# Disclosing pre-existing injuries and illnesses during TPD insurance applications

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If you have a pre-existing medical condition that your super fund is unaware of, they may have the right to reject a TPD claim or other disability insurance claim. When you apply for TPD insurance inside super, you will usually have a duty of disclosure, and that duty could include full disclosure about any pre-existing injuries or illnesses.

Each super fund has its own rules and regulations regarding the policies that are offered to its members for TPD cover. That is why it is very important that you are familiar with what your fund can offer you, as well as the restrictions and requirements your policy sets out.

Rules regarding pre-existing medical conditions are complex, and most often, if you have had a pre-existing injury or illness and have not disclosed this to your fund, your TPD claim will likely be rejected.

## Definition of a pre-existing medical condition

A pre-existing medical condition is often a medical condition, illness or ailment that existed prior to you signing up for your TPD policy.

This may be a medical condition that has now been resolved or an ongoing medical condition.

Examples of medical conditions can include high blood pressure, heart disease, mental health conditions, cancer, asthma, diabetes and others.

# When can an insurer cancel or vary a TPD policy?

An insurer may cancel or vary a policy for TPD cover for any of the following reasons:

- If you have a previous illness which was not disclosed on the insurance application form;
- If you have a pre-existing injury which was not disclosed on the insurance application form;
- If the insurer finds out that you have a medical condition at present, which you may not necessarily have been aware of.

# Will my TPD cover be affected if I do not disclose a pre-existing medical condition?

If you have taken out TPD insurance, you have a duty to disclose all relevant information, including any pre-existing illnesses or injuries. All relevant information includes any prior medical conditions that you may be aware of or any prior medical conditions that a reasonable person in your circumstance ought to be aware of.

Many TPD claims are denied as a result of non-disclosure of pre-existing medical conditions. People are often mistaken and believe that they need to only disclose current medical conditions. This assumption may be due to peoples' lack of understanding of their policy.

If you fail to disclose any prior medical conditions, the insurer may come to the conclusion that the information was withheld on purpose and, as a result, determine that you have breached your duty to disclose such information. This may result in them refusing your TPD claim on the basis of non-disclosure.

Similarly, if the insurer is able to prove that you did not disclose any other relevant matters which you are obligated to under your policy, your insurance provider may decline your claim.

Each individual's claim is dealt with by the insurance provider on a case-by-case basis. This means it is up to your insurance provider whether your non-disclosure will affect any subsequent TPD claim. Therefore, no matter how minor you believe your previous injury may have been, it is always beneficial to disclose all pre-existing medical conditions to ensure that you are forthcoming with your provider.

Notably, obligations related to disclosure of medical conditions for income protection claims are usually the same.

# Examples of rejected TPD claims due to non-disclosure of pre-existing injuries/illnesses

We have seen examples of super funds declining TPD cover in the following circumstances:

## TPD claim for psychological injury rejected

An injured worker lodged a TPD claim for physical and psychological injuries.

The super fund investigated pre-existing injuries and declined the claim due to non-disclosure of a medical condition almost a decade earlier. The worker had discussed feeling “stressed” with her GP ten years before the claimed injury.

The doctor had recorded in their clinical notes that the worker had depression. The worker was not provided with medication and did not seek psychological therapy.

The worker did not disclose the pre-existing depression as they were not of the view that this was an injury or illness.

### TPD insurance voided due to non-disclosure

A person was diagnosed with cancer. They lodged a TPD claim as they had to stop working due to their illness.

The super fund declined their application on the basis that they had failed to disclose a previous gastrointestinal illness when taking out TPD cover. They had received treatment and medication for the illness, which was well-managed at the time of the cancer diagnosis. The gastrointestinal illness was not the cause of the inability to work.

The fund considered that the non-disclosure of a pre-existing medical condition voided their disability insurance policy.

## What should I do if my TPD claim is rejected due to non-disclosure?

If your TPD claim is rejected and the insurer advises this is because you did not disclose a pre-existing medical condition when you took out insurance, you may have options to appeal that decision.

Appealing a rejected TPD claim due to non-disclosure needs to be handled very carefully to ensure you protect any rights and entitlements you may have.

It is crucial that you seek legal advice from a lawyer experienced in TPD claims **before** you respond to the insurer’s notification of a rejected claim.



## Investigations undertaken by the insurers

Many individuals are unaware that upon lodging an insurance claim for TPD cover (or income protection, trauma insurance etc), you often sign general authorities. This authority allows your insurer to access your medical records which often may span across your whole life.

When you lodge a TPD claim with your insurer, they will undertake an investigation into any pre-existing medical conditions.

Although insurers have the ability to conduct investigations, they must do so in an ethical, fair and honest manner. They do not have the ability to conduct fishing expeditions and therefore should not be obtaining information without having proper grounds for doing so.

## Why should I engage a TPD lawyer?

Engaging a lawyer experienced in TPD and disability insurance claims is crucial so that you can be sure that the best application is lodged, along with all the appropriate supporting evidence. If your claim is rejected, a lawyer will be able to review your policy and medical history and guide you through your options and obligations.

Call us today for a free appointment to find out where you stand.

### Contacting Guardian Injury Law


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