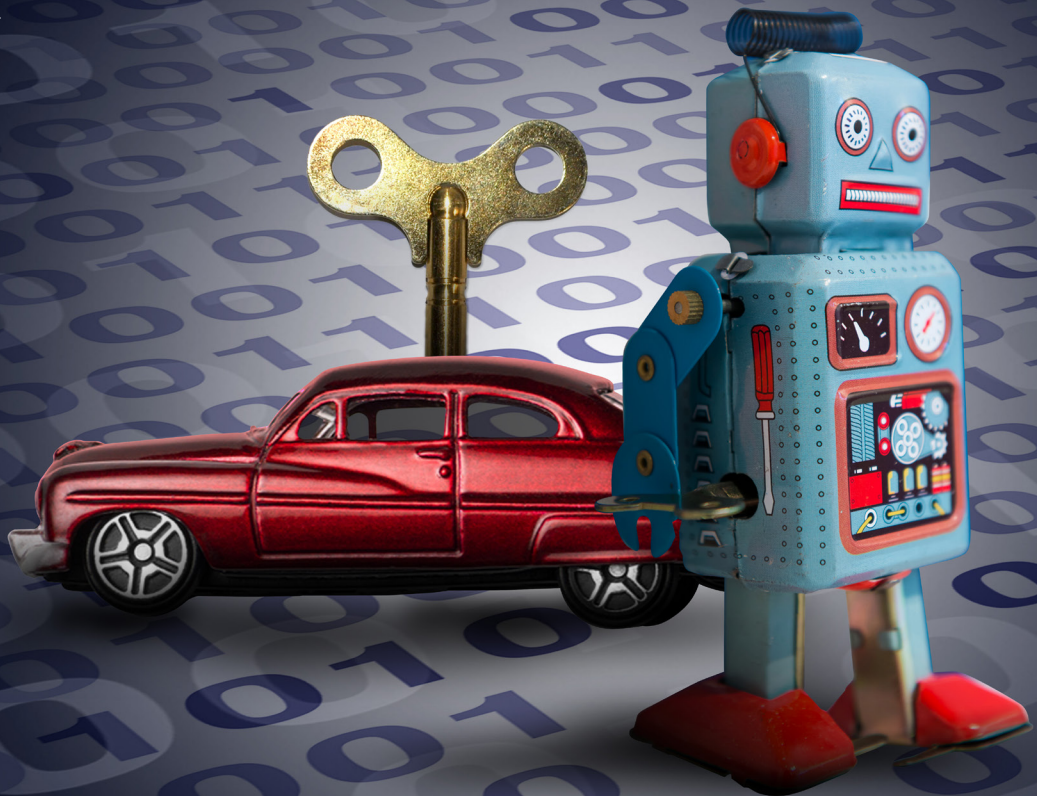




**Financial
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LEGAL CENTRE

Automating General Insurance Disclosure

October 2021



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Foreword

The future of insurance is uncertain. Central to this uncertainty is the transformation of insurance through the application of new data technologies to insurance processes and the expansion of the Consumer Data Right (CDR) to the sector to allow greater portability of consumer data.

This report – **Automating General Insurance Disclosure** – is the second in Financial Rights' series of reports examining these changes and the future of insurance.

Our first report – **Open Insurance: The Consumer Data Right in Insurance** – took a high level look the application of the CDR regime to general insurance. It provided significant insights into both the risks and opportunities for Australians in a world with greater access to, and movement of, consumer data in the insurance process.

What was central to the Open Insurance report was to look at these changes through the lens of the consumer. Insurers unsurprisingly see things in very different ways to that of the users of their products. We see, time and again, and across all sectors, industry purporting to have the best interests of consumers at heart when discussing the benefits of increased access to consumer data. These purported benefits tend however to be reduced to the creation of new, “innovative” products and services to sell, increased choice, and easier switching and sales processes to make this all happen. So often this translates into benefits for industry without necessarily producing benefits for consumers. At worst, it creates significant harm for the financially vulnerable consumers we assist.

One of the intentions of this report series is to flip this on its head and identify potential use cases for data that can address problems and issues that consumers currently face – and ultimately help consumers and insurers to work together to produce improved personal and social outcomes.

One such consumer-centric use case identified in the Open Insurance report, is assisting people to provide the required information to insurers during the quoting, sales and renewal process for general insurance – known as the “disclosure” process. The Open Insurance report recommended further investigation be undertaken to explore the use of publicly held consumer data to create more accurate quotations, which can ultimately reduce average premiums and reduced risks of inaccurate consumer disclosure.

This report is the result of this further investigation and provides a comprehensive case for using the CDR to automate the disclosure of driving histories and insurance claims information, with consent and where it is safe and secure to do so. Importantly, the report identifies that automating general insurance in this way is already largely supported by the insurance sector, is currently in place elsewhere – including in the UK, and, when asked, Australian consumers in high numbers are comfortable with the sharing of their driving history and insurance history with insurers.

This report is however not a call to open up all consumer data to the vagaries of the CDR regime. It is clear that not all consumer data are equal and automating other forms of consumer data – including criminal and medical records – may not be appropriate or acceptable. Any steps taken to opening up consumer data to insurers should therefore be done so with a balanced consideration of the ongoing privacy, safety and security risks inherent to the use of sensitive datasets and any potential benefit that may lie in their use.

We hope that this comprehensive look at current disclosure processes and the potential for automating general insurance disclosure contributes to shaping the future of the CDR and brings about improved outcomes for both consumers and insurers in a more cooperative risk management partnership.

Thank you to ECSTRA for providing the funding for Financial Rights to undertake this work - without which it would never have occurred. A big thank you to NielsenIQ for their work in gauging broader community views on the issues raised in the report, and thank you to Drew MacRae, Senior Policy and Advocacy Officer for undertaking this research, drafting the report and managing the project. Finally thank you to Andy Lewis of Studio Shapes for the great design.

We urge those stakeholders currently working on the future of insurance to take heed of the insights in this report and create a data environment that addresses current, and prevents future, consumer harms. Applying CDR to insurance without strong privacy and security protections will lead to harms that will inevitably undermine interest and confidence in the CDR. That is neither in the interests of consumers nor industry. Building a safe and secure CDR with strong privacy protections for genuinely convenient and useful functions like those recommended in this report will however provide consumers with the confidence to participate in this new world and lead to better outcomes in the long run.

The recommendations of this report, if implemented, will reduce illusory motor vehicle insurance, which is in the interests of insurance consumers, as well as insurers, governments and all road users.



KAREN COX

**Chief Executive Officer
Financial Rights Legal Centre**

Executive Summary and Recommendations

There are currently an unknown number of Australians driving the streets under the belief that they are insured when in reality they are not. This is because they have inadvertently – or in a small number of cases - purposefully not provided the full picture of their driving history, insurance history, or any other relevant information to their insurer at the time they purchased their insurance.

If they were to have an accident, and make a claim, their insurer will check the information provided when they purchased the insurance against their databases and, if there is a discrepancy, the insurer will deny the claim on the basis of 'non-disclosure'. The insurer will say that they would never have insured them if they had known their true driving or insurance claims record in the first place.

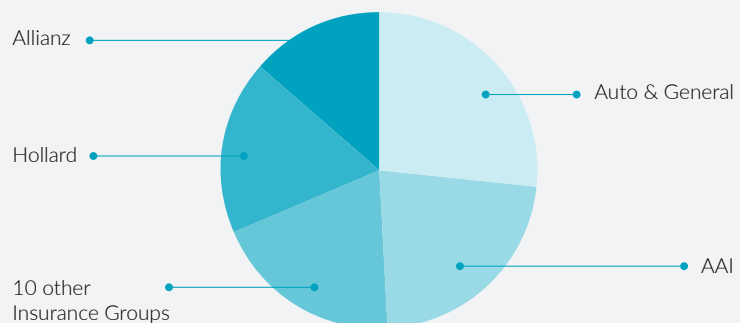
Driving the streets in the erroneous belief that you are insured involves serious financial risk for you and other road users. While you may be refunded some, or all of your premiums, you still remain on the hook for all the costs of the other party (or parties), your own vehicle, and in some cases, expensive public infrastructure. And all this time you could have been insured – by either providing accurate information in the first place - or paying premiums to another insurer who was willing to accept the risk. Even if no insurer would accept you as a risk, you are at least aware of this, and have the option to choose to drive less, or not at all, rather than pay for worthless insurance.

The reasons people may not provide the full picture of their driving or insurance claims histories vary. This report examined 186 Australian Financial Complaints Authority (AFCA) decisions based on non-disclosure disputes and 190 Financial Rights clients denied claims on non-disclosure grounds, from 2018 to 2020. Our analysis found that the number one reason people gave at AFCA for not disclosing the full picture to insurers was that the question asked by the insurer was ambiguously worded or they misunderstood the question (31.6%). The number one reason given by Financial Rights clients was a lack of awareness - they were unaware that the information had to be disclosed, unaware that their vehicle had been damaged or that their licence had been suspended or unaware that the other driver on their policy had problems on their driving history, insurance claims or criminal record.

This report also found that:

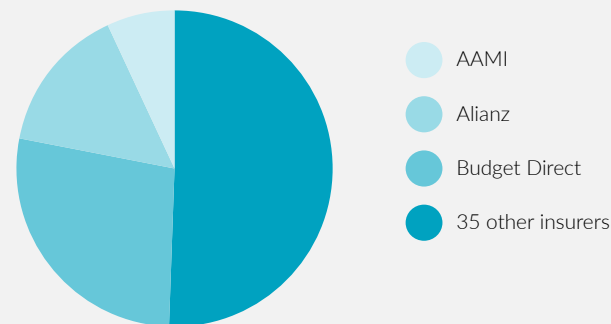
Four insurers accounted for 80% of the non-disclosure AFCA disputes in 2020: Auto & General (26.9%), AAI (22.4%), Hollard (17.9%) and Allianz (13.4%).

Insurance Groups involved in non-disclosure AFCA disputes 2020



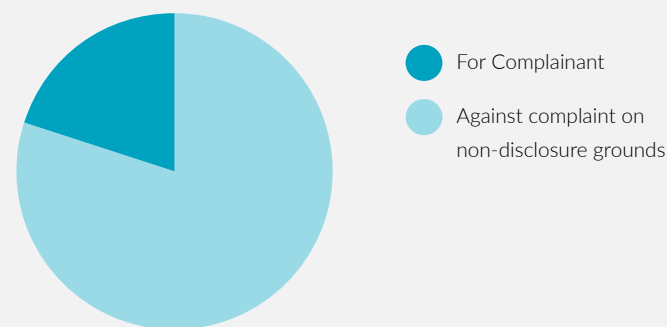
Auto & General's brand Budget Direct was the most common brand named by Financial Rights clients over the three year period at 28%; and

Insurer brands involved in Financial Rights client non-disclosure disputes 2018-20



Consumers rarely succeed in non-disclosure disputes in AFCA, succeeding in only one in five decisions (20.4%)

Success rate of AFCA non-disclosure complainants 2018-20



As a first step, this report recommends that Auto & General (and in particular Budget Direct), AAI, Hollard and Allianz examine their underwriting guidelines and quoting, sales and claims assessment processes to ensure fewer people are denied at claims time due to non-disclosure.

Where these insurers are unable to provide cover, they should give Australians the opportunity to obtain appropriate insurance coverage elsewhere based on accurate information rather than provide illusory cover.

The Financial Services Royal Commission identified the issue of ambiguous disclosure questions as a serious issue in its final report. It concurred with a similar finding in the UK that “policyholders may be denied claims even when they act honestly and reasonably. ... It is easy for consumers to misunderstand [disclosure] questions, and therefore give inaccurate answers, even if they are doing their best to answer truthfully.”¹

1 The Law Commission and The Scottish Law Commission, *Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation* (2009), 14 [2.20] quoted at page 299 Page 298, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report* February 2019 <https://treasury.gov.au/sites/default/files/2019-03/fsrc-volume1.pdf>

The Royal Commission recommended – and the Government has subsequently implemented from October 2021 – the replacement of the duty of disclosure by the duty to take reasonable care not to make a misrepresentation. This is a positive change that places the onus back on to the insurer to pose clearer questions to consumers when obtaining the information they need to provide insurance coverage.

However, the new duty will not do away with the problem facing drivers, described above. This is because insurers will continue to rely on people's imperfect memory, or haphazard personal record keeping to obtain the information they require. It does not matter how clearly the question is asked, if people don't know the right answer, they cannot provide it. Practically speaking, nothing has altered the fact that full disclosure may not occur and people may be – unbeknownst to them – driving on the roads uninsured.

This report argues that the best solution for consumers and insurers is to automate the disclosure of driving histories and insurance claims information, with consent and where it is safe and secure to do so.

Automated disclosures already occur elsewhere. Most insurers currently allow you to provide your registration number in order to pre-fill vehicle details for an insurance quote. In NSW, insurers access the demerit point status of a driver via the Service NSW online portal for the provision of Compulsory Third Party insurance.

The UK too has a longstanding scheme known as MyLicence that automates the disclosure of a consumer's driving history to an insurer (including demerit points and penalties). It was introduced to solve the same problem of unwitting non-disclosure issues. According to MyLicence, 1 in 6 UK consumers under-declare their motoring convictions, while 7% over-declare their convictions and end up paying more.² The Association of British Insurers estimates that the MyLicence system saves 'honest' motorists £15 on their insurance.

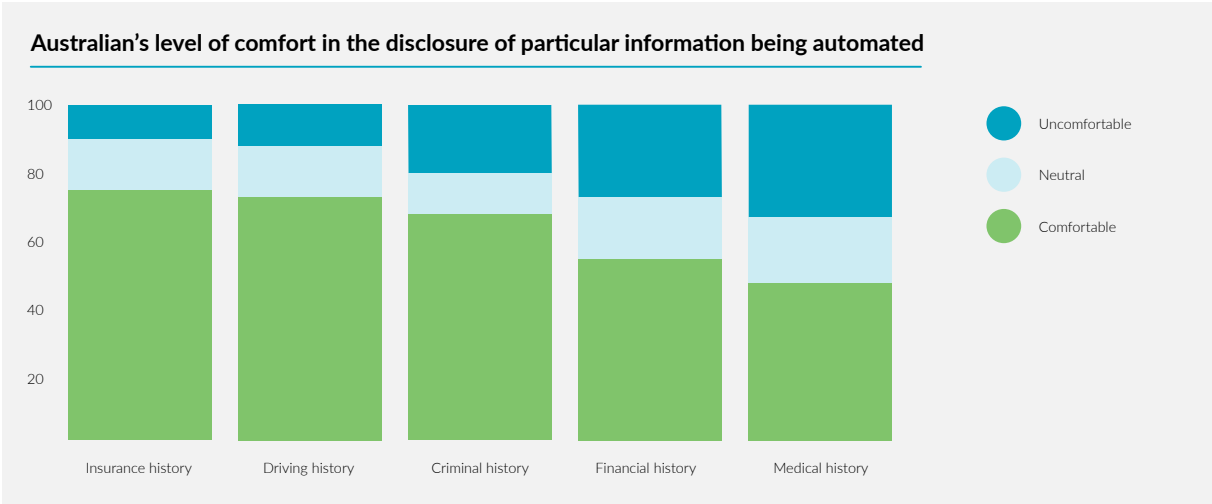
This report recommends that state government road and traffic authorities work with the insurance sector to establish an Australian version of the MyLicence scheme to allow for the automated disclosure of driving records.

This is in line with the Insurance Council of Australia's view that expanded access to this data would be beneficial for both consumers and insurers.³ Automating disclosure will mean greater certainty for insurers that the information is complete and accurate; it will lead to speedier quotes and reduced call times in call centres; there will be fewer claims rejections and investigations borne of non-disclosure and ultimately bring about improved customer experiences. Some drivers may pay less for their insurance, as noted in the UK. Over the longer terms these changes could also improve the availability of more accurately priced insurance for riskier drivers and/or drive positive changes in driver behaviour, as a result of being rejected for, or charged more for, insurance.

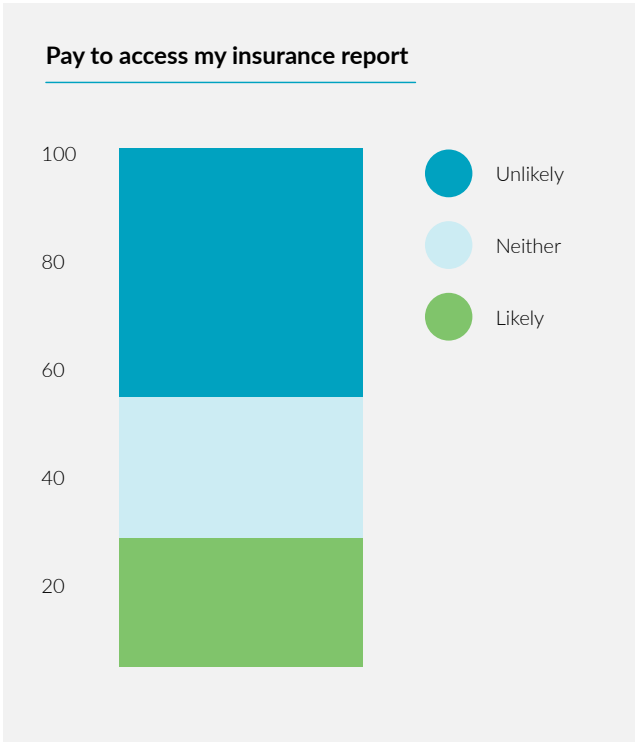
² <http://www.myllicence.org.uk/mydata/>

³ Page 13, Insurance Council of Australia, *Submission to the Productivity Commission Inquiry into Data Availability and Use*, 29 July 2016. https://www.pc.gov.au/__data/assets/pdf_file/0004/203278/sub066-data-access.pdf

We engaged NielsenIQ to undertake consumer research into Australian's level of comfort in the disclosure of particular information being automated. This research found that 71% of Australians are comfortable with sharing their driving history (including demerits, license suspensions, cancellations or disqualifications, license status, accidents and offenses) with insurers; increasing to 77% for people aged 55 and over.



The NielsenIQ research showed Australians also have a high level of comfort with sharing insurance histories (including claims made, claims declined and insurance cancellations), at 73%. This too increased to 82% of those aged over 55 and over, and 79% of those living in regional centres of Australia.



