



Member forums

Life Insurance

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Today's session includes



Statistics



Cancelling life policies



Premium complaints



Claims delay complaints
and s29(6) complaints

Life insurance complaints



Complaints received

1,623 complaints received

31% resolved at Registration and Referral stage

Top five life insurance complaints received by product ¹

| Product | Total |
|------------------------------|-------|
| Income Protection | 575 |
| Term Life | 290 |
| Total & Permanent Disability | 184 |
| Funeral Plans | 169 |
| Trauma | 115 |
| Whole of Life | 115 |

Top five life insurance complaints received by issue ¹

| Issue | Total |
|--|-------|
| Incorrect premiums | 213 |
| Denial of claim | 212 |
| Delay in claim handling | 172 |
| Service quality | 141 |
| Misleading product/service information | 109 |

Complaints closed

1,409 complaints closed ²

More than **\$13.99** million ³ in compensation was awarded or obtained through AFCA

57% of complaints resolved by agreement, or in favour of complainants

Average time to close a complaint
124 days

Stage at which life insurance complaints closed

| Stage | Total |
|------------------------|-------|
| At registration | 486 |
| At case management | 395 |
| Preliminary assessment | 194 |
| Decision | 239 |

Average time taken to close life insurance complaints

| Time | Total |
|-----------------------------|-------|
| Closed 0–30 days | 10% |
| Closed 31–60 days | 18% |
| Closed 61–90 days | 24% |
| Closed greater than 90 days | 49% |

¹ One complaint can have multiple products/issues.

² This includes 571 received before 1 July 2020, and 1,021 received from 1 July 2020 to 30 June 2021.

³ This includes matters previously received by AFCA's predecessor, Financial Ombudsman Service, and resolved by AFCA between 1 July 2020 to 30 June 2021.

Cancelling life insurance policies



AFCA's position is that s210(5) of the *Life Insurance Act* applies to the cancellation of all life policies, not just policies with a surrender value

A valid s210(5) notice must

- > State the amount of the outstanding premium
- > State the date on which that amount became due, or will become due
- > Warn the complainant the policy will be cancelled if the amount is not paid

28 days notice must be given before cancellation. Where the notice is emailed, instant delivery will be assumed. Where the notice is posted, we will apply s160 of the Evidence Act – which currently deems delivery after seven working days

Cancelling life insurance policies



The insurer must notice cancel the policy until the notice period has passed

Fairness may require the insurer to reinstate a validly cancelled policy. These things will be relevant:-

- > the insurer's standard practice in relation to reinstatement
- > the length of time between the cancellation and the request to reinstate
- > the reason for non-payment of the premiums

Fairness may also require that a policy not cancelled strictly in accordance with s210(5) be treated as validly cancelled. These things will be relevant:-

- > how long premiums have been unpaid since the purported cancellation
- > evidence about whether the customer actually knew the policy was not on foot
- > evidence showing the complainant chose to let the policy lapse and later changed their mind

Cancelling life insurance policies

AFCA has published an Approach Paper on cancellation of insurance policies.

You can find it at afca.org.au/approach



Premium complaints



AFCA continues to receive a lot of complaints about premiums

AFCA has only a limited jurisdiction to consider complaints about premiums. AFCA can only consider complaints about:-

- > non-disclosure, misrepresentation of the premium
- > incorrect application of the premium
- > a breach of law by the financial firm

AFCA cannot consider a complaint that a premium increase was simply too large.

Premium complaints



AFCA will exclude a complaint at the Registration and Referral stage if it is clear that it is outside jurisdiction.

Insurer should provide this information at the earliest opportunity:-

- > the policy documents showing a provision that premium rates are not guaranteed.
- > the letters issued to the Complainant, informing them of the premium increases
- > confirmation from the Financial Firm's premium pricing unit including:
 - factors and reasons impacting and leading to any re-rates and premium increases.
 - whether any re-rates were applied (if so, what year/s, percentage).
 - full breakdown of how the premiums were calculated.
 - evidence any re-rates were applied to all policyholders in the group (not only the Complainant).
 - confirmation that the premium increase amounts are correct.
- > Any other supporting information you believe will assist us in our jurisdictional assessment.

Claims delay complaints



AFCA receives many complaints about delays in the assessment of claims

AFCA will deal with the complaints as quickly and efficiently as it can, but even in the best case, the AFCA process through to determination takes months, not weeks or days

AFCA expects insurers to continue with claims assessment while a complaint is at AFCA

AFCA will explain to complainants that their cooperation with disputed requests by the insurer may lead to a quicker outcome than waiting for an AFCA determination

AFCA has begun early ombudsman conferences in claims delay cases, aimed at earlier resolution

Variation of cover - evidence



Increase use of variation of contract remedy under section 29(6) ICA for non-disclosure or misrepresentation in life and super claims.

Steps

1. Has there been non-disclosure/misrepresentation?
2. What is the insurer's proposed varied position (e.g. a retrospective exclusion) ?
3. Is this proposed varied position not inconsistent with other reasonable and prudent insurers?
4. Does the insurer's proposed varied position allow for the denial of the claim?

Variation of cover - evidence



- > Variation e.g. new exclusion would have been applied under the insurer's underwriting guidelines.
- > We also require evidence that:
 - the imposition of the exclusion **and**
 - the wording of the exclusionare substantively similar to (i.e. not inconsistent with) what other reasonable and prudent insurers would have applied
- > No judicial guidance on s 29(6) and s29(7) but the following cases offer guidance on AFCA's position

Variation of cover - evidence



Determinations 664256 & 692867/695770

- > Complainant had TPD cover both inside and outside super with same insurer.
- > Complainant lodged claim for major depression, anxiety and chronic fatigue
- > Complainant answered 'no' to questions about treatment for mental health and symptoms of mental health in last 5 years – this was incorrect
- > Insurer sought to retrospectively apply a mental health exclusion which was widely drafted; included conditions not necessarily caused by mental health conditions, including fatigue and fibromyalgia
- > Insurer declined both claims on basis they were excluded by retrospective exclusion

Variation of cover - evidence



Determination 664256 (non-super)

- > One example of an exclusion provided by one other insurer (external retrospective u/w opinion)
- > Insurer provided its own u/w opinion statutory declaration and guidelines
- > Determination found that the insurer's exclusion was more restrictive than external insurer's exclusion (conditions not caused by mental health)
- > Exclusion purporting to cover major depression and anxiety not inconsistent but chronic fatigue was inconsistent. Failed Step 3.

Variation of cover - evidence



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Claims delay complaints



Determination 692867/695770

Significant additional evidence provided by insurer

- > Reinsurer - Statement of Head of Underwriting at reinsurer containing 5 mental health exclusions of life insurance companies at that time
- > Insurer - Statutory declaration from insurer's Head of Underwriting
 - detailed research into mental health exclusion wording at relevant time
 - provided mental health exclusions - 4 from insurer and 6 from reinsurer
- > Additional evidence provided for purpose of showing chronic fatigue not inconsistent if there is a link ('as a result of') to mental illness – satisfied Step 3
- > Determination found that there was no evidence that chronic fatigue actually related to mental health on the facts of this complaint – failed Step 4

Thank you

