You can complain to AFCA if you think it was wrong to cancel the policy](#), or you were not properly told about the cancellation.

## **4. Fraud**

Fraud is a serious allegation. It is up to the insurer to prove fraud.

The insurer must show you intended to deceive the insurer or acted with reckless indifference about whether the insurer was deceived. The insurer cannot refuse your claim if the fraud was minor and it would be unfair for the insurer to reject the claim.

If the insurer proves fraud, it can reject your insurance claim and cancel your policy.

In serious cases, the insurer may refer the matter to the police, and you may be charged with a criminal offence.

Fraud may be listed on your insurance history and may affect your ability to get insurance in the future.

Insurers are always on the lookout for fraud. They can investigate any claim. If you are being investigated:

- be cooperative
- provide all relevant details truthfully
- provide evidence (for example, witnesses, photos).

### **What to do if you are being investigated for fraud**

[If you are being investigated for fraud, read our Insurance Investigations fact sheet.](#)

Get legal advice immediately if:

- you are concerned about the way the investigation is going
- you have any concerns about whether you might have misled the insurer, given them false information, or done anything that may be considered fraud
- the insurer alleges you have committed fraud.

**You can ring our Insurance Law Service on 1300 663 464.** Legal advice is confidential, and will help you work out what to do next.

## **Need more help?**

[Visit our Useful Links page for a list of other resources.](#)

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