This report recommends that the insurance industry provide the means for people to automate the sharing of their insurance history.

Currently, the insurance sector has established the Insurance Reference Service which provides a central access point for insurance claims histories for both insurers and consumers. However most people are unaware of its existence. The NielsenIQ research found that less than one in ten people (9%) were aware that they can apply for and pay to access a My Insurance Claims Report (My Insurance Claims Reports are not free to consumers and cost \$22 to obtain). The NielsenIQ research also found that only 27% of Australians were willing to apply and pay for this information.

This report argues that consumer data in the form of insurance claims histories should be made available through the application of the CDR to the general insurance sector.

This would require improved data collection standards including greater consistency and accuracy, with the support of the CDR's Data Standards Body. Insurers should also resource a program to improve the reliability of the consumer data they hold.

This report takes the view that automating other forms of disclosure including criminal history, medical records and financial records may not be appropriate or acceptable.

There remain significant sensitivities with respect to the sharing of criminal and medical records both of which are considered sensitive information under the *Privacy Act*. Credit information (or financial records) too is considered separately under the *Privacy Act*. The NielsenIQ research findings reflected these sensitivities with less comfort expressed in sharing criminal histories (66%), financial histories (53%) and medical records (46%). It is also debatable how relevant some of this information is to insurance underwriting, how consistent its use is with social justice objectives, and to what extent exposing people to increased financial risk, for example, because they have had a past insolvency event, or committed an unrelated offence, is in the public interest.

However, automating driving and claims histories, would address the bulk of claims denials on the basis of non-disclosure and provide significant benefit for both consumers and insurers. Automating driving and claims histories would account for 56% of AFCA disputes and 52% Financial Rights non-disclosure clients.

1. Introduction and approach

In 2020 the Financial Rights Legal Centre (Financial Rights) released the report **Open Insurance: The Consumer Data Rights and Insurance**.⁴ The report examined the concept of Open Insurance - the application of the CDR to the insurance industry - and the potential consumer benefits and risks associated with an improved ability to access specified data held about them by insurers, and to authorise the secure disclosure of that data to third parties.

The Open Insurance report found that potentially the most significant benefits to insurance consumers will come from greater access to the data held by government sources including departments, agencies and Government-owned organisations. This data includes information on licences and demerit points held by state road and traffic authorities for motor vehicle insurance, and property level data for home insurances. The Open Insurance report argued that making this consumer data available would help reduce the dependence on the consumer disclosure with several benefits including:

- more accurate quotation, which can ultimately reduce average premiums
- reduced risk of inaccurate consumer disclosure
- more accurate estimating of sum-insureds

The Open Insurance report made specific recommendations to further explore the use of publicly held consumer data in disclosure during the quoting, sales and renewal process for general insurance:

Recommendation 4

Consumer advocates should work with government and industry to ensure greater consideration of how historical claims data is used and provided to consumers.

Recommendation 12

Consumer advocates explore further the comfort level of consumers accessing and sharing relevant data held by government owned and controlled entities on themselves and their assets.

Recommendation 13

Consumer advocates explore this issue further and work with government, industry and other stakeholders to consider how consumers gain access to data held by suppliers to the insurance industry.

This report - **Automating General Insurance Disclosure** - is the result of this further exploration.

This report examines the current manual provision of information by consumers for the purposes of disclosure in the general insurance industry. It takes a close look at what is required under the duty of disclosure and the impact this manual provision of consumer data has on Australians by analysing AFCA and Financial Rights' client data on claims denials based on non-disclosure.

⁴ Dr Richard Tooth, *Open Insurance: The Consumer Data Right and Insurance*, 22 September 2020, Financial Rights Legal Centre, <https://financialrights.org.au/wp-content/uploads/2020/12/Open-insurance-final-report.pdf>

The report then takes a closer look at motor vehicle insurance – the insurance that accounts for the vast majority of non-disclosure disputes and claims denials, and in particular, the categories of driving history, insurance history and criminal records that are at the centre of the vast majority of non-disclosure disputes and claims denials.

It examines what information insurers are seeking when they ask about these categories of information, and touches upon what consumer data there is available to be accessed by insurance consumers to assist in the disclosure process. The report explores potential risks and issues that may arise under an automated disclosure regime. Finally the report provides results of NielsenIQ research examining the comfort levels of Australians sharing disclosure information directly to insurers from a range of data sources.

2. Background

INSURANCE CLAIMS DENIALS ON THE BASIS OF NON-DISCLOSURE

Solicitors at Financial Rights regularly receive calls from Australians complaining about insurers declining their claims because they failed to include a piece of information in their application at the time of purchasing their insurance policy.

Callers describe making a claim on their insurance following an accident or after their vehicle has been stolen. When they contact their insurer, they are informed that their claim is denied because they have not disclosed to the insurer an important piece of information. The insurer has checked say, a driving history database, or an insurance claims database, and discovered that the driver has not included all of the necessary information about themselves at the time of signing up for their insurance – a previous accident, lost licence points, a criminal conviction. The insurer tells the policyholder had they known all the information they would never have insured them in the first place and will not pay the claim now. In some instances the insurer repays 12 months of the claimant's premiums, or more rarely all of the premiums paid depending on the circumstances.

Practically speaking, the caller may have been driving around uninsured for the entire period that they have been paying premiums - despite, at times, paying for years on end. The caller could in some cases have been paying another insurer instead who would have taken on the risk. Even where insurance was not available, the person could have chosen to drive less, or not at all, rather than pay for worthless insurance.

Driving the streets in the belief that they are insured involves serious financial risk for these callers and other road users. They remain on the hook for all the costs of the other party or parties, their own vehicle, and in some cases, expensive public infrastructure.

Callers also complain to Financial Rights' solicitors that the insurer should have checked that their information was complete in the first place. If the insurer had just taken 30 seconds to check at the time of the insurance quote and purchase, they argue, there would be no problem now.

Case study 1 - Jim's story - S179491⁵

Jim's vehicle was damaged on a work site in April 2017 by an unknown party. He submitted a claim on his insurance soon after. Jim's insurer asked for his driving record.

Five years before then, Jim's licence was suspended, and he did not disclose this to the insurer. Jim could not remember why he didn't disclose it at the time, whether he had forgotten or misunderstood. Jim is angry that his insurer should have checked up front now that he realises he has been driving around uninsured.

5 Not his real name. All the names used in Financial Rights and AFCA-sourced cases studies have been changed to maintain anonymity and protect their privacy. Case file numbers have been listed.

Having a claim denied on the basis of non-disclosure is incredibly frustrating and confusing for most people, but it happens all the time. AFCA decisions support the fact that there is no obligation on the insurer under the current law to check disclosure information provided at the point of policy inception.

Case study 2 - Anya's story - AFCA Determination 712130⁶

Anya obtained a comprehensive motor vehicle policy in 2019. In January 2020, she was involved in an accident with another vehicle and lodged a claim with her insurer.

Her insurer denied the claim on the grounds she breached her duty of disclosure by not disclosing her previous claims and driving history at policy inception.

Anya disputed the claim denial and says that she had innocently overlooked this when clicking through the application. Anya argued the insurer should check the information that is provided.

AFCA did not accept this contention because the insurer's obligation is to inform the complainant of her duty of disclosure. It is not obliged to check the information provided.

Many callers claim that they forgot about that accident at the time of buying the insurance. Some were confused by the application questions themselves, not understanding what was being asked of them. Others were not asked at all. A small number of people will openly admit to misrepresenting the information on their disclosure form, fearful that they would not be insured if the insurer knew.

What is true for everyone buying insurance, is that the application process and current rules around providing personal information are leaving many people exposed. The duty of disclosure and the disclosure process at purchase time involves a full and frank provision of all information that one knows is relevant to the insurer's decision to provide insurance or a reasonable person in the circumstances could be expected to know.⁷

This manual process – for want of a better expression - is subject to the various failings of humanity – we forget things, can't find information, we are in a hurry or in some cases, we are answering on behalf of others and make assumptions. At other times, we may not understand the question, or in the minority of cases we lie because we are worried the truth may cost more or that we won't be able to get coverage at all.

To be clear, the insurer has the right at law to not cover somebody who lies or even forgets to mention relevant information under the duty of disclosure. This duty of disclosure – or now the duty not to make a misrepresentation - is fundamental to the insurance model to ensure insurers are provided with accurate information about the risk that they are insuring.

⁶ All AFCA case studies has been re-drafted for readability but are based on the facts as provided in the decision.

⁷ Section 21, *Insurance Contracts Act 1984*. There are some parameters limiting this obligation described in further detail below.

WHAT IS THE DUTY OF DISCLOSURE?

An insured's duty of disclosure is a statutory duty outlined under section 21 of *Insurance Contracts Act 1984*. This is the law that applied at the time of the analysis conducted for this report. In short, a consumer (insured) has a duty to disclose to their insurer all matters that they know are relevant to the insurer's decision to provide that insurance or all matters a reasonable person in the circumstances could be expected to know are relevant.

Section 21 *Insurance Contracts Act 1984*, The insured's duty of disclosure

1. *Subject to this Act, an insured has a duty to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that:*
 - a. *the insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or*
 - b. *a reasonable person in the circumstances could be expected to know to be a matter so relevant, having regard to factors including, but not limited to:*
 - i *the nature and extent of the insurance cover to be provided under the relevant contract of insurance; and*
 - ii *the class of persons who would ordinarily be expected to apply for insurance cover of that kind.*
2. *The duty of disclosure does not require the disclosure of a matter:*
 - a. *that diminishes the risk;*
 - b. *that is of common knowledge;*
 - c. *that the insurer knows or in the ordinary course of the insurer's business as an insurer ought to know; or*
 - d. *as to which compliance with the duty of disclosure is waived by the insurer.*
3. *Where a person:*
 - a. *failed to answer; or*
 - b. *gave an obviously incomplete or irrelevant answer to;*
 - c. *a question included in a proposal form about a matter, the insurer shall be deemed to have waived compliance with the duty of disclosure in relation to the matter.*

In practical terms, a consumer comes across this duty at three key points along the insurance journey.

The first is at **policy inception** – when the consumer obtains a quote and/or obtains the insurance. This can occur online, over the phone or face to face. It can also occur via a broker, financial advisor or salesperson. Consumers are generally asked a series of questions where they are required to provide information that discloses to the insurer information that the insurer requires.

There is significant variance in the number of questions asked, the categories of information sought and the wording of these questions. Much of this variance is based on risk profiles and the underwriting guidelines of each insurer brand and the different reinsurance underwriters.

Taking a look at, for example, motor vehicle insurance, outside of basic information about the car that is being insured (including its usage and storage), the information variously sought could be grouped into the following categories:

- driving history including demerit points, licence suspensions, cancellations or disqualifications; licence status; and/or accidents and offences;
- insurance history including claims accepted, withdrawn, declined (fraud or unacceptable risk), and insurance cancellations and renewals refused;
- criminal history;
- employment status, financial position and motor vehicle financing; and
- condition of a vehicle (including pre-existing damage).

See [Appendix A](#) for further breakdown of motor vehicle disclosure questions.

The second time a consumer comes across the duty of disclosure is at **policy renewal**. People are expected to update their insurer at the time of renewal which includes reviewing the information in the renewal certificate to ensure that the details remain correct and up to date. If they are not, then they need to be updated. If someone does not tell the insurer about any change, then the insurer will assume there is no change.

The final point at which a consumer will come across the duty is at **claims time**. It is at this point that insurers check whether a claimant has in fact disclosed all relevant matters. This is where a person can be denied coverage on the basis of non-disclosure.

If an insurer can establish that a policyholder has breached a duty of disclosure, and the insurer would not have accepted the risk and offered insurance had they known about the true situation, then they are within their rights to deny the claim on this basis and cancel the policy.

However if the insurer has not advised the policyholder of this duty, the insurer cannot rely on a breach unless the non-disclosure was fraudulent. An insurer can also be deemed to have waived the duty of disclosure if they fail to ask sufficient questions, or if the policyholder failed to answer or gave an obviously incomplete answer in response to a question included in a proposal form. A policyholder can also argue about whether they have complied with the duty of disclosure if a reasonable person in the circumstances would have answered as they did in response to that question.

Policyholders can ask for the insurer to review their underwriting guidelines and provide evidence that they are complying with their underwriting guidelines. If the insurer would have insured the policyholder, knowing the undisclosed information, but at a higher premium, the policyholder can argue for the claim to be paid with a deduction for the higher premium amount. If the insurer would never have covered the policyholder, they may be able to argue for a refund of premiums.

A NEW DUTY TO NOT MAKE A MISREPRESENTATION

In 2019 the Financial Services Royal Commission identified the issue of ambiguous disclosure questions as a serious issue in its final report and found that the current duty of disclosure did not:

recognise the breadth and depth of the gap between what a consumer knows and what an insurer knows ...insurers are always better placed than an insured to identify the categories of information that they consider to be relevant to their decision of whether to insure a risk.⁸

The Commissioner referred to observations in the UK – which he believed were equally applicable in the Australian context - that found that under a duty of disclosure:

policyholders may be denied claims even when they act honestly and reasonably. ... It is easy for consumers to misunderstand [disclosure] questions, and therefore give inaccurate answers, even if they are doing their best to answer truthfully.⁹

The Royal Commission recommended – and the Government has subsequently implemented from October 2021 – the replacement of the duty of disclosure by the duty to take reasonable care not to make a misrepresentation, noting that:

the current requirements fall short of adequately safeguarding consumers against having their claims declined where they may have inadvertently failed to disclose their past circumstances or because insurers have failed to ask the right questions.¹⁰

8 Pages 297-298, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report* February 2019 <https://treasury.gov.au/sites/default/files/2019-03/fsrc-volume1.pdf>

9 Page 297, *ibid*

10 2.16 of the Explanatory Memorandum, Financial Sector Reform (Hayne Royal Commission Response) Bill 2020

New Section 20B Insurance Contracts Act 1984, The insured's duty to take reasonable care not to make a misrepresentation

1. *Subject to this Act, an insured has a duty to take reasonable care not to make a misrepresentation to the insurer before the relevant contract of insurance is entered into*
2. *Whether or not an insured has taken reasonable care not to make a misrepresentation is to be determined with regard to all the relevant circumstances.*
3. *Without limiting subsection (2), the following matters may be taken into account in determining whether an insured has taken reasonable care not to make a misrepresentation:*
 - a. *the type of consumer insurance contract in question, and its target market;*
 - b. *explanatory material or publicity produced or authorised by the insurer;*
 - c. *how clear, and how specific, any questions asked by the insurer of the insured were;*
 - d. *how clearly the insurer communicated to the insured the importance of answering those questions and the possible consequences of failing to do so;*
 - e. *whether or not an agent was acting for the insured;*
 - f. *whether the contract was a new contract or was being renewed, extended, varied or reinstated.*
4. *Any particular characteristics or circumstances of the insured of which the insurer was aware, or ought reasonably to have been aware, are to be taken into account in determining whether an insured has taken reasonable care not to make a misrepresentation.*
5. *The insured is not to be taken to have made a misrepresentation merely because the insured:*
 - a. *failed to answer a question; or*
 - b. *gave an obviously incomplete or irrelevant answer to a question.*
6. *To avoid doubt, a misrepresentation made fraudulently is made in breach of the duty to take reasonable care not to make a misrepresentation.*

This is a positive change that places the onus back on to the insurer to pose clearer questions to consumers when obtaining the information they need to provide insurance coverage.

However, the new duty will not completely do away with the problem facing drivers, described above. This is because insurers will continue to rely on people's imperfect memory or haphazard personal record keeping to obtain the information they require. It does not matter how clearly the question is asked, if people don't know the right answer, they cannot provide it. Practically speaking, nothing has altered the fact that full disclosure may not occur and people may be – unbeknownst to them - driving on the roads uninsured.

3. Quantifying claims denials based on non-disclosure

To further quantify and understand the issue of claims denials on the basis of non-disclosure, Financial Rights:

- examined 186 decisions from three years of non-disclosure disputes that reached a decision at the AFCA and its predecessor the Financial Ombudsman Service (FOS) from 2018 to 2020;¹¹ and
- identified and analysed the instructions of 190 general insurance clients who called our specialist Insurance Law Service regarding non-disclosure disputes over the same period.¹²

From these analyses we were able to identify the following insights.

Key Findings

Motor vehicle insurance was by far the most common form of insurance subject to a non-disclosure dispute at 72% of AFCA non-disclosure disputes and 85% of Financial Rights non-disclosure clients.

Driving history was the most common category of information not disclosed at 36.6% of AFCA non-disclosure disputes and 39.5% of Financial Rights non-disclosure clients. This was followed by criminal history and insurance history.

Driving history, criminal history and insurance history combined account for 77.4% AFCA non-disclosure disputes and 67.3% Financial Rights non-disclosure clients.

The number one reason given by AFCA claimants for not disclosing information was a technicality or ambiguously worded question (31.6%). Being unaware information had to be disclosed was the most common reason given by Financial Rights clients. This would be surpassed if being unaware of existing damage of a vehicle or a licence suspension were combined with being unaware of a related party's driving, criminal or insurance history.

