



Here's what to do if your TPD claim is rejected

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If you're injured or sick and can't work anymore, you may have lodged a claim for total permanent disability (TPD) benefits with your super fund. The process for lodging your claim may have seemed quite straightforward so you might be expecting it to be accepted and to receive your payout. But what if your TPD claim is rejected or declined?

What's required for a successful TPD claim?

To be [successful with a TPD claim](#), you are generally required to meet certain criteria as set out in the super fund's rules, also known as the trust deed. Whilst trust deeds vary, most require you to show:

1. that you meet the fund's definition of total permanent disability. That is, you are no longer able to work in your pre-injury job or any other occupation for which you have the necessary skills, training and experience.
2. that you were in active employment at the date of becoming unwell or injured.
3. that you were paying the relevant TPD premiums at the date of becoming unwell or injured and had active insurance cover.

Why has my super fund declined my claim?

Sometimes, super funds will decline a claim if they form a view that you do not meet the necessary criteria.

Some of the most common reasons super funds use to deny or reject claims include:

- That whilst you are unable to perform your pre-injury job, you have the necessary skills, training and experience to perform some other type of work.

- Although you are currently unable to work, this is not for the foreseeable future, and you may return to work at some point in the future.
- That failed attempts to return to work or working in a “supported” role, show that you have a work capacity and do not meet the TPD definition.
- That you were not in “active” employment at the date of becoming unwell and injured.

It's worth noting that the trust deed content you and the fund should be relying on, is the one at the time of your injury or illness diagnosis, not the one at the time you make a claim. For example, you may have been [injured three years ago](#) and since then the super fund has updated its trust deed. If you lodge your claim today, the trust deed your claim references is the one from three years ago.

If your claim is rejected, it is crucial that you seek legal advice as soon as possible to understand if you have any grounds to dispute the decision.

[Call 1300 700 761 for free advice about your options](#)

What options do I have if my TPD claim is rejected?

In some instances, it may be appropriate for further submissions to be prepared and sent to the super fund, without the need to lodge a formal complaint or issue proceedings in the court. These submissions need to be carefully drafted, outlining why the super fund's decision is incorrect and formally advising that you are seeking a review.

If this (more informal approach) doesn't work, depending upon the amount of the TPD benefit, there are generally two different avenues to pursue a dispute.

1. Australian Financial Complaints Authority

The first option is to lodge a formal complaint with the [Australian Financial Complaints Authority](#) (AFCA). AFCA was established in 2018. Its main function is to independently assist consumers to make and resolve complaints about financial firms, including super funds.

AFCA tries to resolve complaints in the fairest, most effective and efficient way possible. They will generally try to first resolve a complaint by informal methods and reach a settlement between you and the financial firm through negotiation or conciliation.

If this doesn't work, they may then use more formal methods, where they may provide a preliminary assessment of the merits of your complaint, or they may make a decision (called a determination).

If they make a determination that is in your favour and you accept it, the financial firm (your super fund) is required to comply with the determination and any remedy that AFCA award. For

superannuation complaints, any determination that AFCA makes is binding on both parties.

You need to be aware that you have two years to make a complaint with AFCA from the date of the super fund's decision to decline your claim.

2. Issuing proceedings in Court

The second option is to issue proceedings in the relevant Court. Depending on the complexity of your matter and the amount of the benefit, this is often the most appropriate avenue to achieve the best outcome possible. Pursuing your matter in Court allows you to appropriately investigate, prepare and negotiate a successful outcome.

To issue proceedings in Court, you need to have a solicitor acting on your behalf. They will obtain your full file from your super fund along with any relevant evidence needed such as clinical notes, medical reports and insurer files, including investigator reports.

Once these have been appropriately reviewed, the required Court documents will be drafted, filed and served on the super fund and their trustee, also known as the defendants. Once the defendants have filed their defence, a timetable will be agreed between the parties to progress the matter.

Many disputes that are issued in the Court tend to resolve at mediation, without the need to proceed to a formal Court hearing known as a trial.

You have 6 years from the date of the super fund's decision to reject your claim in which to issue proceedings in Court.

Why you should engage a lawyer

At Guardian Injury Law, we often meet with clients who have lodged their own TPD claim which has been rejected. They are often unaware of the complexities of the rules and requirements behind their TPD entitlements and the super fund's decision to decline their claim. For example, if you have multiple policies for TPD insurance (with multiple TPD funds), the order in which you lodge your claims could be an important determining factor.

The process of appealing a decision to reject your TPD claim can be quite an overwhelming and stressful time.

We take the time to get to know our clients and understand what has occurred in their life in order for them to lodge a TPD claim with their super fund.

We are experts in analysing the rules of the fund and the evidence that has been relied upon by the fund in coming to its decision. We can then properly prepare a case for issuing in the Court to achieve the best outcome.

How do our legal costs work for TPD claims?

At Guardian Injury Law, we undertake super TPD claims on a "no win, no fee" or expenses basis. This means that you only have to pay our fees if you have a successful outcome. We will always be upfront about our legal costs so you know where you stand and what you can expect.

You can [learn more about how we charge here](#).

Contacting Guardian Injury Law

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