A Consumer Guide to Life Insurance Law

What this guide is about

Life insurance can help to provide financial security in the case of an unexpected event that impacts your life or health. This guide is a practical summary of life insurance law in Australia and how it relates to consumers. As it focuses on laws specific to financial services, other laws not explained in this guide may also apply, such as general consumer law.

Who is the Financial Services Council (FSC)?

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in financial services, one of Australia's largest industry sectors. It is responsible for the Life Insurance Code of Practice, in which subscribing insurers commit to standards of consumer protection beyond what the law requires.

More information

If you need any further information or assistance on the topics discussed in this guide or for any other questions related to a life insurance policy, please contact your product issuer. Other services such as Legal Aid, local community legal centres and the Insurance Law Service may also be able to help you with any concerns you may have.

Contents

1. What is life insurance?

The term "life insurance" covers a range of insurance products including:

- life cover, also known as term life insurance or death cover, which pays an agreed lump sum when the insured person dies.
- Total and Permanent Disability (TPD) cover which pays a set amount designed to cover the costs of rehabilitation, repayment of debt, and the future cost of living, if the insured person is totally and permanently disabled because of illness or injury.
- trauma cover (also referred to as critical illness or recovery insurance), which provides cover if an insured person is diagnosed with a serious illness or injury covered by the policy.
- income protection insurance, which helps to replace some of the income lost when the insured person is unable to work due to illness or injury.
- other policies that provide cover for risks related to death or injury, including funeral and consumer credit insurance.

Life insurance is available to be purchased through several providers, including:

- superannuation funds,
- financial advisers,
- insurance comparison services, or
- directly from a life insurance company or distributor.

For more information about life insurance, please visit the [Money Smart website]().

2. Who regulates life insurers?

Responsibility for the regulation of life insurers is divided between the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA):

- ASIC is responsible for financial services licensing, the conduct of financial services providers, product design, product disclosure, marketing and dispute resolution.

- APRA is responsible for the registration of life insurers, prudential management, operating standards and industry data collection.

To find out more on each of these organisations please visit the ASIC website and the APRA website.

More information on how to make a complaint about an insurer can be found in the section below titled *'What you can do if you have a complaint'*.

3. Key consumer protections when buying and holding life insurance

The law protects consumers by requiring life insurers to treat you efficiently, honestly and fairly, to ensure that the products they sell to you are likely to meet your needs. The law is also intended to ensure you will be given the information you need to make an informed decision on the policy that is right for you.

Design and Distribution Obligations (DDO)

The DDO is part of the *Corporations Act 2001*. Under DDO, life insurers must prepare a "Target Market Determination" for the life insurance product which specifies the class of consumers that comprise the target market for the product.

Life insurers must design and distribute their products such that it is reasonable to conclude the consumer is likely to be within the target market; and that the product would likely be consistent with the likely objectives, financial situation and needs of consumers in the target market.

Under DDO, a life insurer must take reasonable steps that will, or are reasonably likely to, result in the distribution of the product to consumers in the target market; and reasonable steps such that the policy is likely to be consistent with the likely objectives, financial situation and needs of people in the identified target market.

The insurer must also periodically undertake a review to ensure the target market remains appropriate and the policies are being appropriately distributed to that target market. Some aspects of DDO do not apply to financial advisers where the customer has received personal financial product advice, as the adviser is required to provide advice that is in the customer's best interests.

To find out more about the DDO, please visit the ASIC website.

Unfair contract terms

The *Australian Securities and Investments Commission Act 2001* gives a court the power to void unfair terms in most standard form consumer life insurance contracts other than group insurance (such as a policy issued through a superannuation fund or some large employers). A term is unfair if:

- it would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- it is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term; and
- it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

Life insurers are expected to consider the terms of their policies carefully, to ensure they don't result in unfair impacts on consumers.

To find out more about unfair contract terms, please visit the ASIC website.

Sales practices

The *Corporations Act 2001* prevents anyone from selling you a life insurance product by phone, in person, or through instant messaging unless you have requested them to contact you for this reason. This 'anti-hawking' law prevents unsolicited offers of life insurance policies being made to consumers who are not interested in these products.

The law also requires a 'deferred sales model' for the sale of any add-on of a life insurance policy to another product, such as a credit card. This means that a provider must usually wait at least four days before selling you any extra products, or not at all if you have opted out of receiving any further offers.