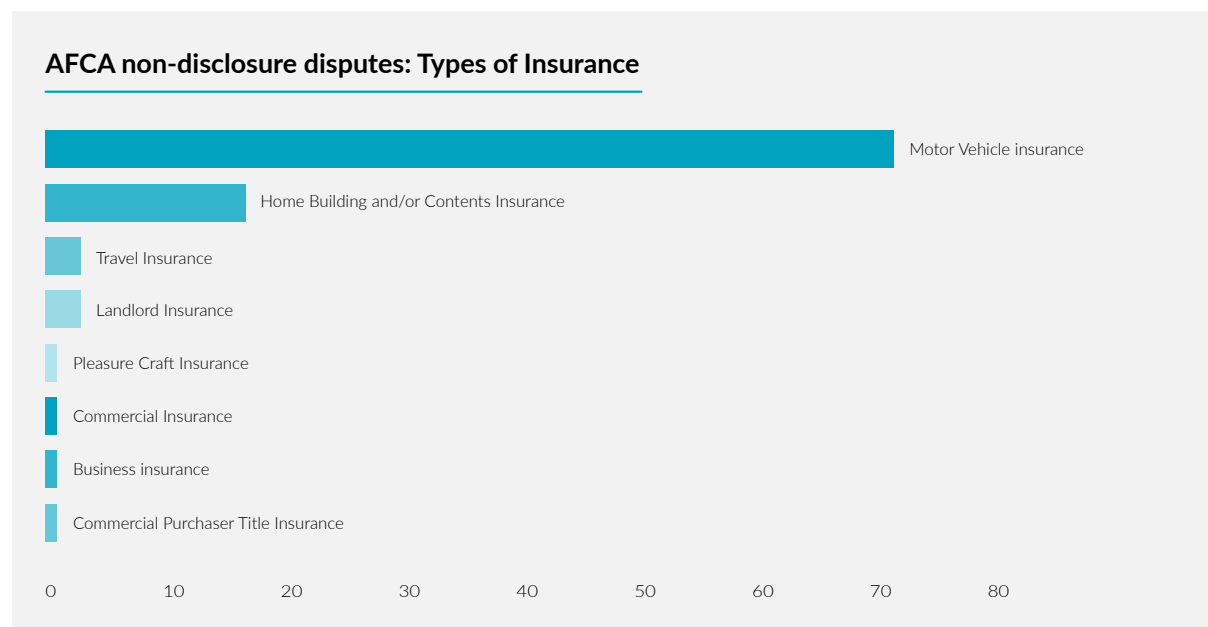
Insurer groups Auto & General (26%), AAI (22%), Hollard (17.9%) and Allianz (13.4%) accounted for 80.5% of the non-disclosure disputes in AFCA in 2020.

Budget Direct (Auto & General) was named by 28% non-disclosure Financial Rights clients, followed by Allianz (14.7%) and AAMI (AAI) (7%). These three accounted for almost 50% of the non-disclosure calls to the Financial Rights.

AFCA decisions favoured the insurer in 74.7% non-disclosure decisions.

TYPE OF INSURANCE

Analysis of AFCA non-disclosure decisions and Financial Rights calls make it clear that there is one form of insurance that primarily leads to non-disclosure disputes: **motor vehicle insurance**. This category accounted for almost 72% of AFCA non-disclosure disputes and 85% of Financial Rights non-disclosure clients during this period.



Note: Title, commercial and business will not be captured by the new duty not to take reasonable case make a misrepresentation

11 Financial Rights searched the published decisions on the AFCA website (<https://www.afca.org.au/what-to-expect/search-published-decisions>) using the search:

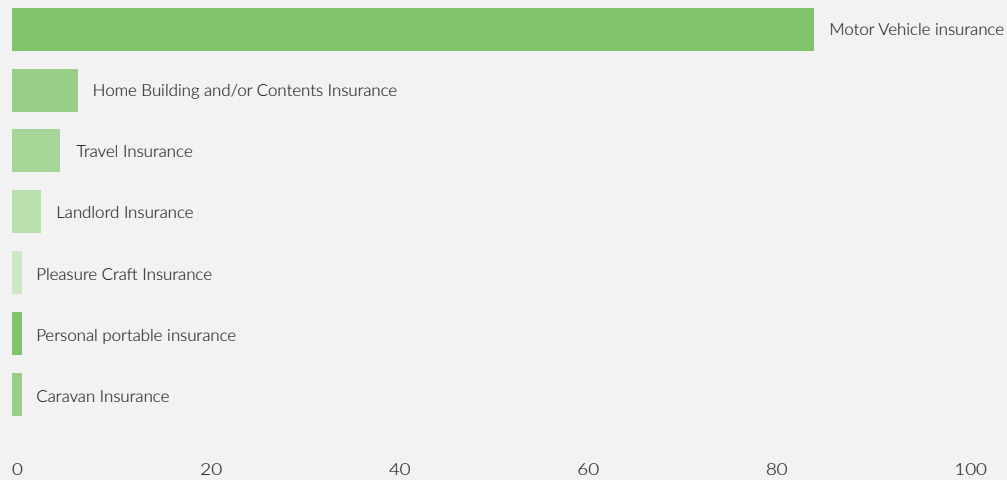
- Date of decision: 1 January 2018 to 31 December 2020
- Product Line: General Insurance
- Issue: Denial of claim – Complainant Non-disclosure

This search found 186 decisions. Note that there were a number of decision that were miscategorised in the database as a non-disclosure based decision, when they were not. Further there were a small number of decisions dated 2017 but were nevertheless reported in the period. These were maintained. The 186 decisions analysed were:

457006, 467204, 470250, 470735, 472320, 474315, 474657, 475214, 480048, 481885, 483957, 484719, 485418, 485661, 489321, 489707, 490042, 491618, 492205, 492205, 492448, 492448, 492485, 492915, 493316, 493845, 493967, 494931, 495011, 495706, 496434, 497025, 497790, 498890, 500615, 504253, 504503, 504943, 505094, 505406, 505651, 505969, 506882, 507380, 507404, 507466, 507642, 507981, 508853, 509164, 509340, 509542, 509664, 513355, 517161, 517569, 518187, 518691, 519995, 523506, 526198, 526656, 527672, 527869, 528788, 529303, 529632, 530679, 533562, 533663, 534938, 535017, 536590, 536831, 536873, 538713, 539079, 539105, 540307, 540338, 541846, 542587, 543365, 546008, 546189, 547108, 548318, 548707, 550728, 601273, 601893, 602454, 606121, 609082, 612176, 612324, 613514, 615440, 615897, 616399, 617518, 618043, 618758, 619039, 621121, 622731, 623682, 624796, 625139, 626726, 627226, 627604, 629282, 632245, 634203, 636766, 637775, 638144, 640204, 641164, 642186, 642602, 642931, 644352, 644749, 647239, 647362, 647598, 648523, 650409, 651440, 652048, 653344, 655054, 655125, 656359, 657145, 657490, 657707, 662163, 662630, 663411, 665722, 665779, 665993, 670459, 671051, 672891, 672911, 676147, 677719, 679541, 680771, 682412, 683860, 689406, 691706, 692766, 697717, 698900, 700067, 700948, 701802, 702393, 703390, 705965, 707327, 708284, 709139, 710820, 711659, 712130, 716830, 719868, 721590, 721814, 723356, 724665, 726370, 7276 82, 727913, 728317, 732878, 739952, 740361, 758093.

12 This is unlikely to capture the sum total of non-disclosure calls since the database is limited to 2 problem description types.

Financial Rights non-disclosure clients: Type of Insurance



Home building and/or contents insurance followed with almost 17% of AFCA non-disclosure disputes and 7% of Financial Rights non-disclosure clients during this period.

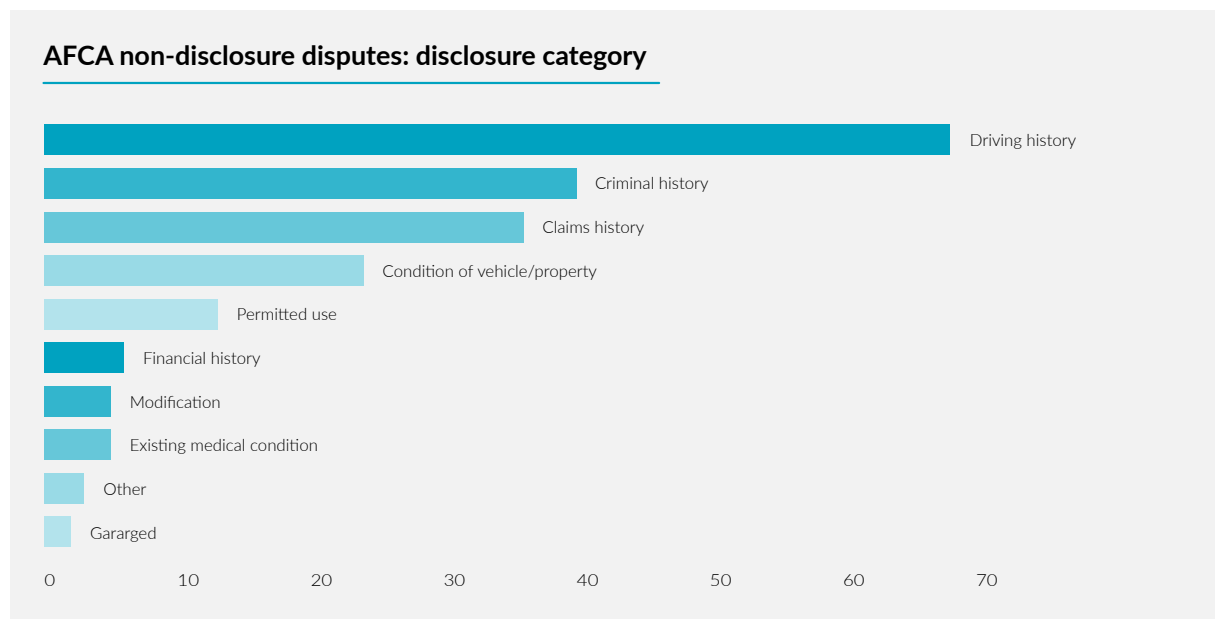
Travel insurance was third most common insurance type with 3.2% of AFCA non-disclosure disputes and 5% of Financial Rights non-disclosure clients during this period. These usually involved non-disclosure of pre-existing medical conditions.

These were followed by a smattering of cases involving pleasure craft insurance, landlord insurance, caravan insurance and personal portables insurance.

CATEGORIES OF NON-DISCLOSURE

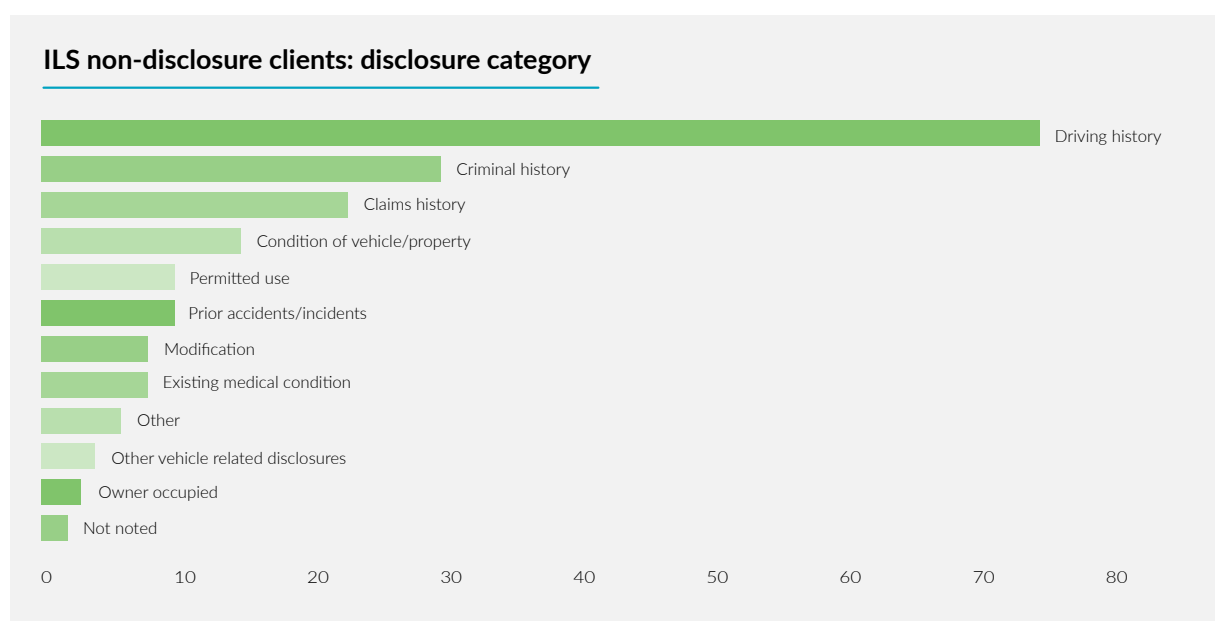
Analysis of AFCA non-disclosure decisions and Financial Rights calls show a clear pattern with respect to categories of non-disclosure.

Not disclosing one's **driving history** was the most prominent category of non-disclosure asserted by insurers in denying claims with 36.6% of AFCA non-disclosure disputes and 39.5% of Financial Rights non-disclosure clients. These were made up of licence suspensions cancellations, disqualifications, demerit points and other traffic offences.



Note: Some disputes involved multiple non-disclosures. "Other" includes listed drivers, purchase price and circumstances of the purchase.

Not disclosing one's **criminal history** was also prominent with this issue raised in 21.5% of AFCA non-disclosure disputes and 15.8% of Financial Rights non-disclosure clients.



Note: Some callers raised multiple non-disclosures. "Other" includes occupation change, bankruptcy, garaging etc. "Prior accident or incidents" are those unrelated to insurance claims.

Not disclosing one's **insurance history** is the third most common non-disclosure issue with it being raised in 19.4% of AFCA non-disclosure disputes and by 12.1% of Financial Rights non-disclosure clients.

These three categories – driving history, criminal history and insurance history combined account for a little over three out of four AFCA non-disclosure disputes (77.4%) and two out of every three Financial Rights non-disclosure clients (67.3%).

The **pre-existing condition of a vehicle or property** being insured is the fourth most common disclosure issue for both AFCA disputes (12.9%) and Financial Rights clients (7.9%).

The fifth most common disclosure issue related to the **permitted uses** of the thing being insured at 7% of AFCA disputes and 5.3% of Financial Rights clients. This largely refers to the phenomena of motor vehicles being used for ride-sharing schemes and other undeclared business purposes.

REASONS GIVEN FOR NON-DISCLOSURE

The reasons claimants gave for not disclosing a particular piece of information to an insurer varied significantly. Note that the following analysis has excluded those clients who did not provide a reason or a reason was not noted in either the AFCA decision or the Financial Rights client record.¹³

By far the number one reason given by AFCA claimants for not disclosing a piece of information to their insurer was a **technicality or ambiguously worded question** that threw them. This was raised in almost 31.6% of AFCA non-disclosure disputes where a reason was provided. These included, amongst many reasons, those relating to:

- claims history, specifically thinking that only at-fault accidents were required;¹⁴
- criminal convictions, specifically thinking a question related to driving offences only,¹⁵ asserting that the insured person had not been charged at the time,¹⁶ or an offence had been subsequently withdrawn;¹⁷ or
- financial history, specifically the person not realising that a Part IX Debt Agreement was a form of insolvency under the *Bankruptcy Act*.¹⁸

Technical or ambiguously worded questions were raised by 15.8% of Financial Rights clients who provided a reason – the second highest reason provided.

13 Approximately 6% of AFCA decisions did not note a reason for the non-disclosure or one was not able to be ascertained. Approximately 20% of Financial Rights clients either did not provide a reason or a reason was noted in the file.

14 540338

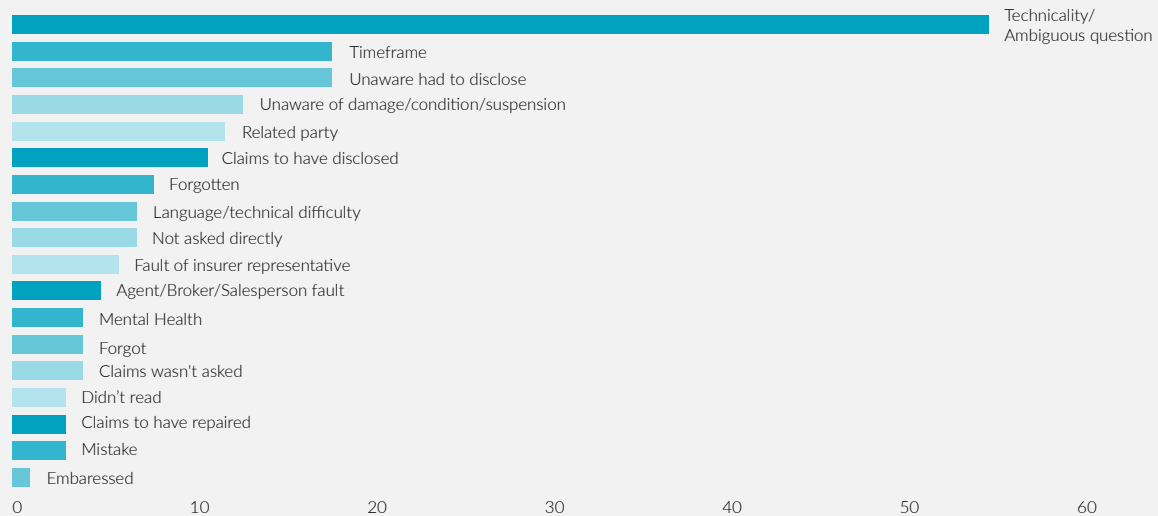
15 518691

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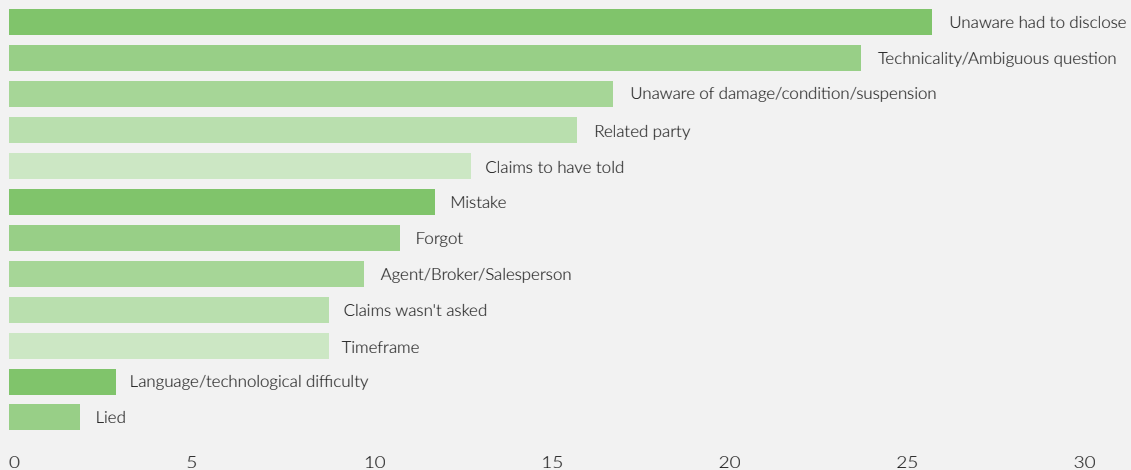
AFCA non-disclosure disputes: Reasons given



Note: Approx. 6% of decisions did not note a reason for the non-disclosure or one was not able to be ascertained.

