

Factsheet No.12

Insurance - common questions?

This factsheet looks at the process of obtaining and utilising insurance in Australia, as well as some of the legal issues surrounding insurance

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Obtaining insurance, duty of disclosure, and how to get the best value and cover

There are many different types of insurance, which cover different types of property, expenses or liabilities. Common forms of insurance include Workers Compensation, Motor Vehicle Insurance, Home Building and Contents insurance, Health Insurance and Travel Insurance. For the most part, the process involved in obtaining insurance is fairly similar across all forms. Most major insurers allow customers to obtain a quote and apply for insurance online and over the phone.

In applying for insurance cover, you will be required to provide a range of information to your desired insurer. Though this will differ depending on the type of insurance you wish to obtain; this often includes matters such as your age, habits, and personal history.

Here, insured persons hold a duty of disclosure.

Under the duty of disclosure, persons applying for insurance are legally obligated to disclose any information, which they know (or a reasonable person would know) to be relevant to the insurer's decision to provide insurance, and the terms on which it is offered. This does not include details, which diminish the risk of insuring you, are common knowledge, or the insurer knew or ought to have known. Importantly, if you fail to meet your duty of disclosure, the insurer may refuse to cover you in the event of a claim.

In practice, the information you are required to provide will be included in the insurance application form (which tend to be quite comprehensive). Notably, if you do not answer a question in an application form, and are still granted cover by the insurer, the insurer will be deemed to have waived the duty of disclosure regarding that particular matter.

Despite the type of insurance you are seeking, you will generally have a range of options regarding the extent of your cover. This decision will determine the premium (that is, the ongoing fees) you will be required to pay to be insured. Here, it is important that you give a lot of thought to this decision. If you seek a large amount of cover, you may find yourself unable to meet your premium payments; conversely, if you do not purchase enough cover, you may find yourself in a situation that is not covered by your insurance plan. It is important for you to strike a balance between these factors.

In addition to deciding the extent of your cover, it is important to shop around between providers to ensure that you receive the best possible value on your insurance. Here, you should seek quotes from a number of insurers and compare the details of their proposed plans. Alternatively, there are a number of websites, which specialise in comparing insurance plans, however the accuracy of these services cannot be guaranteed.

What is a PDS? Why is understanding your PDS important?

Under law, insurers are required to provide a Product Disclosure Statement (**PDS**) for their insurance products. These statements are required to be written

in plain English (rather than legal jargon), and must disclose all of the terms, features, costs and restrictions included within the insurance policy.

Though it can be quite inconvenient to have to read through and understand multiple PDS documents, it is very important that you do so. The information provided within the PDS will form the basis of your insurance contract, and you will be bound by the terms included within it, even if you do not understand them. As such, carefully reading the PDS will prevent you from signing up for unwanted restrictions or conditions, and will ensure that you are provided with the level of cover you desire. Furthermore, reading the PDS documents provided by different insurance companies puts you in the best position to compare these providers and ensure you are selecting the best option.

Types of Insurance

There are various forms of insurance however, some common ones you may purchase or be insured under include the following.

- Workers Compensation.
- Motor Vehicle Insurance.
- Home Building and Contents Insurance.
- Health Insurance.
- Travel Insurance.

Workers Compensation is a compulsory insurance for all Australian employers. If you suffer bodily injury, disease or illness (mental or other) during, or at work, you should report to this your employer immediately. You may be entitled to claim loss of income and other associated expenses from your employers workers compensation insurance.

Motor Vehicle Insurance has two main forms:

- Compulsory Third Party (**CTP**); and
- comprehensive insurance.

CTP (also known as your Green Slip) is compulsory by law and is effected with the registration of your vehicle. CTP covers bodily injury or death to third parties (including passengers and pedestrians). If you injure people and you are at fault, CTP covers you against the financial costs associated with their injuries.

Comprehensive insurance can cover damage to your vehicle, damage to other vehicles, damage to, or loss of property, and the theft of your vehicle.

You should consider obtaining comprehensive insurance as it may protect you from financial loss if there was large property damage in a motor accident.

Home Building and Contents Insurance generally covers your home building, garage or shed and their contents, for damage and loss caused by fire, break-ins, or weather events (i.e. flood, storm, earth quake etc.). Your policy may also cover up to \$20 million for legal liability cover (i.e. cover for your negligence if someone suffers injury or death on your property).

Policies may vary, so it is important to read the terms and PDS carefully before taking out this cover.

Health Insurance is also referred to as private health cover and covers hospital and/or other ancillary treatments (dental, optical, physiotherapy etc.), which is not covered by Medicare. When choosing a policy you should determine what you need, what different insurers offer, and the premium. It is also important to note that if this is your first time, you will need to serve a waiting period. More information can be found at <http://www.privatehealth.gov.au/healthinsurance/howitworks/>.