To find out more about these laws, please visit the ASIC website.

Disclosure

If you are offered a life insurance policy, you will be provided with a Product Disclosure Statement (PDS). The PDS will explain the key features of the product, including what conditions need to be met to make a claim, what is excluded, how the premiums are calculated and can change in future, risks associated with the policy, and what you can do if you have a complaint.

If you need a copy of the PDS, please contact your insurer.

Accurate information and fair treatment

The *Corporations Act 2001* and the *Australian Securities and Investment Commission Act 2001* include various prohibitions on misleading or deceptive conduct, false or misleading representations, unconscionable conduct, harassment, and coercion, in relation to financial products and services. These laws mean you can expect to receive accurate information about the insurance policy you are taking out, and will not be inappropriately pressured to buy a policy you don't want. The law also acts to protect vulnerable consumers from predatory behaviour.

If you feel that you have been given misleading or incorrect information, harassed, were pressured into purchasing a policy, or were taken advantage of when an insurance policy was sold to you or during a claims process, you should make a complaint. See the section below titled *'What you can do if you have a complaint'*.

Cooling off period

The *Corporations Act 2001* gives you a right to return a financial product and be refunded any money you have paid for the product, within a minimum period of time after the product was acquired. The statutory minimum period is 14 days, but life insurers subscribing to the industry Code of Practice will offer cooling off periods of at least 30 days for cover longer than three months. The PDS will include details of the cooling off period applicable to your policy.

4. Consumer privacy

The *Privacy Act 1988* regulates the way individuals' personal information is collected and handled.

The law prohibits insurers from collecting your personal information unless it is needed to provide the services you will receive by having the policy.

As an individual, the Privacy Act gives you greater control over the way that your personal information is handled. It provides that you:

- must consent to the collection of sensitive personal information, such as health information;
- will be informed that your personal information is being collected and why, how it will be used and who it will be disclosed to;
- will have the option of not identifying yourself, or of using a pseudonym in certain circumstances;
- can ask for access to your personal information (including your health information) held by the insurer;
- can stop receiving direct marketing;
- can ask for any incorrect personal information about you to be corrected; and
- can make a complaint about an organisation or agency the Privacy Act covers, if you think they've mishandled your personal information.

Life insurers are obliged to make a copy of their privacy policy available which gives you information on how personal information is collected and used, and how to contact them if you have a question or complaint. This can usually be found on your insurer's website, the PDS, or the insurer will provide a copy to you upon request.

For more information on your privacy visit your insurer's website or the Office of the Australian Information Commissioner's website.

5. What you must do when applying for life insurance

An important consumer responsibility when applying for life insurance or making any changes to an existing policy is to provide the insurer with accurate information.

Before you buy or vary a policy, an insurance company may ask you to answer questions on your situation, such as current health, medical history, job, lifestyle and activities. These answers will help them decide what cover they can offer you and how much it will cost.

If you do not answer the questions to the standard required by the law, the insurer may be able to cancel or change the terms of your policy, or decline your claim.

The standard in the *Insurance Contracts Act 1984* is for consumers to take reasonable care not to make a misrepresentation to the insurer. This means you must be careful to answer the insurer's questions carefully, accurately and to the best of your belief, and not give false or misleading answers.

To find out more about the duty not to misrepresent, please contact your insurer.

6. Discrimination and life insurance

The *Disability Discrimination Act 1992* (DDA) aims to promote the rights of people with a disability to participate equally in all areas of life. It does this by making it unlawful to discriminate against a person with a disability in a range of areas, subject to certain exceptions.

Section 46 of the DDA provides that treating people individually in relation to provision of insurance or superannuation by either refusing to offer a product, or in respect of the terms or conditions on which the product is offered or may be obtained, is only lawful if the individual treatment:

- is based on actuarial or statistical data on which it is reasonable to rely, and the discrimination is reasonable having regard to the data and other relevant factors; or
- in a case where no such actuarial or statistical data is available and cannot reasonably be obtained — the discrimination is reasonable having regard to any other relevant factors.

Most States and Territories also have similar anti-discrimination legislation. If you believe your life insurer has unlawfully discriminated against you, a complaint can be made to the Australian Human Rights Commission or to the anti-discrimination body in your State or Territory.