The number one reason provided by Financial Rights clients was that they were **unaware they had to disclose the information** (17.1%). The information that they were unaware they had to disclose (or did not think relevant) ranged widely but included criminal histories, business purposes, modification, and pre-existing damage. A lack of awareness of the need to disclose was also asserted as a reason by 10.3% of AFCA claimants – the equal second most common reason. The information that they were unaware they had to disclose covered a similar diversity of categories.

Financial Rights non-disclosure clients: Reasons given



Note: Approx. 20% of clients either did not provide a reason or a reason was not noted in the file.

The **timeframe** in a question was raised as the equal second most common reason given by AFCA claimants at 10.3%. Most insurers use a five or three year timeframe and generally the complainant asserts that they believed that their offence, or other event, occurred outside the relevant timeframe. Some are found to be right on the cusp - see Victor's story below. Timeframe was also raised by Financial Rights clients but at not such a high rate at 5.9% and coming in as the 10th most common reason given.

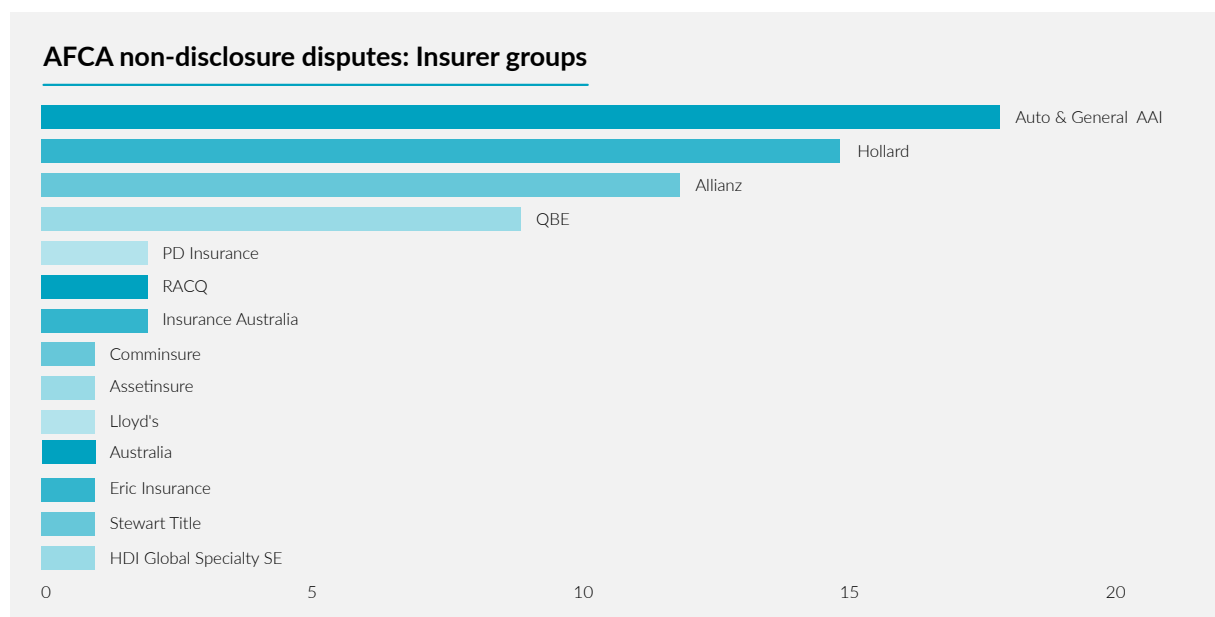
Being **unaware that there was information to be disclosed** including being unaware of existing damage, the condition of a vehicle or property, a licence suspension or medical condition was the third most common reason provided by Financial Rights clients (11.2%) and the fourth most common reason by AFCA claimants (7.5%).

This reason would be significantly higher in the rankings if we were to combine this category with another category of unawareness: people who purchased the insurance policy who were **unaware of information known to a related party**, in other words the policyholder's husband, wife or child's driving, insurance claim or criminal history. This was the 5th most common reason for AFCA claimants and the 4th most common reason provided by Financial Rights clients. If these categories were combined, the state of being unaware that there was information that needed to be disclosed at all, as opposed to being unaware of the need to disclose known information, would be the number one reason given by Financial Rights clients and the second highest reason given by AFCA claimants.

Rounding out the top five reasons provided by Financial Rights clients was the assertion that **they did disclose the information** to the insurer (8.6%). This was also the sixth most common reason given by AFCA claimants (6.3%). However if this were to be combined with another similar category – that is – the assertion that they told their broker, advisor or the car salesperson in the showroom, this would be the third most common reason provided by Financial Rights clients and the fourth most common reason from AFCA claimants

INSURERS INVOLVED IN NON-DISCLOSURE DISPUTES

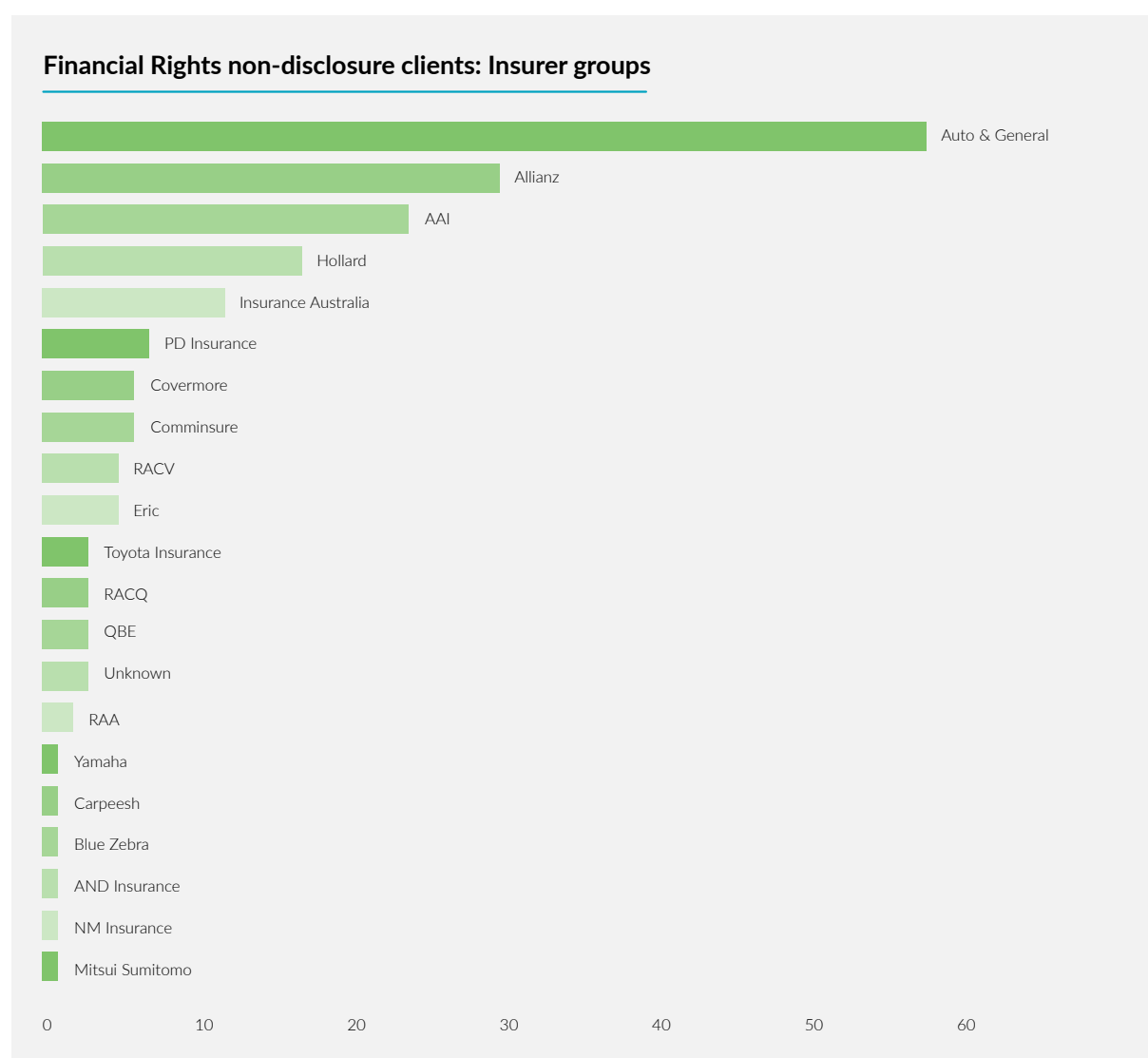
AFCA began to identify insurer groups involved in disputes from the 1 January 2020 and so there are limited numbers of decisions where the insurer is named in AFCA decisions – 67 in total. Despite this, it is clear that there are outliers in denying claims based on non-disclosure. These 4 insurer groups – Auto & General (26.9%), followed by AAI (22.4%), Hollard (17.9%) and Allianz (13.4%) – made up 80.5% of the non-disclosure disputes in AFCA in this period.



This is particularly significant given this is not necessarily a reflection of the size of their market share in all cases – the top four car insurers being Suncorp Group Limited (AAI), Insurance Australia Group QBE Insurance Group and Allianz.¹⁹

Unlike AFCA, Financial Rights did capture the names of insurers in most if not all cases, and more specifically the brands involved were reported since that is what the consumer understands.

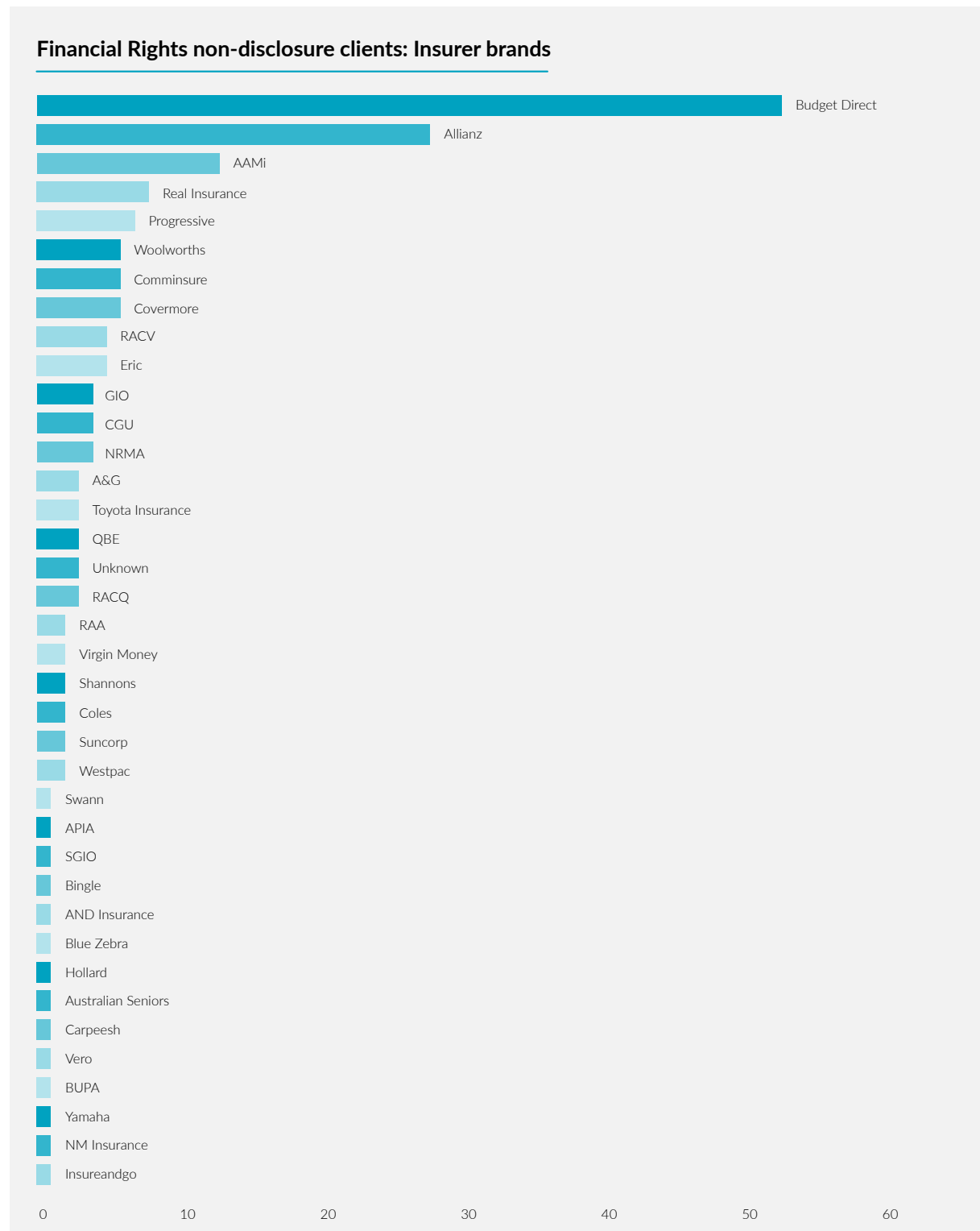
The first observation to be made of the Financial Rights clients was that in terms of insurer groups this largely reflected the pattern observed with AFCA disputes. Auto & General led with 30.5% of the total, followed by Allianz at 15.2%, AAI at 12.6% and Hollard at 8.9%. These 4 insurer groups made up two thirds or 67.3% of the non-disclosure clients.



As noted above, Financial Rights were also able to capture the consumer facing brands involved. It is here that there are clear outliers. Budget Direct (of Auto & General) were named in 53 of the non-disclosure calls or 27.9% of the total. They were followed by Allianz with 14.7% of the total and AAMI (of Suncorp/AAI) at 6.8%.

¹⁹ Ibisworld, Car Insurance in Australia - Market Research Report, Updated: November 26, 2020, available <https://www.ibisworld.com/au/industry/car-insurance/4122/#:~:text=The%20companies%20holding%20the%20largest,Limited%20and%20Allianz%20Australia%20Limited.>

This means that three insurer brands accounted for almost 50% (49.5%) of the non-disclosure calls to the Financial Rights.



We are unable to provide definitive reasons why some insurers are over-represented in denying disputes relating to non-disclosure. However it could reflect:

- a problem with these insurer's inception processes in relation to disclosure (for example, asking questions which are ambiguous or otherwise unclear), or
- a greater appetite for excluding claims to cut costs (looking harder for reasons to deny claims), or
- a market that seeks to reduce premiums through tighter underwriting guidelines
 - with people more likely to complain to Financial Rights or AFCA if their claim is not paid at all compared to where they are paid the claim but some extra premium is deducted as a result of a non-disclosure.

If these insurance brands do have tighter underwriting guidelines than other insurers it is all the more important these insurers reject people up front and give them the opportunity to find cover elsewhere. Many consumers believe all insurance products are more or less equal and do not understand that there are differences. This can be made clearer to people from the beginning.

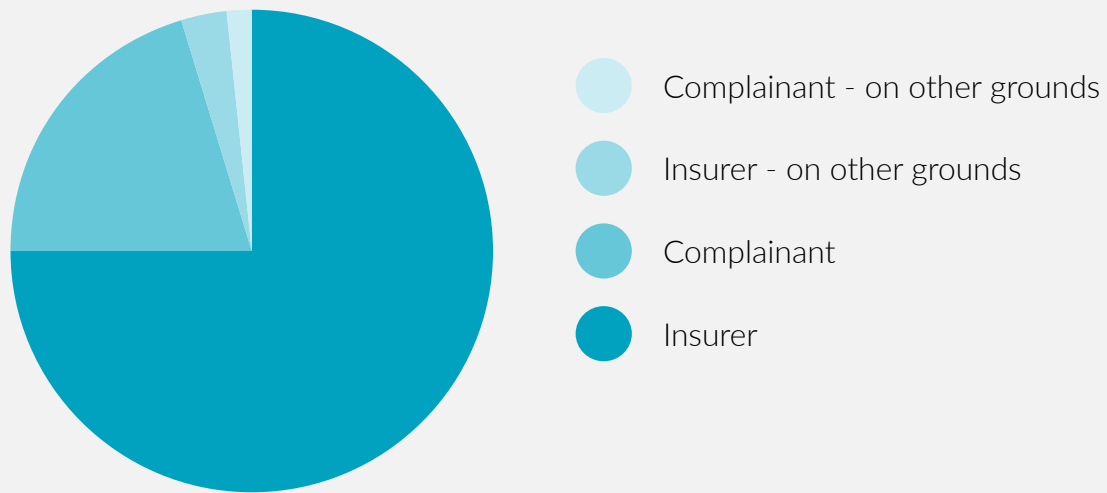
Recommendations:

Auto & General (and in particular Budget Direct), AAI, Hollard and Allianz should examine their underwriting guidelines and quoting, sales and claims assessment processes to ensure fewer people are denied at claims time due to non-disclosure. Where these insurers are unable to provide cover, they should give Australians the opportunity to obtain appropriate insurance coverage elsewhere based on accurate information rather than provide illusory cover.

FINDINGS IN NON-DISCLOSURE DISPUTES

AFCA finds in favour of the insurer in the great majority of cases – almost 74.7% of the time, not including those findings where AFCA found in favour of the insurer for reasons other than non-disclosure. Only 20.4% of decisions based on non-disclosure were found in favour of a complainant. When a decision is made in favour of the complainant the reasons are varied – mainly on technicalities or ambiguous questions (36.8% of findings in favour of the complaint) or the complainant was unaware of the damage, condition or suspension (15.6% of findings in favour of the complaint).

AFCA non-disclosure disputes: Findings



While some people win cases on a technicality and may not have obtained insurance if the insurer had checked up front, these people are relying on luck and circumstance to be covered and are clearly a minority. The majority of the time consumers lose in non-disclosure complaints.

4. Automating disclosure: Driving, insurance and criminal histories

The analysis above demonstrates that: motor vehicle insurance accounts for the vast majority of non-disclosure disputes at 72% of AFCA non-disclosure disputes and 85% of Financial Rights non-disclosure clients; and when combined, driving, insurance and criminal histories account for three out of four (77.4%) AFCA non-disclosure disputes and two out of every three (67.3%) Financial Rights non-disclosure clients.

