

## Insurance Investigations

This fact sheet is for information only. You should get professional advice about your personal situation from a lawyer.

### **Main ideas**

- **Insurance fraud is a criminal offence.**
- **Insurers are entitled to investigate claims but must act reasonably.**
- **You must cooperate with an insurer's reasonable investigation.**
- **Get legal advice if you think your insurer is acting unfairly.**

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## **Insurance fraud is a criminal offence**

If your insurance claim is not genuine, withdraw it immediately. Insurance fraud is a criminal offence and can lead to serious consequences.

Fraud is where a person obtains, or tries to obtain, a benefit under an insurance policy by deception. Examples of insurance fraud include:

- Deliberately giving the insurer false information in your claim.
- Knowingly making false statements when applying for insurance.
- Buying a policy after an accident and falsely claiming the accident happened after you

bought the policy.

- Deliberately damaging insured property and then making an accident claim.

Fraud is a serious allegation. The insurer must prove the fraud allegation – by providing clear and cogent evidence showing that you intended to deceive the insurer, or that you didn't care (acted with reckless indifference) whether or not the insurer was deceived.

The insurer needs to prove fraud on the 'balance of probabilities' – which means it's 'more likely than not' that the claim was fraudulent.

If the insurer can prove fraud:

- The insurer can reject your claim and cancel your policy.
- The insurer may refer the issue to police. You may be charged with a criminal offence.
- You may not be able to get insurance in the future. Insurers usually ask about fraud, your claims history and policy cancellations when policies are taken out. When you renew your policy, the insurer will ask you to confirm your information is still accurate.
- Fraudulent claims may be listed on your insurance report.

## **Get legal advice if you think you may have misled the insurer**

Get legal advice if you think you have lied or misled your insurer, or if you have concerns about the consistency of information the insurer has. Legal advice is confidential and can help you decide which way you want to go with the claim and what risks are involved.

There are some limited protections in the *Insurance Contracts Act 1984*, but the way they work can be complex, so get legal advice on your situation as early as possible.

For example:

- The insurer cannot rely on fraud if the fraud was minor and it would be unfair for the insurer to reject the entire claim. The insurer can reject any part of the claim that is made fraudulently (section 56).
- The insurer cannot rely on an act or failure to act, or statement or misstatement on your part, if your words or conduct did not contribute to the loss or prejudice the insurer's interests (section 54).

## **Co-operate with a reasonable investigation**

Insurers are always on the lookout for fraud. They may not tell you they suspect you of fraud. Instead, you will often be told that your claim is being investigated.

An insurer is entitled to investigate your claim. They need to make sure your claim is genuine and falls within the scope of the policy.

You must cooperate with your insurer's investigation if you want the claim to go ahead. But their investigation must be relevant and reasonable. If you believe the insurer's request is unreasonable, you can complain (see below). Get legal advice if you're not sure if a request is reasonable.

You need to prove that you have suffered a loss covered by your policy. This means showing your version of events is credible and consistent with other information and evidence.

## **Providing information and documents**

Most general insurers have committed to the [General Insurance Code of Practice](#). Section 67 says:

*When we (the insurer) are assessing your claim, we will only ask for and rely on information that is relevant to our decision. If we ask you for information, then we will tell you why we need it.*

'Relevant information' can be interpreted widely. When investigating a claim, insurers often ask for:

- financial records including bank statements, credit card statements, loan statements, lines of credit and mortgage documents
- information about the insured property, such as proof of registration and service records in a motor vehicle claim
- telephone records
- criminal history
- driving history.

If you refuse to provide requested information, there is a risk the insurer will reject your claim. They can say you have not complied with your duty of utmost good faith to cooperate with reasonable investigations.

If you are unable to provide information the insurer has asked for:

- Explain to the insurer (in writing) why you are unable to provide the information and what attempts you have made.
- Offer to sign an authority so the insurer can contact other organisations (such as phone companies or banks) to get the information they need. Check what they are asking for is reasonable before signing any authorities. For example, you may want to limit the organisations, time period, or the type of accounts the insurer can access.

## **Other people providing information about your claim**

Insurers cannot force people who are not part of the policy to cooperate in their

investigations.

Insurers also cannot rely solely on another person's refusal to cooperate to reject your claim, but they may consider it in the overall circumstances of your claim.

As you want your claim paid, it is generally in your interests for other people to confirm your version of events. The evidence provided by another person can help prove that the loss occurred.

Your duty to cooperate with your insurer will usually mean you should provide the names and contact details of people who may be able to provide information relevant to your claim. But you do not have to:

- give them someone's else private information (for example, your spouse's phone records, if they are not on the policy)
- compel your friends and relatives to answer questions from an investigator.

