

DISPUTE RESOLUTION

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Background

- Decisions and service issues can be a point of contention
- Insurance industry dispute resolution mechanisms are in place.
- Overview of dispute resolution and tips.

Agenda

- What is a dispute
- The dispute resolution process.
- Doing research and ground work
- Preparing a dispute
- Water Damage claims

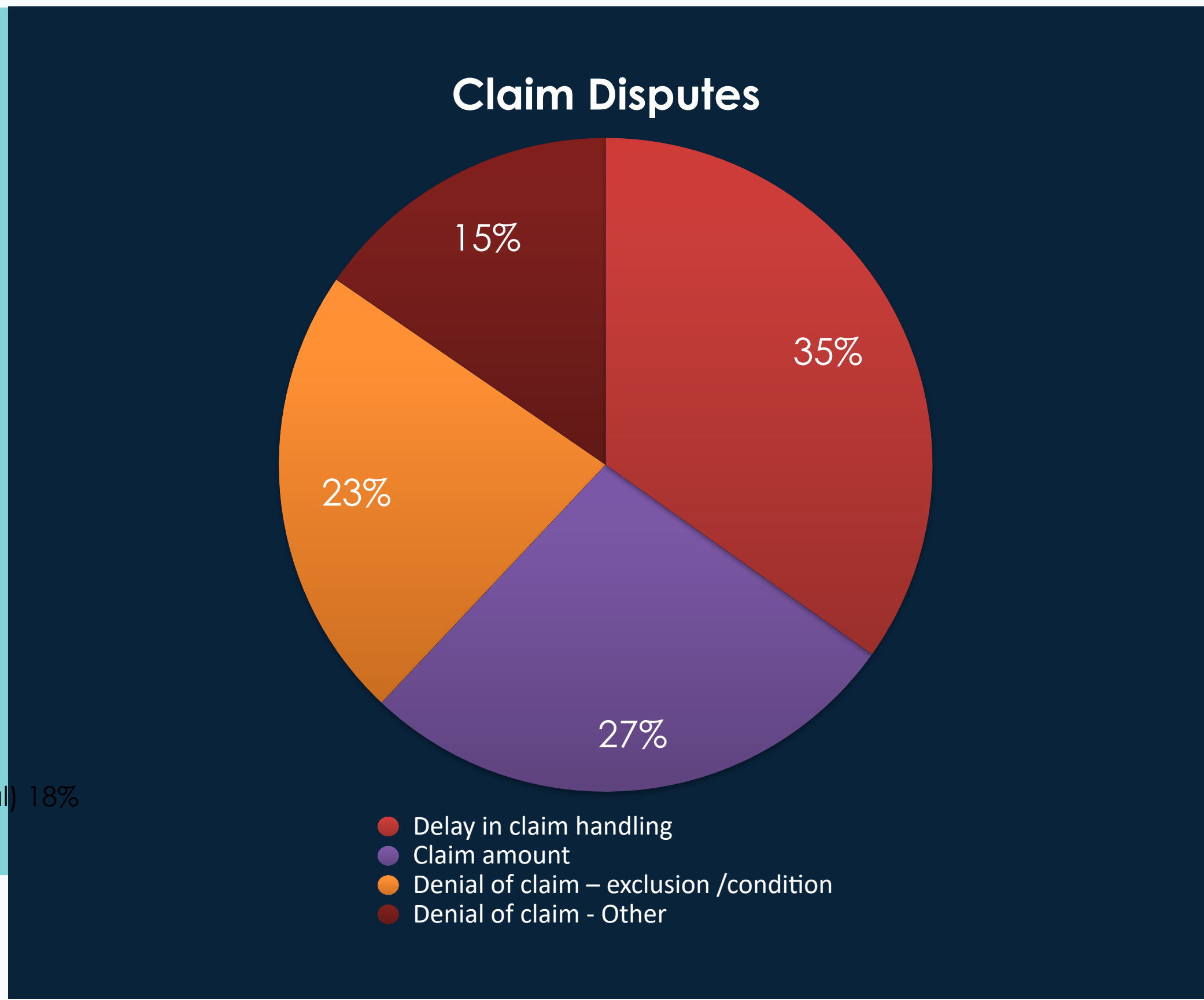
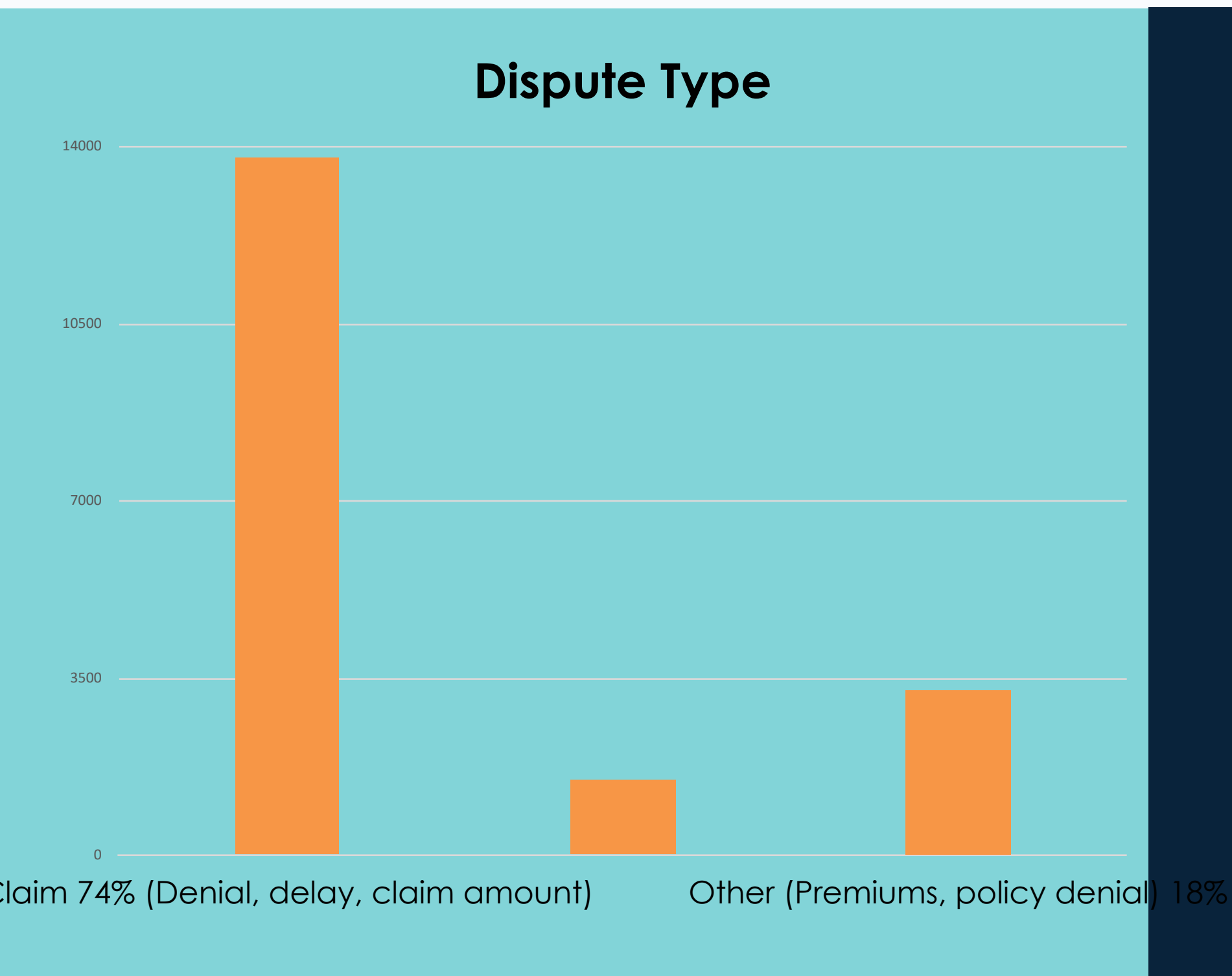
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What is a Complaint?