The Open Insurance report found that potentially the most significant benefits to insurance consumers will come from greater access to the data held by government sources including departments, agencies and Government-owned organisations. This data includes information on licences and demerit points held by state road and traffic authorities for motor vehicle insurance. The Open Insurance report argued that making this consumer data available would help reduce the dependence on the consumer disclosure with several benefits including more accurate quotation, which can ultimately reduce average premiums, and reduced risk of claims being rejected due to inaccurate consumer disclosure.

The Insurance Council of Australia (ICA) too has argued the case for expanding access to consumer data, with consumer consent and appropriate privacy protections, for underwriting purposes:

Currently, each of the State Governments, through their road and traffic authority, collects and maintains databases recording driver license demerits, suspensions, cancellations, disqualifications and restrictions. Access to these databases, where a consumer has applied for insurance, could enable insurers to verify information provided. This may be beneficial for motor vehicle insurance policies where non-disclosure has occurred due to error, and verification of records at the point of sale would reduce the likelihood that consumers are left uninsured when they need to make a claim. The Insurance Council would welcome broader consideration of the potential to obtain access to driver records for the purpose of insurance underwriting.

While insurers recognise the benefits of accessing this data, the industry considers that adequately protecting consumer privacy is an important issue that requires thorough consideration. Insurers seeking consumer consent to obtain data is a potential option to ensure that access to data is balanced with the important need to protect individual privacy.²⁰

Providing objective data from official sources of information removes the subjectivity in the current practice of consumer disclosure and ensures that risk would be more accurately assessed and priced, optimising underwriting practices in the process.

²⁰ Page 13, Insurance Council of Australia, *Submission to the Productivity Commission Inquiry into Data Availability and Use*, 29 July 2016. https://www.pc.gov.au/__data/assets/pdf_file/0004/203278/sub066-data-access.pdf

Most if not all insurers already provide an option to customers to automate the inputting of motor vehicle information via a vehicle's registration number.²¹ This, according to the industry, reduces call times in call centres; simplifies quoting, provides certainty in vehicle identification; and assists in the identification and reduction of fraud.²²

Since motor vehicle insurance, driving history, criminal history and insurance history account for the bulk of non-disclosure claims denials and disputes, this section therefore examines whether it is possible and appropriate to apply similar automated processes to these forms of disclosure. It explores what information insurers are looking for and whether this information is recorded and available to both insureds and insurers, to be provided in a more accurate and complete way. It also includes findings from NielsenIQ as to Australian's level of comfort in the disclosure of particular information being automated.

DRIVING HISTORY

When a person is obtaining motor vehicle insurance, they will be asked about their driving history. This type of information will always be required by insurers because it goes to the heart of how risky a driver is. However, not all insurers seek the same driving history information from a prospective customer, with the information asked for varying significantly across insurer brands and insurance groups.

To begin with, what is meant by driving history is not uniform. Insurers ask potential customers to disclose one, some combination or all of the following:

- licence penalties such as licence suspensions, cancellations, disqualifications, restrictions or special conditions recorded by a licensing authority;
- demerit points recorded under a states driver's licensing scheme;
- the length of time holding a licence; and/or
- accidents and/or 'incidents'.

PD Insurance, for example, asks about suspensions, cancellations or disqualifications, demerit points but not restrictions. NRMA asks only about cancellations and suspensions due to driving offences.

21 We found that out of 25 insurers that we looked at, 4 did not provide the option to automatically fill in motor vehicle information: Comminsure, Guild, PD Insurance and Toyota insurance. To provide this option insurers subscribe to a service known as Motor Web, a private company that provides vehicle information services via data stored in Government registries and private databases, in both Australia and New Zealand. The service allows insurers to include a form on their website that allows anybody to input their number plate details and automatically provide in real time the motor vehicle information required by the insurer. The information is largely drawn from the Austroads National Exchange of Vehicle and Driver Information System (NEVDIS) database and "a variety of other 3rd party data sources."

22 <https://www.motorweb.com.au/action/virsFaq>

Figure 1: Examples of driving history questions

Bingle	In the last 3 years how many car related claims, driver licence suspensions, cancellations, disqualifications, restrictions has the main driver had?
NRMA	In the past 2 years, has any owner or driver had their licence cancelled or suspended due to any driving offences?
PD Insurance	In the last 5 years, have you, or any covered driver: Had any licence suspensions, cancellations or disqualifications? And in the past 3 years, how many demerit points have you incurred?
QBE	Does this driver currently have zero demerit points on their Australian driver's licence?

As can be seen with the examples above, the length of time the insurer is interested in also varies with examples between 2 and 5 years seen across the brands examined.

Confusingly PD Insurance asks about licence suspensions, cancellations or disqualifications over 5 years but is only interested in 3 years of demerit points. This is important since timeframe was the second most mentioned reason raised by AFCA disputants, as well as being raised by Financial Rights clients.

Case study 3 - Victor's story - C120964

Victor had a car accident and claimed through his insurer. An investigation was instigated based on the proximity of the accident to obtaining the vehicle. The insurer declined the claim on the basis of non-disclosure of a driver's licence suspension. Victor had been asked about licence suspensions in the last three years – he told them he thought it was over 3 years ago but he was not sure. It turned out the suspension was 2 years, 11 months prior to the policy inception.

Also at variance is whose licence history is relevant to the underwriting. Different insurers cover the “main driver,” the “owner or driver,” “you or any driver” or “you and any intended driver.” Again this is relevant because clients and disputants assert that they were simply unaware of another driver's history. The following case study is an example of this. Note too that the suspension was due to a reason that had little to do with the riskiness of the driver involved.

Case study 4 - John's story - C174038

John's wife had a motor vehicle accident when another driver hit her. She was not at fault. He subsequently lodged a claim. The insurer's underwriting guidelines provide that they do not issue policies: *"to any driver or policy holder who has had a licence suspension, cancellation or disqualification within the last 5 years."*

The insurer found that a licence suspension had been imposed on John's wife. John advised he wasn't aware of his wife's suspension. After making enquiries John found out that the suspension, of which she was also unaware, was for non-payment of a fine for failing to vote in an election.

Even the question about how long a customer has held a licence causes potential confusion since insurers ask a variety of questions seeking what would seem to be straightforward information. For example Bingle asks "which year did the main driver get their licence, inclusive of probation?" By contrast, Toyota's interest centres on whether the driver has "held a full Australian drivers licence for more than 2 consecutive years." And Comminsure asks how long has the driver been licensed to drive "in Australia or a country we recognise" (our emphasis) without reference to the probation period.

Finally, some insurers ask information about accidents or 'incidents' a customer has had – separate to any insurance claim that would be included in any insurance history disclosure. For example, RACT asks the number of "at fault incidents or accidents in the last 5 years."

Available sources of consumer data

Information on driving histories including licence penalties such as licence suspensions, cancellations; demerit points; and length of time holding a licence (but not accidents/incidents) are held by state government road or traffic authorities on their own registers or databases.

For example, in NSW, there is the demerit points register²³ which records the number of demerit points a person has collected. Drivers can check their own demerit point balance at a Service Centre, online using their own MyServiceNSW Account²⁴ or via their MyServiceNSW App. However to obtain a more comprehensive NSW driving record including a history of offences recorded against a licence, this needs to be purchased (\$22 for standard driving record information, \$30 for a certified copy) and can include an online driving record which cannot be used for legal proceedings, or a certified driving record which can be used for legal proceedings, which can take up to 21 days to provide.²⁵

23 Established by section 31 of the *Road Transport Act (NSW) 2013*. The *Road Transport (Driver Licensing) Regulation (NSW) 2008* provides further information with respect to this register and the administration of the register – including the limitations of sharing this information with other parties.

24 <https://www.service.nsw.gov.au/transaction/check-your-demerit-points>

25 <https://www.service.nsw.gov.au/transaction/request-driving-record> According to an online chat 23 June 2021 "It will cost \$22 and you can download it straightway or \$30 for a certified copy which can take 21 days to get."

However there are some situations where drivers can consent to insurers automatically obtaining some driving record data. In NSW, insurers can access the demerit point status of a driver via the Service NSW online portal when obtaining Compulsory Third Party insurance.²⁶ Transport for NSW provides an online Driver Licence Check (DLC) service to authorised organisations, such as heavy vehicle operators.²⁷ Insurers do not have a “points disclosure agreement” for any other form of motor vehicle insurance that Financial Rights is currently aware of.²⁸

By contrast, the UK has a longstanding scheme known as MyLicence²⁹ that automates the disclosure of a consumer’s driving history to an insurer (including demerit points and penalties). It was introduced to solve the problem of unwitting non-disclosure issues.

26 Disclosure of demerits points is permitted under Road Transport (Driver Licensing) Regulation 2017 which provides that:

- a CTP insurer can enter into an agreement with Service NSW for the disclosure of demerit points recorded against a person's name, provided the person provides their consent;
- before entering into such an agreement, Service NSW must consult with the Privacy Commissioner; and
- the agreement may provide for the payment of a fee by the CTP insurer to Service NSW.

27 NSW Driver Licence Check is in place to “to assist them to fulfil their duty of care responsibilities concerning road safety as well as to encourage the promotion of good driving practices.” <https://roads-waterways.transport.nsw.gov.au/about/access-to-information/release-of-information-authorised-organisations.html>. DLC is a web-based application that can be used for organisations to confirm driver licence and demerit point status of drivers engaged, or intended to be engaged, to drive vehicles for their organisation. Each enquiry requires the prior express consent of the licence holder who is the subject of the enquiry. The authorised organisation must retain evidence of that consent for audit purposes. An authorised organisation must also agree to and comply with the stringent auditing requirements set out in an agreement endorsed by the Privacy Commissioner.

28 Service NSW is currently prevented from disclosing an individual's driving history to a motor vehicle insurer under the *Privacy and Personal Information Protection Act 1998 (PPIP Act)* unless an exemption applies. Under the *PPIP Act*, disclosure can be made in limited circumstances including for example, with the consent of the individual. There are also several other sources of exemptions, including exemptions in a regulation or privacy code of practice made by the Attorney General, or exemptions in a public interest direction made by the privacy commissioner. In Queensland, Western Australia and the ACT, a third party can apply for a driving record with the consent of the driver.

29 <http://www.myllicence.org.uk/>



The UK Government established the 'MyLicence' regime in 2015. It was established with the explicit aims to:

- protect motorists from unwittingly making false declarations regarding their motoring convictions which could invalidate their insurance;
- improve road safety by providing a more accurate risk assessment of drivers
- act as a deterrent against insurance fraud
- and in some cases, should reduce insurance premiums for ... motorists.³⁰

MyLicence holds driving licence and history data for every registered driver in the UK. The system is accessible only by insurers when they provide a quote to a person, however, individuals can view the data held on them through another system.

The MyLicence website³¹ states that 1 in 6 UK consumers under-declare their motoring convictions, while 7% over-declare their convictions and end up paying more. The Association of British Insurers estimates that the MyLicence system could save 'honest' motorists £15 on their insurance.

The system contains information about a person's driving entitlements, length of time they have held a licence and valid motoring convictions. This information is provided to insurers when a consumer requests a quote and provides their licence number. If a consumer purchases a policy, the insurer keeps the data. Medical information, address information and photographs are not included in the data. Individuals must consent as part of the application process to providing the information to the insurer. They can choose not to, but insurers may then treat them differently and regardless still require them to self-declare any driving history. After a quote expires, an insurer can anonymise the information and use it for analysis purposes (in which the driver is unidentifiable), after which it will be deleted.³²

The result is that UK drivers can simply provide their licence number instead of having to go through the part of the insurance application that deals with previous driving offences or licence suspensions/cancellations, meaning that getting a quote is much quicker.

Comfort level of consumers with insurers accessing driving history

Financial Rights engaged NielsenIQ to gauge Australian's comfort levels with insurers accessing various forms of their data with insurers in an automated fashion: see the full findings this survey at [Appendix B](#).

This research found that 71% of Australians were comfortable with insurers accessing their driving

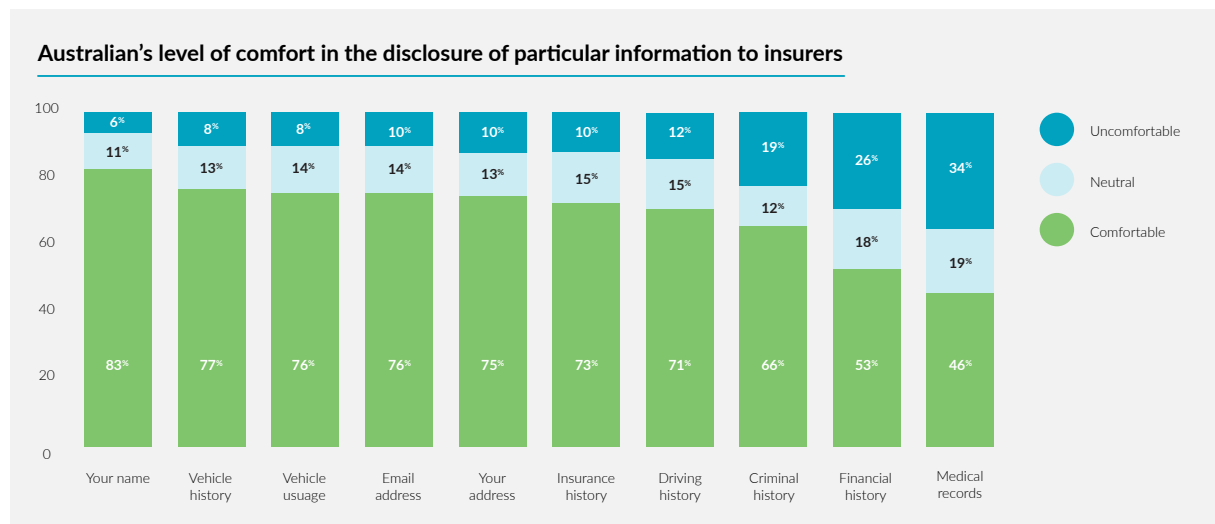
30 UK Driver and Vehicle Licensing Agency and The Rt Hon Claire Perry, DVLA and MIB announce the launch of MyLicence service, 9 December 2014 <https://www.gov.uk/government/news/dvla-and-mib-announce-the-launch-of-mylicence-service>

31 <http://www.myllicence.org.uk/myinsurance/>

32 <http://www.myllicence.org.uk/mydata/>

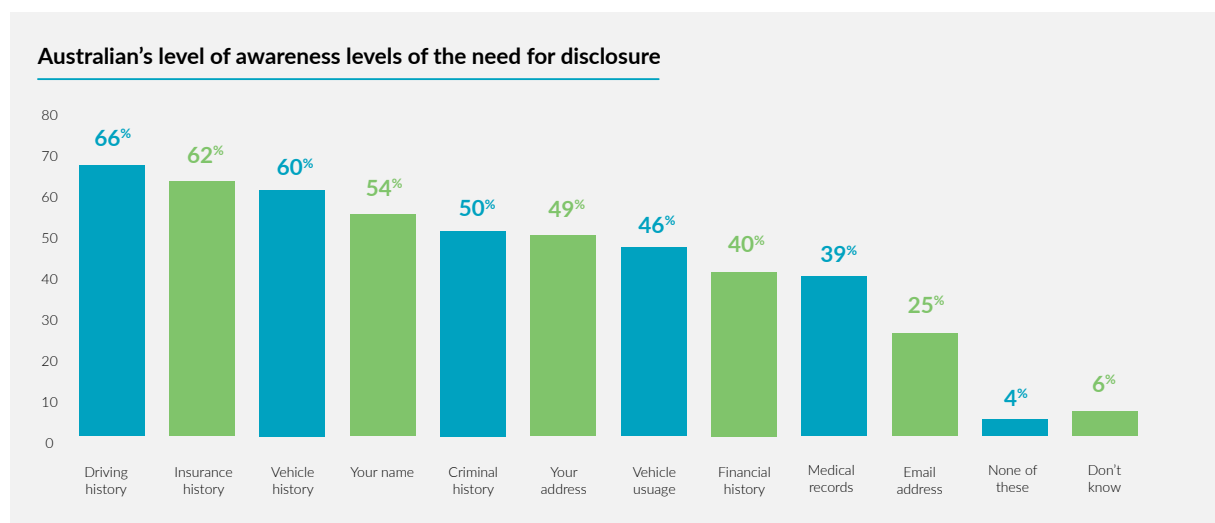
history (including demerits, license suspensions, cancellations or disqualifications, license status, accidents and offenses). This rose to 77% for those aged 55 and over and 76% for those with household annual income of over \$100,000. By way of comparison the research found that 77% of Australians were comfortable with insurers accessing the history of their vehicle – as noted above - a process that is already largely automated.

Figure 2: NielsenIQ research – Comfort with insurers accessing available data sources before taking out insurance



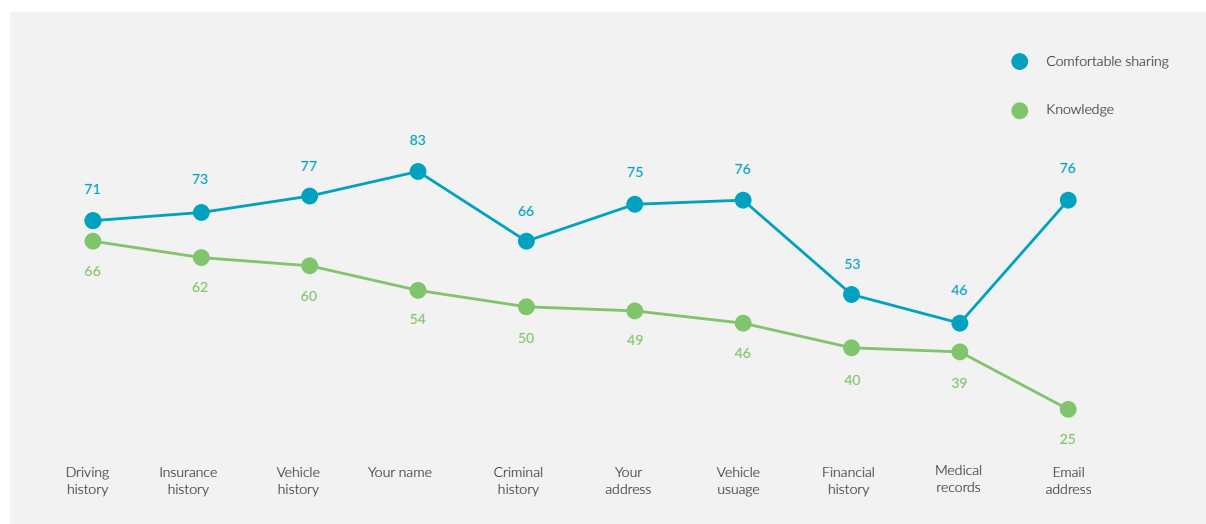
One in ten Australians don't know or don't think that the incorrect disclosure of their personal information can result in their insurance claims being rejected. This percentage was considerably higher when each piece of information was considered separately. For example 34% of people did not realise they could be rejected for failing to disclose their driving history, rising to 38% for claims history.