For more information, please visit the Australian Human Rights Commission's website.

7. Premiums

Customers are charged a premium that is calculated by the insurer.

Unless the life insurer has told you otherwise, insurance premiums for policies will usually be variable and will change. This may be because, for example:

- the insurer is increasing the premiums due to an increase in claim costs;
- the amount of insurance provided by the policy has increased, for example due to inflation;
- government fees or taxes on life insurance have increased, such as stamp duties.

In general, an insurer is required to explain the circumstances in which the premium will change in the PDS. It is important that you read it to understand how your policy's premium can change. The PDS will also explain if the insurer can only change the premium at a certain interval (for example, no more than once per year), and the minimum advance notice they will provide for any increases.

To find out more about common types of premium and how they can change, a fact sheet is available on the FSC website.

8. Making a claim

When you make a claim, you are protected by laws designed to ensure you will be treated fairly.

Claims handling and settling services

Most of the steps in the claims handling and settling process are regulated under the *Corporations Act 2001*. This includes ensuring that the person who assesses your claim must be adequately trained and must ensure your claim is handled efficiently, honestly and fairly. Your right to fairness in claims handling is also supported under the *Insurance Contracts Act 1984*.

To find out more about claims handling, please visit the Money Smart website and the ASIC website.

Utmost good faith

The *Insurance Contracts Act 1984* requires buyers, sellers and anyone who benefits from an insurance policy to act with 'utmost good faith' towards one another on anything to do with the policy. This requires them to act efficiently, honestly and fairly, and with decency towards one another, which includes not misleading or withholding critical information from one another.

Interest on claims

If your claim payment is unreasonably withheld or delayed by the insurer, the *Insurance Contracts Act 1984* requires you to be paid interest on the unpaid amount for the period of the delay.

9. Policy cancellation

In general, customers can cancel their insurance whenever they wish. However, an insurer cannot cancel your individual life insurance policy other than in specific circumstances.

Your life insurer can cancel your individual life insurance policy if:

- you do not pay the premiums when due;
- you make a fraudulent claim; or
- you did not disclose something you were required to or made a misrepresentation to the insurer when you applied for cover, and the insurer would not have provided you with the insurance had they known the true facts.
- for other reasons outlined in the product documentation.

Provided these circumstances have not occurred, you can usually keep the same policy until it expires, or until you decide you no longer want to keep it.

10. What you can do if you have a complaint

If you have a complaint about your life insurance, you should first contact your policy provider. This could be your superannuation fund, financial adviser or life insurer. They will have an Internal Dispute Resolution process and will help you with your complaint.

If you are not satisfied with the outcome, or if the provider does not provide a response to your complaint within the permitted timeframe, you can contact an external body such as the Australian Financial Complaints Authority (AFCA) to help resolve your complaint.

AFCA can consider complaints about life insurance, including:

- Advice that was not provided to you, or that you received about the insurance policy that may have been inappropriate or misleading.
- Premiums that were incorrectly charged.
- Decisions such as cancelling your policy or denying all or part of the claim. This may include where a request to increase your insurance cover has not been actioned.
- Denial of your claim based on non-disclosure of a pre-existing condition or exclusion; where the claim is alleged to be false or fraudulent or where the policy is claimed to be lapsed or cancelled.
- Instructions you gave the financial firm that it did not follow or delayed in following, or if the sum insured was not increased.
- Disclosures that the financial firm didn't make such as incorrect, insufficient, or misleading information about costs or fees, or about the product they provided to you.
- Privacy and confidentiality, including disputes about privacy breaches and disclosure of personal information by an insurer.
- Transactions such as overpayment or underpayment of an insurance benefit, or an insurance claim paid to someone other than the insured and/or a refund provided to another party.

To find out more, please visit the AFCA website.

11. Consumer protection beyond the law: the Life Insurance Code of Practice

The Life Insurance Code of Practice (the Code) sets standards of service and practice in the Australian life insurance industry. Subscribers to the Code have formally agreed to be bound by its standards.

The Code intends to create standards beyond those imposed by the law. The Code's standards apply to many aspects of a customer's relationship with their insurer including when buying insurance, what to expect when making a claim, including timeframes for making a claim decision, supporting vulnerable customers, and how insurers deal with complaints.

To find out more about the Code, please visit the Financial Services Council website.

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