An expression of dissatisfaction made to or about an organization, related to its products, services, staff, or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

— AFCA General Insurance Complaints



FAIRNESS



WHAT'S FAIR

- Free Process
- Independent from the Insurer
- Adjudicator may put forward arguments for the insured.

WHAT'S NOT FAIR

- Time to settle claim
- Insurer has greater access to expert witnesses
- Insurer has greater experience in dispute resolution.

DISPUTE PROCESS

Stage 1: Claims Handler / Customer Service Rep (Free)

- Discuss concerns dispute/issue with claims handler.
- It is not recommended you automatically refer to IDR. Wait for formal response.

Stage 2: Internal Dispute Resolution (Free)

- Lodge Dispute Insurer has 15 business days to respond.

Stage 3: Australian Financial Complaints Authority (Free)

- Property Only: Limit \$542,500 (as at 1 Jan 2021) – if you have damage to multiple units you may consider disputing a portion of the claim.
- Response 3 to 6 months (can be 12 months or longer depending on the complexity)
- Binding on insurer not binding on you

Stage 4: Litigation

- Claims over \$542,500
- Public Liability claims
- Claims that you have been unsuccessful in AFCA

OUR PRINCIPLES FOR DISPUTES

- Evidence based disputes with sound arguments
- Be commercial
- Don't abuse the process: Consider prospects of success



EVIDENCE BASED DISPUTES

- Policy Contract (Policy wording & policy schedule)
- Expert Evidence.
- Precedent Cases (AFCA & Courts)
- General Insurance Code of Practice
- Law – Insurance Contracts Act, ASIC Act, Corporations Act etc.

Preparing a Dispute



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REVIEW INSURERS DECISION

- Fairness test “The Pub Test”
 - Policy Contract (Denial policy exclusion/condition):
 - *Have they referenced to policy wording?*
 - *Has the Insurer’s entire exclusion/condition been considered?*
 - *Is the interpretation reasonable or disputable?*
 - *Are there subjective or ambiguous meanings?*
- Response time (within terms of the GICOP)

REVIEWING EXPERT REPORTS

- Were appropriate investigations completed to reach conclusions?
- Building codes (current vs historical)
- Was the cause stated contestable?

***If you believe the insurers expert witness is not correct,
the best way to support your dispute is to engage your own expert.***

RESEARCH

- Search AFCA Decisions
- Insurance Contracts Act
- General Insurance Code of Practice

Search AFCA
Decisions

<https://afca.org.au/what-to-expect/search-published-decisions>

Keyword search

flood

Advanced keyword search


Case number

Date of decision

☐ Days back from nov

OR

☒ to

Advanced search 

Product line

General Insurance

Product category

Domestic Insurance

OTHER CONSIDERATIONS

- Engage your own expert witness (may be at your own cost)
- Photos
- Financial Hardship (expedited process)
- Non-Financial Loss (\$5,400) AFCA Rule D3.3 *“an unusual degree or extent of physical inconvenience, time taken to resolve the situation or interference with the Complainant’s expectation of enjoyment or peace of mind has occurred.”*

PREPARING A DISPUTE SUBMISSION

HISTORICAL CONTEXT

- Timeline of events
- Info relevant to dispute
- Keep it simple

ISSUES IN DISPUTE

- Evidence based arguments relevant to your dispute

RESOLUTION

- What will resolve your dispute
- Quantify (if seeking \$)

ATTACHMENTS

- Insurer correspondence
- Expert Reports
- Photos
- Other relevant info

SUBMITTING A DISPUTE

Internal Dispute Resolution – details in insurer PDS or ask insurer

AFCA – www.afca.org.au (attach dispute letter)

Start the complaint process



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Water Damage Claims

SUDDEN & ACCIDENTAL

While there may be some question over whether the damage can be considered “sudden” there is no strict definition in the insurers policy of sudden. It is our view that previous AFCA decisions support our clients position that the damage was sudden, and we outline the adjudicators comments that we feel also apply to our claim (we have provided the case numbers of the applicable AFCA decisions).

201657 – *“The insurance policy covers events relating to water that is considered to be “escaping suddenly or unexpectedly” in a shower or bathroom area. No strict definition of “suddenly or unexpectedly” is provided and whilst it might imply a “gush of water”, it does not specify as such. Any arrival or build up of water in an area of the home (where it otherwise should not be) might arguably be considered “sudden and unexpected”.”*

424472 – *“I am satisfied based on the reports that the escape of liquid was both unexpected and sudden. Although the damage may have progressively gotten worse, the initial cause of damage was from a pipe cracking allowing water to escape. This event was sudden and unexpected.”*

422097 – *“I accept that when the dishwasher first started leaking and causing damage, such an occurrence would be considered sudden and unforeseen.”*

It is therefore our view that the action of water coming in to contact with the **[property]** is a sudden cause. We accept that the non-discovery of the water exposure to the **[property]** has caused the damage to exacerbate and worsen with time, however we do not believe the insurer has grounds to pursue non-payment of this claim due to the cause not being sudden as it is standard insurance industry practice that water damage is considered a sudden cause for property damage claims.

Further commentary in AFCA decision 519422 also provides a more broader view on previous adjudicators position with regard to Accidental Damage policies. The adjudicator goes on to say:

“The applicant has established a prima facie claim under the terms of the policy because:

- *the policy is an accidental damage policy*
- *accidental damage is damage that is unintended and unexpected*
- *the damage to the insured property was unintended and unexpected.”*

WEAR & TEAR / GRADUAL DETERIORATION

Wear and tear and gradual deterioration cannot be relied on in this claim, as such exclusions require that time is the only or major contributing factor that caused damage, which is attributable to normal use over time. It is therefore our view that the water component of this claim is the primary cause of damage and is therefore an event that fits the coverage of the policy.