Figure 3: NielsenIQ research – Awareness levels of the need for disclosure



Importantly, more people were comfortable allowing insurers to access this information from available data sources before taking out insurance, to avoid the situation of a claim being rejected because you forgot or made a mistake.

Figure 4: NielsenIQ research – Comfort with insurers accessing available data sources before taking out insurance versus awareness levels of the need for disclosure



Recommendations

We recommend that state government road and traffic authorities work with the insurance sector to establish an Australian version of the UK MyLicence scheme to allow for the automated disclosure of driving records.

This is in line with the ICA's view that expanded access to this data would be beneficial for both consumers and insurers.

Noting that each State and Territory has its own system for recording driving history and there is likely to be a range of outputs, we recommend that the CDR Data Standards Body work with all stakeholders in the application of the CDR to general insurance to develop consistent data standards to better enable the sharing of data. While implementing common data standards can be costly for government agencies and industry, the Productivity Commission has noted that not implementing standards can be more costly.³³

Furthermore, we recommend that if a MyLicence style scheme is introduced, the regime should address privacy and security concerns, in line with both the protections under the CDR and the rules in place in the UK scheme.³⁴ Specifically:

33 Page 163, Productivity Commission, *Data Availability and Use, Final Report*, 2016 <https://www.pc.gov.au/inquiries/completed/data-access/report>

34 Key privacy and security provisions of the UK MyLicence regime set out at <http://www.myllicence.org.uk/mydata/>:

Your personal details, and the data provided by the Driver and Vehicle Licensing Agency (DVLA) will only ever be used to calculate a motor insurance quote. They will not be used for any other purpose, or be made available for anyone else. Only the motor insurance industry will use this information.

Data from the DVLA will only be processed with your agreement, and the agreement of any named drivers, as both the DVLA and insurers understand the sensitivity of this information. MyLicence adheres to the *Data Protection Act 2018*, and there are strict controls in place about what data is provided, and how it can be used. The DVLA only provides details of your driving entitlements, the length of time you have held a driving licence, and valid motoring convictions.

- Consent to share any disclosure data should be voluntary, express; informed; specific as to purpose; and time limited; and easily withdrawn, in line with rule 4.9 of the CDR.
- People should be clearly informed what information will be shared and what information will not be shared.
- The data disclosed needs to be limited to the information genuinely required by insurers to provide a quote and comply with data minimisation principles (that is limiting data collection to what is required to fulfill a specific purpose).
- Insurer use of disclosed data needs to be limited to the purpose of providing an insurance quote.
- Disclosed data should only be retained if a policy is purchased in order to administer the policy.
- Disclosed data needs to be deleted upon redundancy, or de-identified or anonymised once a use case expires, such as the end of period where a quote is valid.
- Disclosure data of a main driver and any other drivers should not be shared with one another nor provided in any documentation.
- Security standards and controls need to be in place to ensure disclosed and retained data is not accessible to insurer employees unless strictly required to meet the use case.
- Controls should be in place to ensure any updating of information required is done so in a safe and secure manner.
- Safeguards should be put in place to ensure people can correct data.

Recommendations:

State government road and traffic authorities should work with the insurance sector to establish an Australian version of the MyLicence scheme to allow for the automated disclosure of driving records

The CDR Data Standards Body should work with all stakeholders in the application of the CDR to general insurance to develop consistent data standards to better enable the sharing of data

If or when a MyLicence-style scheme is introduced, the regime should address privacy and security concerns, in line with both the protections under the CDR and the rules in place in the UK scheme.

Information is not shared with anyone else: even as the main policyholder, you cannot see data about named drivers, and no DVLA data is printed on policy documents.

Automatic insurance systems mean information will not be accessed by staff, and if it does need to be viewed, there are strict controls imposed on who can see it.

Your medical information, full address and your photograph is not given to insurers.

When you request a quote, or multiple quotes, the insurer will be provided with the DVLA data. However, insurers can only keep this information while the quote is valid; approximately 30 days. After the quote expires, the insurer can anonymise the information and use it for analysis purposes (in which you are unidentifiable), after which it will be deleted. Once you have purchased a policy, the insurer or broker you have purchased the policy from will retain the data in order to administer the policy.

Your insurer may contact you on an advisory basis if the DVLA has advised that your photocard is out of date or that your postcode is different on your insurance application to that on your driving licence.

INSURANCE HISTORY

Insurance history is another key subject of disclosure for most insurers. Questions can focus on either policy refusals, cancellations, declines, avoidances, non-renewals or special conditions; and/or claims.

In looking at insurer disclosure questions, we identified six insurers posing questions with respect to policy cancellations, declines and avoidances over either a 3 or 5 year period: GIO, Guild, NRMA, QBE, Suncorp and Toyota. Some insurers are interested in all cancellations, denials etc., whereas others asked more limited questions to claims denied for fraud or dishonesty.

Figure 5: Examples of insurance history questions.

Guild	Have you or any drivers ever had a claim denied for fraud or dishonesty?
NRMA	In the last 5 years, has any owner or driver had any insurance refused, cancelled or avoided, insurance renewal not offered, special conditions imposed or claim refused?
QBE	In the last 3 years, regardless of who was at fault, has this driver been involved in any motor vehicle accidents or other incidents claimed on a motor vehicle insurance policy?
Toyota	In the last 3 years, have you or any other intended drivers had any of the following: Any motor vehicle claims where you had to pay an excess?

Confusion can arise for consumers about the implication of an unrelated claim on a different form of insurance, for example, a life insurance policy, or home and contents policy. QBE, above, is particularly confusing since it not clear whether they are asking about all accidents and all insurance claims or only accidents and incidents that led to claims:

The timeframes of interest to insurers range from 2 to 5 years for insurance claims (with 3 years most common). Some insurers are only interested in 'at fault' claims (see BUPA), some are interested in all claims regardless of fault (see NRMA) and others still, limit this to claims where an excess has been paid (see Toyota).

Case study 5 – Barbara and Nathan’s story - AFCA Determination 711659

Barbara and her husband Nathan purchased car insurance in 2019.

Later that year they received a letter of demand from a third party alleging their car hit the third party’s car. Barbara and Nathan say the collision did not occur and lodged a claim under their policy to cover for any liability they may have had.

The insurer denied the claim on the basis of non-disclosure. The insurer says the complainants did not fully disclose their claims history when they took out the policy. During the phone call when they purchased the insurance, the insurer asked:

Regardless of who was at fault, have either of you had any motor claims, unclaimed accidents, thefts, or losses in the last five years?

In response Nathan said he’d made five claims related to their car between 2014 and 2019. However in 2016, they had also lodged three claims saying their cars were damaged by fire. They say the claims related to two separate fires, each caused by faulty electrical wiring in their home. Nathan and Barbara say they did not disclose these claims because they thought the insurer only wanted to know about car accidents. They did not think of their cars being damaged in house fires as car accidents, even though they lodged claims for the damage under their car insurance policies.

AFCA found that Nathan and Barbara had breached their duty of disclosure because the insurer pointed out that the question also asked about thefts and losses. According to AFCA this made it clear to the complainant that the insurer wanted to know about all kinds of losses, not just car accidents.

Available sources of data

The key source for insurance claims histories is the customer’s own insurer (or previous insurer). However obtaining this information is not straightforward since there is no clear and easy way that we have identified to obtain this information automatically via insurer websites. Contacting the insurer directly via phone or through emailing a contact obtained through the insurer’s privacy policy seem to be the only way to do this.

However the insurance industry has also established the Insurance Reference Services (IRS) database managed by Ilion and includes 19 member insurers as of June 2021.³⁵ The IRS manages a claims database which comprises 22 million motor, home, and travel claims information, including previously denied withdrawn or cancelled claims and multiple or unusual claims patterns.³⁶ The IRS website asserts that the:

information is primarily used by these insurance companies and their third party agents to assist them in the validation of information provided to them during the course of an insurance policy – from quotation, risk assessment, policy in effect, and claims.

35 Aioi Nissay Dowa, Allianz, Asset Insure, Auto & General, Blue Zebra, CGU, Comminsure, Hollard, Huddle, iag, NRMA, pd insurance, QBE, RAA, RACQ, SGIC, SGIO, Suncorp, Youi <http://insurancereferenceservices.com.au/>

36 ibid

We are however unaware of any insurer who uses the material accessible via the IRS at policy inception time. The Open Insurance report, for example, found that “typically this information is not used at the time of quotation, with insurers relying on the consumer’s disclosure.”³⁷

The IRS website also asserts that the My Insurance Claims Report should be used by consumers themselves for providing accurate disclosure when obtaining quotes:

It’s a good idea to obtain a copy of your My Insurance Claims Report before shopping for insurance online or obtaining quotes from your insurance company, so that you are aware of the minimum claims information that you must disclose to insurers when purchasing a valid policy.

However obtaining a My Insurance Claims Report is not simple. Consumers must:

- Contact the IRS via the website by providing names and contact details.
- Wait for the IRS to contact them with an email providing an application form as a word document (this was 24 hours later in our attempt).
- Fill in and return the application form providing 2 forms of appropriate ID.
- Pay a fee of \$22 – there is no free version available to obtain your own data as exists in credit reporting; and
- Obtain the report within 5 business days.

The database then produces a My Insurance Claims Report which includes “information about you that you have disclosed to insurance companies in the course of obtaining insurance, making claims or being a party to an insurance claim.”³⁸

The reliability of the data available from the IRS is however questioned. In Financial Rights’ discussions with insurers in 2016, we were told that the reports were haphazard, inconsistent and largely unreliable so that the current report provides minimal benefit to insurers or consumers. The ICA have admitted as such stating in 2017 that

“A number of insurers have advised that they do not have easy access to this data and that access to consumer information through a third party insurance report service can be ambiguous.

37 Page 32, *Open Insurance*, <https://financialrights.org.au/wp-content/uploads/2020/12/Open-insurance-final-report.pdf>

38 Reports include:

- Full Name
- Date of birth
- Driver’s licence
- Gender
- Residential address
- Enquiries made during the past five years including enquiries where cover applied but not taken out. The report records each enquiry by • insurance companies, not actual insurance policies taken out
- Details of enquiries made by agents of insurance companies such as loss assessors, insurance investigators and recovery agents;
- Details of claims made under insurance policies held in your name or jointly in your name - whether or not they eventuated in a payment, and may include withdrawn and denied claims;
- Details of claims where you were named as a driver of an insured vehicle.
- See <http://insurancereferenceservices.com.au/faq>

For example, withdrawn claims may be shown as declined, which could lead to an insurer believing a customer may have failed to disclose a previously declined claim. Insurers have also noted that it could be costly to have to generate an external insurance report for every sale.”³⁹

If this is true then this could have serious consequences not just for consumer confidence in the sector’s ability to collect and maintain data appropriately but also undermines confidence in its reliability for underwriting and premium quoting.

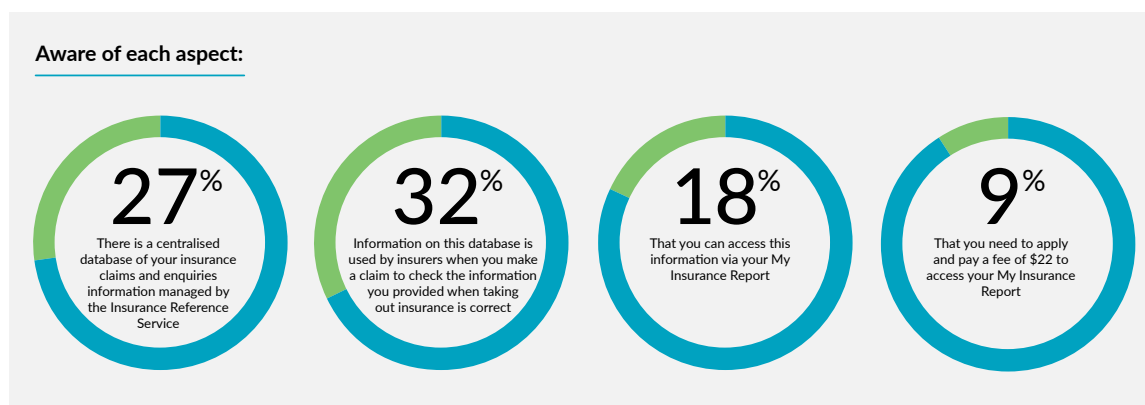
Comfort level of consumers with insurers accessing insurance history

The NielsenIQ research found that 73% of Australians were comfortable with insurers accessing their insurance history (including claims made, claims declined and insurance cancellations). This rose to 82% for those aged 55 and over and 77% for those with household annual income of over \$100,000 and 79% for regional Australians: see **Figure 2** above. Full findings at **Appendix B**.

The NielsenIQ research also found that few people are aware of the ability for individuals to access their own reports, yet it would appear more suspect insurers are using a claims database.

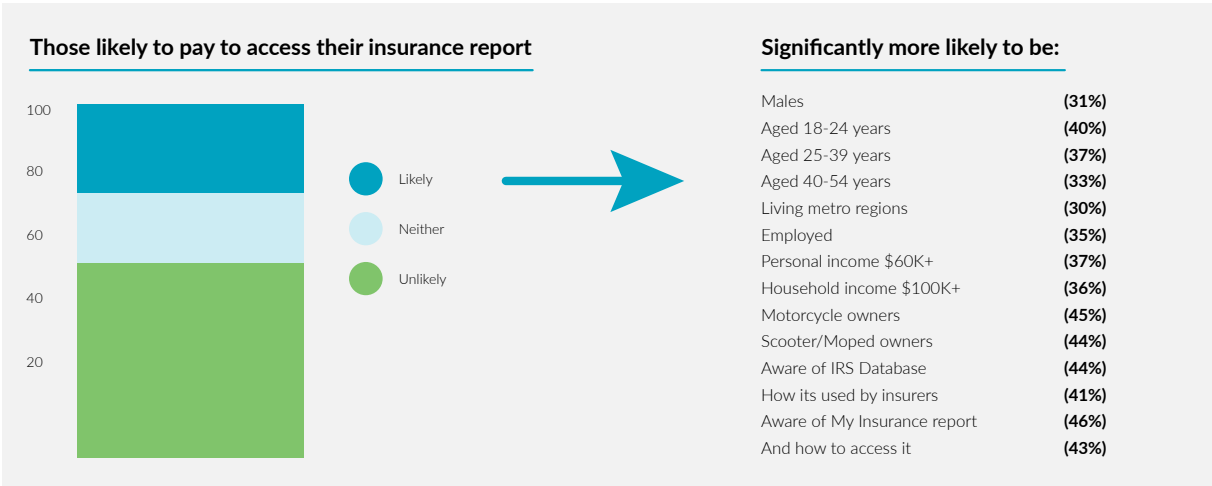
- 27% were aware that there is a centralised database of your insurance claims and enquiries information managed by the IRS;
- 32% answered they were aware that information on this database is used by insurers when you make a claim to check the information you provided when taking out insurance is correct, 5% more than had answered yes to the previous questions about the existence of the database. In other words, more Australians suspect insurers are using a claims database than knowing about the existence of the IRS;
- 18% were aware that they can access this information via a My Insurance Claims Report;
- 9% were aware that they need to apply and pay a fee of \$22 to access their My Insurance Claims Report; and
- Almost half (48%) are unlikely to pay to access their My Insurance Claims Report. Only 27% were willing to pay for access to it.

Figure 6: NielsenIQ research: Awareness of sources of insurance information



39 Page 43, Insurance Council of Australia, *Interim Report, Review of the General Insurance Code of Practice*, November 2017 http://www.codeofpracticereview.com.au/assets/interim%20report/02112017_Interim_Report.pdf

Figure 7: NielsenIQ research: Willingness to pay to access their My Insurance Claims Report



Recommendations

We recommend that the insurance industry should provide the means for people to automate the free sharing of their own insurance history data.

Given that there remains questions regarding the accuracy, consistency and comprehensiveness of insurance claims data collected across the insurance industry, we recommend that the CDR Data Standards Body work with insurers to develop consistent data standards to better enable the sharing of data when the CDR is applied to general insurance and insurers should resource a program to improve the reliability of this data.

The application of the CDR to general insurance would assist this process by requiring insurers lift their data collection standards, and improve consistency to ensure that this information is accurate.

We also recommend that Government consider specific regulations covering the creation of insurance reports stipulating the permitted contents of the report, the type and the meaning of listings and the length of time the information is retained on a report and rights to access and correction. The information held in an insurance report has the potential to be very prejudicial to a consumer in obtaining insurance or in making a claim. The lack of specific regulation in insurance reporting is in stark contrast with credit reports where there is extensive regulation about what information can be held, how consumers can get access and correction procedures.⁴⁰

Recommendations:

The insurance industry should provide the means for people to automate the free sharing of their own insurance history data. The application of the CDR to general insurance could assist by requiring insurers lift their data collection standards, and improve consistency to ensure that this information is accurate. Insurers should resource a program to improve the reliability of the consumer data they hold.

Government should consider introducing specific regulations covering the creation of insurance reports stipulating the permitted contents of the report, the type and the meaning of listings and the length of time the information is retained on a report and rights to access and correction.

40 Part IIIA of the Privacy Act 1988 regulates consumer credit reporting in Australia and is supported by the Privacy Regulation 2013 and the Privacy (Credit Reporting) Code 2014.

CRIMINAL HISTORY AND OTHER SENSITIVE INFORMATION CATEGORIES

Fewer insurers ask customers to disclose information regarding their criminal history. Seven insurers that we reviewed specifically asked about someone's criminal history: ANZ, GIO, Suncorp, Guild, PD Insurance, QBE and Toyota. Answering yes to any of these questions generally leads to the insurer denying insurance to the customer.