Travel Insurance is taken out on domestic or international flights, and covers medical expenses, f cancellation, lost luggage, flight accident or any other losses. It is important to look carefully at the policy as cover and premiums vary significantly from policy to policy.

Claims process

There may be slight differences in the way that insurance claims are made and managed over different forms of insurance and by different insurers. For the most part, these are generally fairly similar. Here, you will be required to contact your insurer (this can usually be done online or by phone), and provide details of the incident or issue, which has caused you to make a claim. During this process, your insurer may ask you to provide particular documents and evidence to support your claim. It is important that you are truthful and cooperative during this process, as a failure to do so may invalidate your claim.

Once your claim has been processed and approved, your insurer will send you the amount sought. Depending on the circumstances and the nature of your insurance plan, you may be required to pay or

bear an 'excess' or 'deductible' before you are insured for your loss or liability. If the amount you are claiming is small, you may find that the excess represents a large proportion of the amount sought. In these situations, it may not be worthwhile to pursue a claim.

How insurers must deal with consumers

There are various laws and standards in place, which dictate the manner in which insurers may interact with and provide their services to consumers. Here, an important standard is the General Insurance Code of Practice. This is a voluntary code, which, in general, requires insurers to be open, fair and honest in their dealings with customers. It also sets standards regarding areas like claims, financial hardship, catastrophes and complaints. Presently, many major insurers are subscribers to this code, and a full list of signatories can be found at <http://codeofpractice.com.au/about-the-code/subscribers-to-the-code>

In addition to the General Insurance Code of Practice the *Insurance Contracts Act* provides a number of rules regarding the way in which insurance contracts operate, and the way in which insurers apply their terms. Perhaps the most important aspect of this Act is the duty of utmost good faith placed upon insurers. Under this, insurers are required to act honestly and fairly towards the customer throughout the duration of the insurance contract. This means that they must not misrepresent facts about the policy (or any other facts) that are material to the policy. The insurer must also disclose any relevant policy terms that have major consequences. It also requires insurers to give due regard to the customer's interests when the insurer is placed in a position of conflict (i.e. deciding whether to pay out on a claim, or where a dispute arises).

Complaints about insurers

As an insured person, you may find yourself dissatisfied with your interactions with your insurer. For the most part, the most common disputes arising between insurers and customers arise in situations where insurers refuse claims, or the amount provided is less than the customer believes is sufficient. If you are unhappy with your insurance company's decision on your claim, you can ask that your case be reviewed via an internal dispute resolution process (IDR).

The internal dispute resolution process for each insurer will be included within the PDS, which forms part of your insurance contract. Most insurers provide

a copy of this process on their website for easy reference. During the process, you will be allocated a representative who will have decision making power over your complaint. This person is obligated to write to you within 15 business days to let you know the outcome of the dispute, so long as the insurer has all relevant information. The insurer is required to keep you informed of the progress of their review of your dispute at least every 10 business days. If you are still dissatisfied with the result of the internal review, you can bring the complaint to the external disputes service run by the Financial Ombudsman Service.

The Financial Ombudsman Service (**FOS**) is an independent body which provides a number of services free to consumers. This includes mediating insurance disputes and complaints, and where mediation is unsuccessful, making determinations. Decisions made by the Financial Ombudsman Service are legally binding on insurers, but not on consumers.

If you are still dissatisfied following a determination by FOS, you are free to take the dispute to court. If you wish to do so, it is important that you seek legal advice and representation so that the legal aspects of your claim can be independently examined, and to ensure that things like time limits and legal formalities are satisfied. If you need help or advice in this area, you can contact the Insurance Law Service online or at 1300 663 464.

If you believe the insurer's conduct may affect other customers, you can also complain to the Australian Securities and Investments Commission (**ASIC**) about their actions.

Recoveries and Hardship

Under the General Insurance Code of Practice, there are a number of rules in place regarding the way insurers can act towards customers when recovering debts, and where customers are suffering financial hardship.

When seeking to recover debts from customers, insurers are generally required to act in a fair and considerate manner. Furthermore, where customers are unable to pay their insurance costs due to financial hardship (e.g. in cases of injury, illness or unemployment), the insurer must consider an alternative payment arrangement, such as extending the due date for payment, allowing payment in instalments; allowing payment of a reduced lump sum amount, or a combination of these options.

In addition to the financial hardship rules surrounding recoveries, the [General Insurance Code of Practice](#) includes provisions that apply where you have made a claim with your insurer and can show that the circumstances leading to this claim have left you in urgent financial need.

Where this occurs, the insurer must fast-track the assessment and decision process, and/or make an advance payment to assist in alleviating the hardship within 5 business days the urgent financial need being demonstrated.

If you are dissatisfied with your insurer's conduct, decision or action regarding recoveries and financial hardship, you may make a complaint as outlined above.

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This factsheet is no substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre

