Handling Insurance Disputes – Internal Reviews / External Reviews

Insurance disputes happen for many different reasons and under all kinds of policies but typically involve a different set of expectations (or even understanding) on the part of the insured and/or insurer about what was and what was not covered. In many instances (but not all) an insurer has some form of Internal Dispute Resolution (IDR) process in place to manage such disputes where the disputes may sometimes (but not always) be escalated to an External Dispute Resolution (EDR) with Australian Financial Complaints Authority (**AFCA**) (being the entity that replaced the Financial Ombudsman Service).

How an insured / insurer prepares the IDR is something that has the potential to make a real difference in respect of the length of the dispute, its cost and ultimate outcome. In many instances the lack of formality at the IDR stage causes the request for a review of a claim or its response to lack the rigour that is required to put a particular case firmly and in a positive light. Regardless of whether you are an insured, or an insurer, Bannermans has experience in the preparation of IDR documentation if this is something you would rather not do yourself.

Some disputes simply do not resolve at the IDR stage and where that happens there may be a right to seek an EDR from AFCA. To obtain such a review the insured would lodge a complaint with AFCA and the insurer would prepare a notice of response attaching any relevant documents. AFCA will then request further information from the applicant, set down a conciliation and encourage the parties to seek to resolve the matter prior to the conciliation.

If the applicant is not satisfied with the outcome of the conciliation, the applicant can request AFCA to undertake the "recommendation process" which is a review and written decision by the AFCA case manager, being the preliminary assessment stage noted below. The applicant has 30 days to accept or reject this decision. If rejected, the final AFCA stage is the "determination" stage where the AFCA Ombudsman will re-review the file and make a determination. This determination is binding on the financial firm but not the applicant and must be accepted within 30 days. If the applicant is not content with this determination it can sue the financial firm by way of Court action but cannot appeal AFCA's decision.

The steps in the AFCA process are as follows:

1. **Step 1:** The applicant to provide the information requested by AFCA within 7 to 21 days.

2. **Step 2:** AFCA will also obtain information from the applicants financial firm at the same time.

3. **Step 3:** AFCA will advise within 3 days whether it requires additional information and if so, this information must be provided within 7 days.

4. **Step 4:** AFCA will provide a preliminary assessment of the complaint after reviewing the responses. This may be in writing or a phone call.

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

© Copyright Bannermans Lawyers 2021.

5. **Step 5:** If the complaint is not resolved, the Ombudsman will issue a final decision called a determination.

AFCA seeks to resolve most complaints within 90 days from when it receives all information required to make a decision.

By having your paperwork meticulously and professionally prepared there is an even greater chance that all relevant facts will be identified, correctly emphasised and key policy terms will be identified. Given that there are often tight timelines, such as 7 to 21 day periods, for preparing a response or further response considerable advantages may flow from having these documents prepared by lawyers to minimise the amount of disruption to your work, life and/or business.

Some of the elements of a well drafted IDR/EDR include:-

- A clear and logical chronology
- Reliance on the correct policy, and key policy terms
- Careful application of the facts to the policy wording
- If the matter is governed by case law / statute law refer to it
- Expert evidence, where appropriate, can be very persuasive
- State the outcome desired and why it follows

Note: AFCA has extensive information published on its website at https://www.afca.org.au/ which may be helpful.

Key takeaways

- Insurance disputes often arise from differing expectations between insured and insurer regarding coverage.
- Proper preparation of IDR documentation can significantly impact the outcome and duration of disputes.
- The AFCA process involves several steps, including information requests and a final determination.
- Timely and meticulous documentation increases the chances of a favourable outcome in disputes.
- Legal expertise can enhance the effectiveness of IDR and EDR submissions.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers
Updated 12 May 2021

BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

© Copyright Bannermans Lawyers 2021.