Figure 6: Examples of criminal history questions

ANZ	In the last 5 years, has anyone on this insurance policy been convicted of any criminal offence relating to drugs, theft, or burglary, arson, wilful or malicious damage, or fraud?
GIO, Suncorp	In the last 3 years, have you or anyone to be insured under this policy committed any criminal act in relation to fraud, theft, burglary, drugs, arson, criminal damage, malicious damage or wilful damage?
PD Insurance	In the last 10 years, have you, or any covered driver: Been charged with, or convicted of fraud, theft or arson or been refused a renewal or had a policy cancelled by your insurer?
Toyota	In the last 3 years, have you or any other intended drivers had any of the following: Been convicted of, or had any fines or penalties imposed for any criminal activity?

The relevant timeframe ranges from 3 to 10 years. The scope of insurer interest can vary from being concerned with criminal convictions only (eg ANZ, Guild), criminal convictions or where a fine or penalty is imposed for a criminal activity (Toyota); criminal convictions and charges (PD Insurance, QBE), and the committing of any criminal act (including presumably where a conviction or charge is not recorded) (e.g. GIO, Suncorp).

Where the scope is limited to convictions these can be further constrained by particular types of criminal convictions and can variously include a combination of offences related to, variously drugs, drug or alcohol related driving offences; theft or burglary; arson; criminal, wilful or malicious damage; and/or fraud.

Available sources of data

The Australian Criminal Intelligence Commission (ACIC) works with Australian police agencies to deliver the National Police Checking Service (NPCS)⁴¹ which maintains criminal records and provides access to individuals and accredited organisations (such as employers, government agencies) to apply for a Nationally Coordinated Criminal History Check, (or a police check). In order to obtain a national police certificate, people must complete an application form and pay a fee. The majority of police checks in NSW are processed and returned within 1 business day but approximately 30% of checks are referred to manual processing which may take from 1-15 business days.⁴² The Australian Federal Police complete most in 48 hours.⁴³

41 administered under the *Australian Crime Commission Act 2002*

42 <https://cvcheck.com/police-checks-nsw/#:-:text=How%20long%20does%20a%20criminal,returned%20within%201%20business%20day>

43 <https://www.afp.gov.au/what-we-do/services/criminal-records/frequently-asked-questions>

Recommendations

While criminal record data is available to be accessed, we do not recommend pursuing any automation for disclosure purposes.

The key reason is that criminal records are classed as 'sensitive information' under the *Privacy Act 1988*. Opening up this form of sensitive consumer data to be more easily accessible raises significant risks since it is "highly personal and has the potential to give rise to unjustified discrimination against individuals."⁴⁴ Criminal records (and all other sensitive information categories) are already subject to a higher level of protection as opposed to other 'personal information handled by organisations'.⁴⁵

The consumer movement also hold outstanding concerns with respect to the blanket rules that reject ex-offenders applications out of hand and do not consider the circumstances or nature of their offences.⁴⁶

The NielsenIQ research findings reflected these sensitivities with a lower proportion of Australians expressing comfort in sharing their criminal history: 66%, see **Figure 2** above.

For similar reasons we do not recommend pursuing automation of medical records (sometimes sought in travel insurance) or genetic information (sometimes sought in life insurance).

Health information and genetic information are both considered sensitive information under the *Privacy Act* and are therefore highly personal and subject to the same risks of unjustified discrimination.⁴⁷ While section 46 of the *Disability Discrimination Act* provides an exemption to insurers in some limited situations, we also note that ongoing concerns with respect to the insurance sector's compliance with this section.⁴⁸

The NielsenIQ research found that medical records were the category of information that the lowest proportion of Australians were comfortable with sharing at 46% of Australians: see **Figure 2** above.

44 ALRC, *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108) at <https://www.alrc.gov.au/publications/6.%20The%20Privacy%20Act%3A%20Some%20Important%20Definitions/sensitive-information>

45 This includes ensuring that consent is acquired, nor shared by 'related bodies corporate' in the same way that they may share other 'personal information': see *Privacy Act 1988* (Cth) sch 3, National Privacy Principles 10 and 2.1(c).

46 See: Former Executive Director of the WestJustice Denis Nelthorpe quoted in Andy Swales, "Crime and Punishment", *Insurance News Magazine*, October, November 2017 https://issuu.com/insurancenewsmagazine/docs/31230_mcmullan_conway_6c10c_insurance_news_octnov

Nelthorpe argues that while there may be some justification, according to Nelthorpe, for restrictions for a convicted arsonist securing home insurance, other offences have little bearing on the kind of cover people are seeking. Nor does it mean that a person is inherently risky for making a one-off mistake or where circumstances conspire against them. Nelthorpe points out that:

There is a need to recognise that sometimes there is a marginal difference between ending up with a record and not ending up with a record.... There are people being charged and convicted for things in the Aboriginal communities that arise exclusively because they are in those communities... The idea that we may say ... 'Because you've got some sort of record, we're not going to insure you,' it's horrifically counterproductive.

RMIT Professor Bronwyn Naylor goes further and argues that:

It's really important that we recognise people with a criminal history have 'paid' for their offending with their penalty; they should not be treated as if they have to be punished indefinitely... [P]eople should be given the opportunity to take on fulfilling employment ... to rent or buy accommodation and so on, And this of course including being able to take out the necessary insurance.

47 We note that section 46 of the *Disability Discrimination Act 1992* provides an exemption to insurers in some situations. The broad effect of this exemption is that insurance premiums and/or policy terms are permitted to vary according to variations in factors that affect risk

48 See Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry Inquiry Report*, March 2018 https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/LifeInsurance/Report

Finally we do not recommend the automated sharing of financial records including employment status, home ownership status or financial position - sought in a range of general insurance products.

Financial information in the form of credit information is considered separately under the *Privacy Act* and is subject to its own rules with respect to access and use. Insurance companies, for example, are not allowed to access a personal credit report.⁴⁹

The NielsenIQ research also found a lower proportion of Australians were comfortable with sharing financial histories (including loan defaults and bankruptcies) at 53% of Australians: see **Figure 2** above.

We are also aware of some insurance companies removing financial information from some of their underwriting on the basis that can punish and discriminate against consumers experiencing financial hardship, or can act as a proxy for discrimination based on ethnicity, culture or socioeconomic groups.

Recommendation:

Automating criminal history, medical records or financial information is not recommended.

⁴⁹ OAIC, Third Party Access to credit reports, <https://www.oaic.gov.au/privacy/credit-reporting/third-party-access-to-credit-reports/>

5. Recommendations

- Auto & General (and in particular Budget Direct), AAI, Hollard and Allianz should examine their underwriting guidelines and quoting, sales and claims assessment processes to ensure fewer people are denied at claims time due to non-disclosure. Where these insurers are unable to provide cover, they should give Australians the opportunity to obtain appropriate insurance coverage elsewhere based on accurate information rather than provide illusory cover.
- State government road and traffic authorities should work with the insurance sector to establish an Australian version of the MyLicence scheme to allow for the automated disclosure of driving records.
- The CDR Data Standards Body should work with all stakeholders in the application of the CDR to general insurance to develop consistent data standards to better enable the sharing of data
- If or when a MyLicence-style scheme is introduced, the regime should address privacy and security concerns, in line with both the protections under the CDR and the rules in place in the UK scheme.
- The insurance industry should provide the means for people to automate the free sharing of their own insurance history data. The application of the CDR to general insurance could assist by requiring insurers lift their data collection standards and improve consistency to ensure that this information is accurate. Insurers should resource a program to improve the reliability of the consumer data they hold.
- Government should consider introducing specific regulations covering the creation of insurance reports stipulating the permitted contents of the report, the type and the meaning of listings and the length of time the information is retained on a report and rights to access and correction.
- Automating criminal history, medical records or financial information is not recommended.

6. Appendix A – Disclosure question examples

In April 2021, Financial Rights obtained a quote for comprehensive motor vehicle insurance from 25 general insurance brands via their website. The 25 insurers examined were:

AAMI, Allianz, ANZ, Bingle, Budget Direct, BUPA, CGU, Coles, Comminsurance, GIO, Guild, NRMA, PD Insurance, QBE, RAC, RACQ, RACT, Real Insurance, St George, Suncorp, Toyota Insurance, Virgin Money, Westpac, Woolworths, and Youi.

There was significant variance in the number of questions asked; the categories of information sought and the wording of these questions. Much of this variance is based on risk profiles and the underwriting of each insurer brand and underwriter.

Outside of basic information sought about the car being insured, its usage and storage, as well as basic information about the person seeking insurance, the information sought could be grouped into the following categories:

- driving history including licence suspensions, cancellations or disqualifications; licence status; and/or accidents and offences;
- insurance history including claims made, claims declined, and insurance cancellations;
- criminal history;
- employment status, financial position and motor vehicle financing; and
- damage and condition of a vehicle.

DRIVING HISTORY

Questions about driving history are very common but can vary between seeking information on licence penalties; demerit points and accidents/incidents

LICENCE PENALTIES

AAMI, APIA, GIO, Suncorp	In the last 3 years has the main driver had any car related claims, driver licence suspensions, cancellations, disqualifications or restrictions?
ANZ	In the last 4 years, have any drivers of the vehicle had their drivers licence restricted, suspended, disqualified or cancelled?
Bingle	In the last 3 years how many car related claims, driver licence suspensions, cancellations, disqualifications or restrictions has the main driver had?
NRMA	In the past 2 years, has any owner or driver had their licence cancelled or suspended due to any driving offences?

PD Insurance	In the last 5 years, have you, or any covered driver: Had any licence suspensions, cancellations or disqualifications?
RAC	In the past three years has any driver: Had your driver's licence cancelled, suspended or any special conditions applied
RACQ	How many licence suspensions, cancellations, disqualifications, restrictions, or good driving behaviour periods have you had in the last 3 years?
Guild	In the last 3 years, have you or any drivers of this vehicle been disqualified from driving and/or had your license cancelled, suspended or restricted due to any driving offences?
Toyota	In the last 3 years, have you or any other intended drivers had any of the following: Their drivers licence or permit suspended, cancelled, restricted or endorsed with special conditions?

DEMERIT POINTS

Rather than licence penalties, other insurers focus on demerit points. PD Insurance seeks both penalty information and demerit points.

QBE	Does this driver currently have zero demerit points on their Australian driver's licence?
Youi	How many demerit points has the Policyholder incurred in the last 3 years?
PD Insurance	In the past 3 years, how many demerit points have you incurred?

LICENCE – STATUS

Most but not all insurers seek information regarding how long someone has held their licence.

Allianz	How old was this driver when they obtained their driver's licence?
Bingle	Which year did the main driver get their licence, inclusive of probation?
CGU	Years Licensed (exc learners); licence state issue; licence type; years licensed
Coles	How many years has the main driver held a licence?
Comminsure	How long has this driver been licensed to drive in Australia or a country we recognise?

Guild	At what age did the main driver first obtain a motor vehicle licence (excluding learner permit or similar)?
NRMA	Age you got your driver's licence
PD Insurance	Age you were First Licenced in Australia
QBE	For how many years has this driver held a full, including provisional, Australian driver's licence or an equivalent licence from a location we recognise.
RAC	Number of years you have held your driver's licence
RACQ	Have you held your driver's licence for 10 years or more?
Real, Woolworths	At what age did the main driver get a full driver's licence?
St George	How old was this driver when they obtained their driver's licence?
RACT	Year obtained first licence?
Toyota	Have you and all other intended drivers held a full Australian drivers licence for more than 2 consecutive years?
Youi	What type of licence does the Policyholder currently have? Australian Open Licence; Provisional Licence Learners Licence International Licence No licence

ACCIDENTS

These include reference to both accidents and claims, or only accidents.

Allianz	<p>Has this driver had any accidents/claims in the past 5 years?</p> <p>Type:</p> <ul style="list-style-type: none"> • You were at fault and an excess was payable; • Licence suspended, cancelled, disqualified or restricted; • Natural Hazard (eg fire, flood, hail etc.); • Any other claim where an excess was payable (theft etc.); • Any claim where no excess was payable; • Windscreen claim
BUPA	How many 'at-fault' incidents/claims have they had in the last 2 years?

CGU	How many 'at-fault' incidents/claims have they had in the last 2 years?
Comminsure	And has this driver had any accidents or incidents in the last 5 years?
QBE	<p>In the last 3 years, regardless of who was at fault, has this driver been involved in any motor vehicle accidents or other incidents claimed on a motor vehicle insurance policy?</p> <p>What happened:</p> <ul style="list-style-type: none"> • Collision - no other vehicles involved; • collision at fault – other vehicles involved; • collision, not at fault, other vehicles involved; • hit when parked; • windscreen; • theft; • fire; • malicious damage or vandalism; • storm, hail, flood or bushfire
RAC	In the past three years has any driver: Had any accidents or made any claims to a vehicle, regardless of blame?
RACT	<p>NUMBER OF AT FAULT INCIDENTS OR ACCIDENTS IN THE LAST 5 YEARS</p> <p>At-fault incidents are events caused by the driver, or events where the driver is unable to identify and provide adequate details of the person who caused the incident. You should not include naturally-occurring incidents (e.g. storm or hail damage) in your response</p>
St George, Westpac	Has this driver had any accidents/claims in the past 5 years?
Youi	<p>During the last 3 years has the Policyholder, regardless of fault, been involved in any car incidents, including accidents, thefts, attempted thefts or any other losses involving a car whether a claim was made or not?</p> <p>Description:</p> <ul style="list-style-type: none"> • Not at fault collision; • Accident or Any Other Damage; • Glass/windscreen only; • Loss, Theft or Attempted Theft; • Natural Hazard (Hail, Bushfire, Storm etc)

INSURANCE HISTORY (COMMON)

Insurance Policy information including cancellation, declines etc

GIO	<p>In the last 3 years, have you or anyone to be insured under this policy had an insurance policy declined or cancelled, a renewal declined, special terms imposed, or had a claim refused?</p> <p>Please specify how many occurrences</p> <p>Type:</p> <ul style="list-style-type: none"> • You were at fault and an excess was payable; • Any other claim where an excess was payable (theft etc.); • Any claim where no excess was payable; • licence suspension, cancellation, disqualification or restriction; • Windscreen claim; • Natural Hazard (eg fire, flood, hail etc.)
Guild	Have you or any drivers ever had a claim denied for fraud or dishonesty?
NRMA	In the last 5 years, has any owner or driver had any insurance refused, cancelled or avoided, insurance renewal not offered, special conditions imposed or claim refused?
QBE	In the past 3 years has this driver been charged with, or convicted of, any criminal offence? In the past 3 years has this driver had an insurance claim denied due to fraud or dishonesty?
Suncorp	In the last 3 years, have you or anyone to be insured under this policy had an insurance policy declined or cancelled, a renewal declined, special terms imposed, or had a claim refused?
Toyota	In the last 3 years, have you or any other intended drivers had any of the following: An application for, or contract of, motor insurance refused, declined or cancelled?

CLAIMS

These can include reference to both accidents and claims, or only claims.

Allianz	<p>Has this driver had any accidents/claims in the past 5 years?</p> <p>Type:</p> <ul style="list-style-type: none"> • You were at fault and an excess was payable; • Licence suspended, cancelled, disqualified or restricted; • Natural Hazard (eg fire, flood, hail etc.); • Any other claim where an excess was payable (theft etc.); • Any claim where no excess was payable; • Windscreen claim
Budget Direct	<p>How many motor insurance claims, regardless of fault, have you had in the last 5 years?</p> <p>How many of the claims were for:</p> <ul style="list-style-type: none"> • an accident where the driver of the car was partially or entirely at fault, • an accident where the driver of the other vehicle or another person was entirely at fault but all their details could not be provided to, or obtained by your insurer, • theft, attempted theft or a malicious act, • fire, or • an accident involving an animal?
BUPA	How many 'at-fault' incidents/claims have they had in the last 2 years?
CGU	How many 'at-fault' incidents/claims have they had in the last 2 years?
Coles	In the last 3 years, how many claims has the main driver made? For how many of these claims did the main driver have to pay an excess?

GIO	<p>In the last 3 years, have you or anyone to be insured under this policy had an insurance policy declined or cancelled, a renewal declined, special terms imposed, or had a claim refused?</p> <p>Please specify how many occurrences</p> <p>Type:</p> <ul style="list-style-type: none"> • You were at fault and an excess was payable; • Any other claim where an excess was payable (theft etc.); • Any claim where no excess was payable; • licence suspension, cancellation, disqualification or restriction; • Windscreen claim; • Natural Hazard (eg fire, flood, hail etc.)
Guild	How many claims (including not at fault) did the main driver make in the last 3 years?
NRMA	How many motor claims have you made in the last 3 years?
PD Insurance	In the past 5 years, have you had any motor insurance claims?
QBE	<p>In the last 3 years, regardless of who was at fault, has this driver been involved in any motor vehicle accidents or other incidents claimed on a motor vehicle insurance policy?</p> <p>What happened:</p> <ul style="list-style-type: none"> • Collision - no other vehicles involved; • collision at fault – other vehicles involved; • collision, not at fault, other vehicles involved; • hit when parked; • windscreen; • theft; • fire; • malicious damage or vandalism; • storm, hail, flood or bushfire
RAC	In the past three years has any driver: Had any accidents or made any claims to a vehicle, regardless of blame?
RACQ	How many at fault claims have you had in the last 3 years?
Real Insurance, Woolworths	How many claims (including not at fault) did the main driver make in the last 3 years?

St George, Westpac	Has this driver had any accidents/claims in the past 5 years?
Toyota	In the last 3 years, have you or any other intended drivers had any of the following: Any motor vehicle claims where you had to pay an excess?
Virgin Money	<p>How many motor insurance claims, regardless of fault, has the Regular Driver had in the last 5 years?</p> <p>How many of the claims were for:</p> <ul style="list-style-type: none"> • an accident where the driver of the car was partially or entirely at fault, • an accident where the driver of the other vehicle or another person was entirely at fault but all their details could not be provided to, or obtained by your insurer, • theft, attempted theft or a malicious act, • fire, or • an accident involving an animal?
Youi	<p>During the last 3 years has the Policyholder, regardless of fault, been involved in any car incidents, including accidents, thefts, attempted thefts or any other losses involving a car whether a claim was made or not?</p> <p>Description:</p> <ul style="list-style-type: none"> • Not at fault collision; • Accident or Any Other Damage; • Glass/windscreen only; • Loss, Theft or Attempted Theft; • Natural Hazard (Hail, Bushfire, Storm etc)

CRIMINAL HISTORY (LESS COMMON)

ANZ	In the last 5 years, has anyone on this insurance policy been convicted of any criminal offence relating to drugs, theft, or burglary, arson, wilful or malicious damage, or fraud?
GIO, Suncorp	In the last 3 years, have you or anyone to be insured under this policy committed any criminal act in relation to fraud, theft, burglary, drugs, arson, criminal damage, malicious damage or wilful damage?
Guild	In the last 5 years, have you or any other drivers of this vehicle had any criminal convictions or been convicted for any drug or alcohol related driving offence?

