

When “claim denied” is not the final word

Unfortunately for those of us who dutifully pay our insurance premiums (insurance companies call us “insureds”), we do not always receive a payment when we make a claim against our insurance policies. Fortunately, while it may seem like insurers have the upper hand, their decisions can be challenged.

The *Insurance Contracts Act 1984* governs insurance arrangements in Queensland and attempts to strike a fair balance between insurers, insureds and other members of the public. It can provide an avenue for challenging an insurance company’s decision not to pay out in certain circumstances.

Claim denied!

When you take out an insurance policy, the insurer must provide a copy of its Product Disclosure Statement (PDS) for that policy. The PDS forms part of the agreement between you and the insurer and sets out, amongst other things, the circumstances where the insurer may avoid or must honour a claim.

The PDS can be tough reading, but it is a good idea to familiarise yourself with its terms at the beginning of the policy and even more so when making a claim.

Insurance Contracts Act v Product Disclosure Statements

Even if the PDS excludes a claim, there are certain circumstances where the insurer may still be required to pay all or part of the claim.

For example, sometimes you may fail to tell the insurer something about the subject of the insurance policy (e.g. a building, contents, a person or business / activity insured, a motor vehicle), and thereby fail to comply with your duty of disclosure.

However, an insurer can only deny a claim in full if the information that you failed to disclose was relevant to the insurer’s decision whether to insure or on what conditions. If it can be established that you would have been offered the same or a similar policy even if the insurer knew the missing information, then the insurer must pay the claim in full or in part.

Similarly, claims can only be denied for reasons that were capable of causing or contributing to the loss being claimed (e.g. cost of repairs).

For example, an insurer may not deny a claim to repair a motor vehicle because the insured failed

to tell the insurer about a feature of their motor vehicle if that feature played no part in the cause of accident and the insurer would have insured the vehicle anyway had it known about the feature before the accident.

If you've recently made an insurance claim that's been knocked back by your insurer, please contact our [Litigation + Dispute Resolution team](#) who can advise whether you have grounds to challenge that decision.

For more information, contact our Litigation + Dispute Resolution team.

Harrison Humphries, Head of
Section

Brian Conrick, Senior
Consultant

Chloe Goodwin, Lawyer

Ebony Archer, Lawyer

Alison Cassidy, Paralegal

Contact Us

Phone 07 4688 2188

www.cglaw.com.au

WORKPLACE • LITIGATION + DISPUTE RESOLUTION • COMMERCIAL + PROPERTY • CONSTRUCTION
INTELLECTUAL PROPERTY • TAX, STRUCTURES + PLANNING • RESOURCES

Copyright 2018 – Clifford Gouldson Lawyers. This is not legal advice. You ought to obtain legal advice before relying on any of the information contained in this publication.