It is our view that previous AFCA decisions support our clients position, that gradual deterioration and wear and tear do not apply in this claim, and we will outline the adjudicators comments that we feel also apply to our claim (we have provided the case numbers of the applicable AFCA decisions).

465230 - Wear and tear and gradual deterioration', as excluded under the policy, relates to gradual deterioration at the unit which occurs in the normal course of events. I accept that there were signs reflecting wear and tear in the bathroom. However, on the available evidence, I am also satisfied it is more likely than not that the cause of at least some of the damage was the water escaping from the unit above (whether through the cracked or missing roof tiles, or from the balcony) into the applicant's unit. That part of the loss cannot reasonably be attributed to normal use over time.

470867 - The plumber identified the leak was from a disconnected waste pipe at the shower drain. There is no indication when this was disconnected, however it means water will only have been leaking when the shower was in use. That also means there was no constant or continuous leak, but instead the water would only have been leaking in short intervals. I do not consider that damage arising from a leaking disconnected pipe can reasonably be regarded as damage caused by normal 'wear and tear'.

LATE NOTIFICATION OF CLAIM

The insurer advised they have been prejudiced as a result of late notification of this claim, but as already mentioned they have failed to provide a reasonable explanation as to why this was the case.

Section 54 of the Insurance Contracts Act has the effect that an insurer may not deny indemnity based on a technical breach of the policy or other act or omission after the policy was entered into unless the breach, act or omission could reasonably be said to have caused or contributed to the loss the subject of the claim.

It is our view the insurers rights have not been prejudiced on this claim because the details of the damage have been documented appropriately in the repairers' report and additionally, the insurer has had the opportunity to have an in-depth discussion with the repairer about the damage they observed when conducting work. It is our view this information should provide the insurer with enough information to properly assess the claim and hence our clients actions have not been prejudicial to the insurer.

CONDUCTING REPAIRS WITHOUT INSURER AUTHORITY

We also note the policy condition "you must take all reasonable steps to reduce Loss or Damage and to prevent any further Loss or Damage." The damage was a safety concern for the client and furthermore they were concerned about loss of rent if the issue was not rectified immediately.

It is our view that our client has acted as a reasonable person in the same circumstances would have acted and they have sought to protect their own and the insurers financial interest by acting quickly to conduct repairs.



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NON-DISCOVERY

There is no policy condition that states our client needs to find damage within a set time period, and we accept that the non-discovery of the damage has caused the damage to worsen over time, however, it is our view that the builders comments support our client in establishing a prima facie claim.

The insurer has presented their case on the length of time that it would have taken for the [property] to be damaged as a result of water exposure, and also presenting their case that the [property] was exposed to water over an extended period of time.

The policy requires that the cause and not the damage is sudden and unforeseen/unexpected. The insurer appears to be arguing that the damage was not sudden and unforeseen/unexpected, however, it is our view that the information provided by the insurer does not demonstrate that the cause was not sudden and unforeseen/unexpected.

It is therefore our view, that the action of water coming into contact with the [property] is a sudden and unforeseen/unexpected cause. We accept that the non-discovery of the water exposure to the floor boards has caused the damage to worsen with time, however, we do not believe the insurer has grounds to pursue non-payment of this claim due to the cause not being sudden and unforeseen/unexpected. It is standard insurance industry practice that water damage is considered a sudden and unforeseen/unexpected cause for property damage claims.

REMOVAL OF TILES (waterproofing membranes)

We are also seeking to claim for costs associated with removing and replacing the tiling to the shower membrane as part of the process for the purpose of repairing the waterproofing membrane (excluded), and repairing the water damaged sub-floor (not excluded). In order to repair the sub-floor, which we believe is claimable, you need to remove the tiles to expose and replace the sub-floor. As you need to remove the tiles to fix the sub-floor the tiling costs should be covered as the removal of the tiles is associated with fixing the beams.

AFCA decision 460833, deals with a similar case related to the removal of tiling to fix a waterproofing membrane (excluded), and fix a water damaged sub-floor in a shower recess (not excluded). The adjudicator stated *“The issue facing the FSP is the fact it has accepted liability for a portion of the damaged flooring. Having accepted this liability, it by default becomes liable for all costs associated with repairing that damage.”*

It is therefore our view considering the above-mentioned previous AFCA decision, the insurer should be liable for the removal and replacement of the tiles that were required to be removed to facilitate the repair of the sub-floor.

QUESTIONS