PD Insurance	In the last 10 years, have you, or any covered driver: Been charged with, or convicted of fraud, theft or arson or been refused a renewal or had a policy cancelled by your insurer?
QBE	In the past 3 years has this driver been charged with, or convicted of, any criminal offence? In the past 3 years has this driver had an insurance claim denied due to fraud or dishonesty?
Toyota	In the last 3 years, have you or any other intended drivers had any of the following: Been convicted of, or had any fines or penalties imposed for any criminal activity?

OTHER

Damage and condition of the vehicle.

GIO	<p>Is it in a roadworthy condition? Does your car have any of the following?</p> <ul style="list-style-type: none"> • Hail damage • Windscreen or window glass damage • Accident or panel damage where paint is removed or metal is exposed • Dents with a diameter larger than 4cm and deeper than 1cm • Scratches more than 10cm long • Rusted areas more than 4cm in diameter • Any other damage of any kind • Minor scratches or general wear and tear are not considered existing damage.
Guild	Does the vehicle have any existing damage (this includes rust, hail, accident damage) or has it ever been declared a Repairable Write-off?
PD Insurance	Is the vehicle, registered, roadworthy, in a safe driving condition, with no pre-existing damage?
QBE	<p>Does it have any existing damage?</p> <p>Select YES if the car has one or more large dents, hail damage or unrepaired damage.</p> <p>Select NO if the existing damage is just minor dents or scratches.</p> <p>If you select "YES", we will only be able to offer you a quote for Comprehensive cover for your car's market value or Third Party Property Damage cover.</p>

Real Insurance, Woolworths	<p>Does your car have any existing damage? Please select what type of damage your car has:</p> <ul style="list-style-type: none"> • Minor <3 panels and 1 bumper; • Minor 2 panels and 2 bumpers; • Minor paint scratches or fading • Windscreen chips no repair required; • major; • other <p>For small scrapes, scratched and dings, select one of the minor damage options. For larger dents, damage to the car's frame or any accident where an air bag is activated, selected 'Major'.</p>
Suncorp	<p>Is it in a roadworthy condition? Does your car have any of the following?</p> <ul style="list-style-type: none"> • Hail damage • Windscreen or window glass damage • Accident or panel damage where paint is removed or metal is exposed • Dents with a diameter larger than 4cm and deeper than 1cm • Scratches more than 10cm long • Rusted areas more than 4cm in diameter • Any other damage of any kind
Youi	<p>Does the {CAR} have any unrepaired accident or hail damage?</p> <ul style="list-style-type: none"> • No damage, • hail damage; • accident damage; • accident and hail damage.

EMPLOYMENT AND FINANCIAL POSITION

Most if not all insurers asked whether the vehicle was financed, while many also asked whether the driver was the owner of the car.

A minority of insurers asked questions regarding the prospective insured employment status, their home ownership status or their financial position.

QBE asks whether the insured bought the car in the last 6 months, while Bingle asked when the insured bought the car and whether it was more or less than 12 months ago.

Allianz	What is your current employment status?
Budget Direct	Do you or your spouse/partner (if any) own a home?
Guild	What is the main driver's current employment
PD Insurance	In the last 5 years, have you, or any covered driver: Declared bankruptcy or defaulted on a loan or credit card?
St George, Westpac	What is your current employment status? What is your current residential status? <ul style="list-style-type: none"> • Renter • Owner • Other
Virgin Money	Does the Regular Driver or their spouse/partner (if any) own a home?
Youi	Employment: <ul style="list-style-type: none"> • Employed; • Self-employed; • Full time student; • Home duties; • Retired; • Unemployed; Please select the nearest Occupation Industry

CAR REGISTRATION

Inputting your car registration to auto-populate your car details automatically rather than undertaking a manual process of selecting the make/model/year is now more common than not. In our examination of inception sales process the following insurers did not offer an automated process registration:

- PD Insurance
- Guild
- Comminsure
- Toyota Insurance

7. Appendix B – NielsenIQ Omnibus Research: Automatic disclosure of personal information

NielsenIQ were asked by Financial Right to conduct consumer research into Australian's level of comfort in the disclosure of particular information being automated to negate the possibility of claims being denied due to information disclosure errors. The research aimed to:

1. Take a pulse of the Australian population with regards to their comfort in sharing information with insurers; and whether this differs by different sub segments of the population
2. Explore what types of information people would be comfortable being automatically shared with insurers
3. Measure awareness of the Insurance Reference Service (IRS) and its holding of the IRS claims database
4. Understand usage and propensity to pay for a My Insurance Claims Report

METHODOLOGY

NielsenIQ Australia has conducted an independent study as follows: A nationally representative sample of Australians who own cars, motorbikes or scooters/mopeds (n=1503) were asked about a range of personal information.

The fieldwork is done in an unbiased manner without intervention from Financial Rights and quality control procedures were followed strictly.

The Omnibus posed 4 questions:

QA1 *Which of these do you think are areas where your insurance claims could be rejected if you did not disclose your personal information correctly or fully:*

- Your name
- Your address
- Your email address
- The history of the vehicle you are trying to insure e.g. modifications, finance status
- The vehicle usage e.g. how many KMs intending to drive per year, personal or business use
- Your driving history including demerits, licence suspensions, cancellations or disqualifications, licence status, accidents and offenses
- Your insurance history including claims made, claims declined and insurance cancellations
- Your criminal history

- Your financial history including loan defaults and bankruptcies
- Your medical records
- None of these
- Don't know

QA2. *Which of the following types of information would you be comfortable allowing insurers to access from available data sources before taking out insurance, to avoid the situation of a claim being rejected because you forgot or made a mistake?*

- Your name
- Your address
- Your email address
- The history of the vehicle you are trying to insure e.g. modifications, finance status
- The vehicle usage e.g. how many KMs intending to drive per year, personal or business use
- Your driving history including demerits, licence suspensions, cancellations or disqualifications, licence status, accidents and offenses
- Your insurance history including claims made, claims declined and insurance cancellations
- Your criminal history
- Your financial history including loan defaults and bankruptcies
- Your medical records
- None of these
- Don't know

The question uses a 5 point Likert Scale, where 1 means Very uncomfortable and 5 means Very comfortable.

QA3. *Which of the following were you aware of before today?*

- There is a centralised database of your insurance claims and enquiries information managed by the Insurance Reference Service
- Information on this database is used by insurers when you make a claim to check the information you provided when taking out insurance is correct
- That you can access this information via your My Insurance Claims Report
- That you need to apply and pay a fee of \$22 to access your My Insurance Claims Report
- None of the above

QA4. *How likely would you be to apply and pay \$22 to access your My Insurance Claims Report?*

KEY RESULTS

Insight:

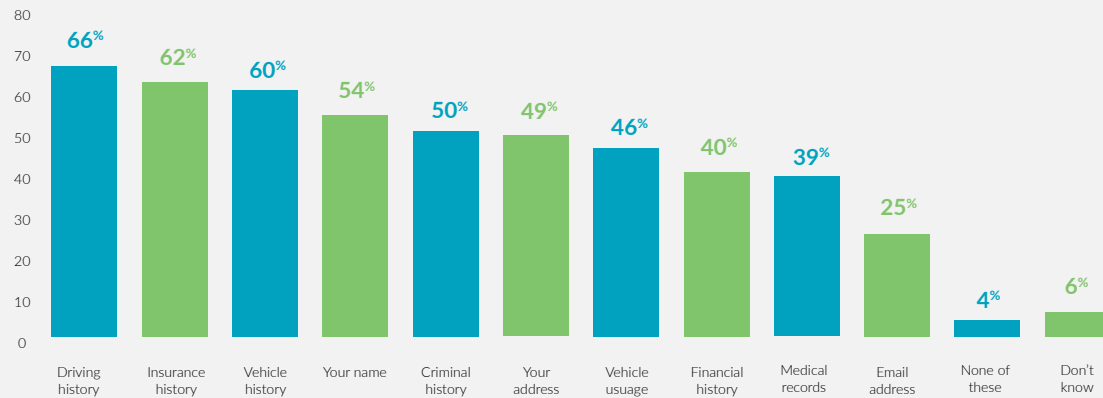
- 1 in 10 Australians don't know or don't think disclosure of information can result in their insurance claims being rejected. This is significantly more likely to be the case among females and those living in low income households.
- Older Australians aged 55+ were more knowledgeable about the disclosure areas that could result in claims being rejected.
- Most are comfortable with their vehicle, licence and driving history being shared with insurers, however draw the line at medical, financial and criminal history.
- There is a low awareness of the My Insurance Claims Report and a low willingness to pay for the report. Young, affluent males, living in metro regions showed the most interest.

Recommendations:

- Need for education among population to help reduce the risk of claims being rejected due to the erroneous disclosure of personal information. If more Australians knew this was a possibility, there might be more interest in accessing their details via the My Insurance Claims Report.
- Develop automated pre filling of driving and insurance history to avoid disclosure failure leading to insurers rejecting claims.
- Improve awareness, accessibility and remove the cost of the My Insurance Claims Report to allow Australians to access to their data in an efficient way to ensure accurate information disclosure at the time of taking out insurances.

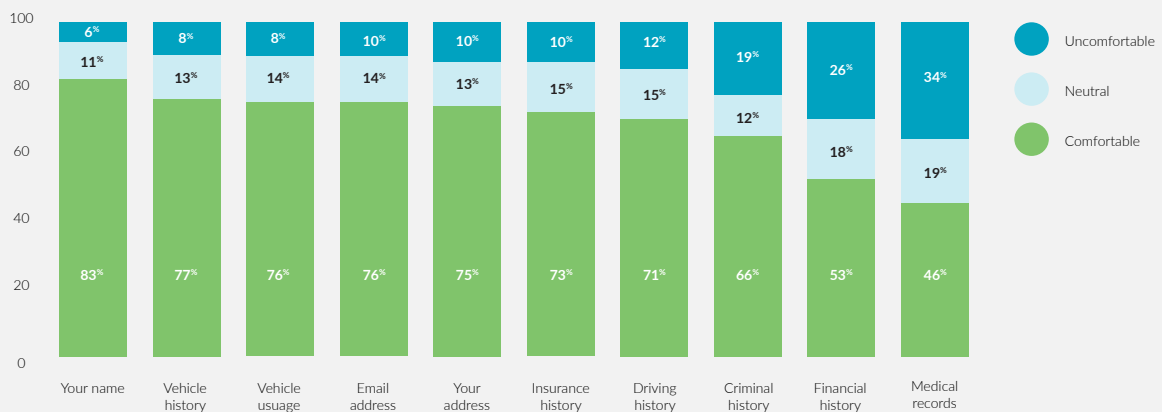
As many as 9 in 10 know that there are areas of information that, if not disclosed properly, could risk claims being accepted and paid out

Most commonly Australians think claims can be rejected due to driving, insurance or vehicle history being incorrectly disclosed, with older Australians being the most knowledgeable in these areas



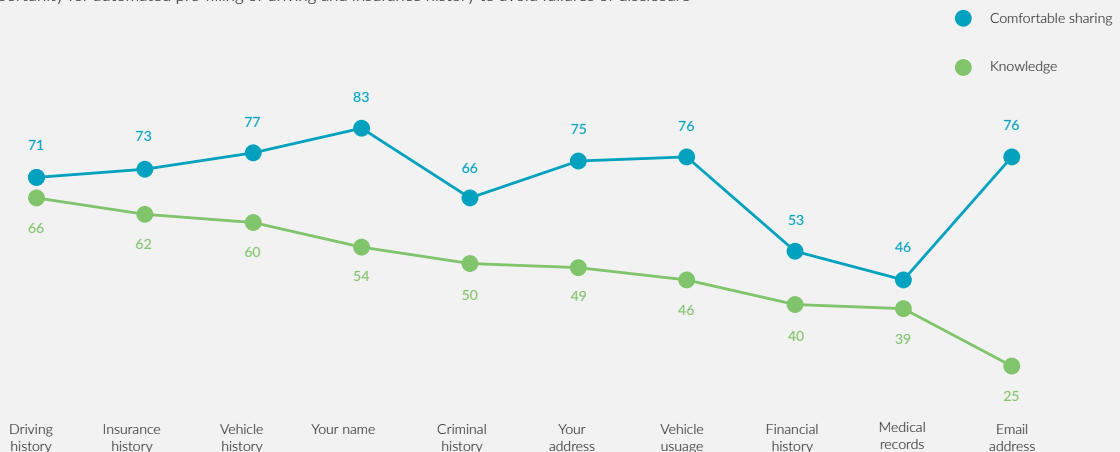
While the majority are comfortable with insurers accessing their names, vehicle history and usage, less than half are comfortable for their medical records being accessed

Criminal and financial history are also areas where Australians display some discomfort being accessed by insurers



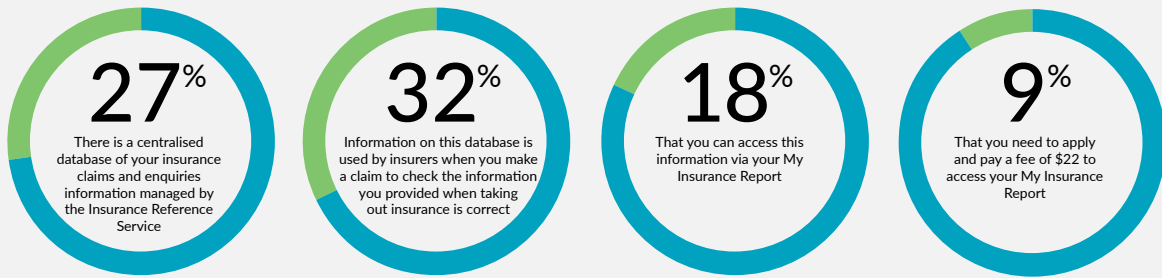
More Australians are comfortable sharing this information than are aware false disclosure could result in claims being rejected

Opportunity for automated pre-filling of driving and insurance history to avoid failures of disclosure



Few are aware of the ability for individuals to access their own reports, yet more suspect insurers are using a claims database

Aware of each aspect:



Significantly more likely to be:

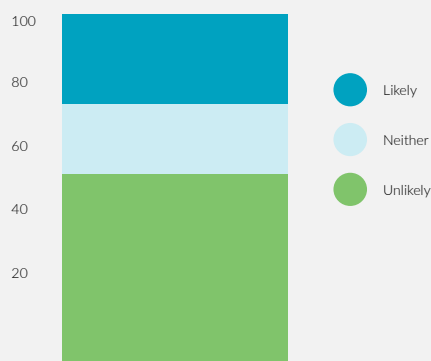
Female	(59%)
Aged 40-54 years	(58%)
Aged 55+	(69%)
Living in SA/NT	(63%)
Living in WA	(61%)
Living in regional centres	(63%)
Not employed	(67%)
Personal income <\$60K	(62%)
Household income <\$100K	(56%)

Uncomfortable with insurers accessing:

Medical records	(65%)
Criminal history	(63%)
Driving history	(59%)

Almost half are unlikely to pay to access their My Insurance Report

With just over a quarter likely to pay to access it



Significantly more likely to be:

Males	(31%)
Aged 18-24 years	(40%)
Aged 25-39 years	(37%)
Aged 40-54 years	(33%)
Living metro regions	(30%)
Employed	(35%)
Personal income \$60K+	(37%)
Household income \$100K+	(36%)
Motorcycle owners	(45%)
Scooter/Moped owners	(44%)
Aware of IRS Database	(44%)
How its used by insurers	(41%)
Aware of My Insurance report	(46%)
And how to access it	(43%)

About us and acknowledgements

ACKNOWLEDGEMENT OF COUNTRY

The Financial Rights Legal Centre acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of this land where we live, learn and work and pays respect to their Elders, past, present and future.



ABOUT FINANCIAL RIGHTS LEGAL CENTRE

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers.

We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues.

Financial Rights is one of the services operating the National Debt Helpline, which helps consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

National Debt Helpline: **1800 007 007**
Insurance Law Service: **1300 663 464**
Mob Strong Debt Help: **1800 808 488**

Monday - Friday | 9.30am - 4.30pm



Ecstra Foundation is a grant making charitable organisation committed to building the financial wellbeing of all Australians within a fair financial system. Money matters. Ecstra is assisting Australians with resources and support to help them talk about money, to navigate through this crisis and to build future financial security. We inform and support consumers, we engage with organisations across all sectors, we make grants to organisations to support and strengthen communities and we research, measure and evaluate outcomes to grow the evidence base of what works.

We also support community organisations on the financial frontline - those delivering direct support to Australians in financial need, but also those ensuring appropriate consumer protection frameworks and community knowledge of consumer rights and redress are available.

Ecstra works as part of the National Financial Capability Strategy led by the Australian Securities and Investments Commission (ASIC). Our initial funding, provided through the Community Benefit Payments scheme, means we will always place consumers at the centre of our work.



A century ago, Arthur C. Nielsen borrowed \$45,000 to start a business that would test the quality of conveyor belts and turbine generators. With each technological advancement and through each new era of business, Nielsen marked the passage of time with trustworthy reporting and the relentless pursuit of truth.

Today, our retail and consumer data platform measures shopper behaviors more precisely than ever before. While trends may change, our unmatched integrity and commitment to data science and analysis remain true and trusted across the globe.

Only NielsenIQ is able to deliver the clear perspective, the breadth and depth of information, and the complete context your business needs. Our insatiable search for knowledge drives our momentum forward, so we stay ahead of the curve to reveal the connected story of your customers and business. NielsenIQ has a global reach, with presence in more than 100 countries, we bring synergy and learnings from developed to emerging markets, with a breadth of experience across all industries. Uncovering the truth is critical for your success, and we have the vision to lead you to True Intelligence.



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