## **Being interviewed by the insurer**

The insurer may ask to interview you. Read this list to help you understand your rights and responsibilities.

- You can ask the insurer to hold the interview at a neutral location – somewhere private but not at your home. This makes it easier to leave if you need to.  
If you are happy to have the interview at home, you can. For some claims, the insurer may have a legitimate interest in viewing the home, for example, for a theft claim at the property.
- Set a maximum time for the interview (such as 1-2 hours). Once this time is up, consider leaving. The insurer may ask to set up another interview if they have a reasonable basis to do so.
- If English is your second language, or you feel more comfortable communicating in a language other than English, you can request an interpreter.
- You can bring a support person, provided they do not speak on your behalf. They should also not be a person the insurer wants to interview, for example, a witness.
- Do not guess an answer:
  - If you are unsure of your answer, tell the investigator you are not sure.
  - If you are estimating times or other details, tell the investigator it is an estimate
  - If you don't know the answer at all, you can say 'I don't know' or 'I don't remember' (whichever applies).
- Some insurers may be suspicious if you cannot remember anything about an event or claim. Try and talk it through with the investigator and answer questions as best you can.
- Try to remain calm.
- Take your time to think through questions before answering them.
- Ask for a break if you need one.

- If the interview is voice recorded, ask for a copy or transcript of the interview later. You can also record the interview yourself (for example, on your phone), but ask for permission first. It is an offence to record without permission in some states.
- Do **not** sign anything you are unsure of.
- If you have any concerns, **get legal advice** before and after the interview.

## **If the investigation is taking too long**

The [General Insurance Code of Practice](#) says insurers should:

- *Make a decision on your claim within 10 business days of completing their investigations (clause 76).*
- *Decide the claim within 4 months (clause 77). They can extend that to 12 months if your claim is fraudulent (or they reasonably suspect fraud) or if you do not respond to their reasonable enquiries or if you are difficult to contact (clause 78).*

The insurer has a duty of utmost good faith. They need to progress your claim even if they are within the time limits above. If you think an investigation is taking too long (for example, there is no sign the claim is progressing, or the insurer seems to be delaying), complain to the insurer.

Keep a record of the dates you were contacted by the insurer or investigator. Make sure you give them all the information they ask for. You do not want the insurer saying that you caused the delay.

If the delay is unreasonable, you can ask the insurer to pay interest from the date when it became unreasonable to withhold payment of the claim. [See AFCA's Approach to motor vehicle insurance claim delays.](#)

## **If the insurer rejects your claim**

The insurer can reject claims because of fraud.

If the insurer cannot prove fraud, they may reject your claim for other reasons:

- There has been a breach of the duty of utmost good faith. That is, they believe you have provided inconsistent information or not cooperated with their investigations.
- You have not proved you suffered a loss covered by your policy.

Ask for:

- written reasons for their decision
- a copy of all evidence the insurer is relying on including expert reports, transcripts, and audio recordings. [See our sample letter to Insurer Requesting Documents](#). ([General Insurance Code of Practice](#), Section 162, outlines the type of information you may access).

Insurers have a duty of utmost good faith towards you and cannot unreasonably refuse your request for information. ([General Insurance Code of Practice](#), Sections 81-82, Part 12.) However, they may refuse to provide information (Section 163):

- if a law — for example, the Privacy Act 1988 — says they do not have to
- if the claim is being or has been investigated, and giving access would have an unreasonable impact on the privacy of other individuals or government agencies
- if providing information may disadvantage the insurer as they deal with a complaint or a dispute about your insurance cover or your claim. However, even in this circumstance, they must give you access to any external experts' reports they relied on.

## Complaining about the insurer

Complaints can take time to resolve. The usual process is:

1. Contact the insurer's complaints section (also called their internal dispute resolution section). [You can search for your insurer's complaints department contact details](#).
2. If the complaint is not resolved within 30 days, or if your claim is rejected, you can [lodge a dispute with the Australian Financial Complaints Authority \(AFCA\)](#). [Read our Insurance Complaints to AFCA fact sheet](#). AFCA provides a free consumer complaints service, but it does take time. An insurer must follow AFCA's decision if you accept it. If you do not agree with AFCA's decision, you can choose to reject it and go to court (time limits apply).
3. Get legal advice if you have any concerns – for example, if the insurer has accused you of fraud, or if you are concerned about more damage happening, or storage costs adding on.

## Need more help?

Call the Insurance Law Service on 1300 663 464 for free and independent legal advice.

Also see our: [Motor Vehicle Accidents Problem Solver](#)

[For a list of other resources, visit our Useful Links page.](#)

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