

Module	GENERAL INSURANCE
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Scope

Does your organisation provide general insurance products?

Does your organisation currently hold or intend to acquire an Australian Financial Services Licence (AFSL) to provide general insurance products?

Does your organisation have systems and processes in place to manage and monitor compliance with its obligations?

Module Application

General Insurance has 2 sub modules:

Obtaining and keeping APRA authorisation to carry on a general insurance business

Provision of financial services and customer protection obligations

Obtaining and keeping APRA authorisation to carry on a general insurance business

The OBTAINING AND KEEPING APRA AUTHORISATION TO CARRY ON A GENERAL INSURANCE BUSINESS sub module informs any general insurance business wanting to obtain and retain APRA registration and authorisation to operate a general insurance business in Australia.

In order for a general insurer to operate a general insurance business in Australia it must comply with all obligations imposed by the Australian Prudential Regulatory Authority (APRA), including those set out in the Insurance Act 1973 (Cth) and those contained in APRA's prudential standards. The module covers the obligations related to the application for registration and authorisation process including;

- Non-operating holding company requirements;
- Lloyd's underwriter requirements;
- Complying with any conditions imposed by APRA.

Once a general insurer has been granted approval by APRA to carry on a general insurance business it must ensure that it complies with all general operational requirements and obligations. The general operational requirements are covered in the module and include these areas;

- Ownership requirements;
- Assets in Australia;
- Maintenance of adequate capital;
- Governance and establishment of a board;
- Risk management;
- Re-insurance management framework;
- Reporting requirements;
- Complying with recapitalisation directions;
- Meeting all obligations to policy holders, stakeholders and the wider community;
- Timeframe requirements.

The module also covers the requirements of the insurer to establish, maintain, update and review policies and procedures to ensure that it complies with additional obligations, including;

- Ensuring that appropriate auditors are appointed, instructed and assisted in the performance of their duties;
- The appointment of an actuary to assist with financial modelling and the management of financial risk;
- Employing fit and proper personnel and ensuring that all staff are properly trained to understand their obligations and the obligations of the organisation;
- Implementing a risk management framework and a review system;
- Managing data risks;
- Developing a business continuity plan;
- Complying with outsourcing requirements;
- Consulting with APRA before entering into offshoring arrangements;
- Establishing appropriate margining period practices relating to all non-centrally cleared derivatives;
- Keeping and maintaining records and report-mandated financial transactions in accordance with AUSTRAC reporting obligations;
- complying with the Australian privacy principles in relation to the collection, storage and handling of personal information;
- Complying with transfer or amalgamation of insurance business requirements;
- Complying with APRA trigger event requirements;
- Complying with all reporting standards and provide all required information about issued policies to APRA;
- Meeting its obligations under the Financial Claims Scheme (FCS);
- Ensuring payment of the supervisory levy and financial claims scheme levy;

- › Providing APRA with any information required to rectify serious identified weaknesses that threaten financial viability or safety. This includes providing APRA with access to its documents, employees and premises and responding to any APRA investigation or request.

The module also covers consequences both civil and criminal that may apply to a general insurer that fails to comply with its obligations. The actual consequence will depend on the specific obligation that is breached but can include;

- › Imprisonment;
- › Financial penalties;
- › Appointment of a judicial manager to administer the organisation;
- › Revocation of the organisation's authorisation to operate an insurance business;
- › Application for an injunction to restrain dealings within the organisation;
- › Accepting enforceable undertakings;
- › Making a declaration that compensation is payable for loss or damage.

The OBTAINING AND KEEPING APRA AUTHORISATION TO CARRY ON A GENERAL INSURANCE BUSINESS sub module covers the obligations of general insurance providers operating in Australia only. It does not cover obligations that are specific to specialised areas of insurance for example life insurance.

Provision of financial services and customer protection obligations

The PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS sub module informs any provider of financial services in Australia wanting to comply with all Australian Securities and Investments Commission (ASIC) obligations, including those relating to the provision of financial services, those relating to the provision of services under insurance contracts, and those relating to customer issues.

The financial services industry in Australia occupies a significant portion of the Australian economy and encompasses a range of industry sectors, including the insurance sector.

A newer section of the Corporations Act 2001 (Cth) (CA) entitled 'Financial Services and Markets', was designed to promote;

- › Confident and informed decision-making by consumers in relation to financial products and services;
- › Efficiency, flexibility and innovation in the provision of financial products and services; and
- › Fairness, honesty and professionalism in the provision of financial services.

The PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS sub module covers the obligations imposed by the Corporations Act (Cth) (CA) on Australian financial services licensees, as well as additional legislation including;

- › The Corporations Regulations 2001 (Cth) are made under the CA and significantly affect its operation and application;
- › The Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) contains contains a suite of consumer protection provisions;
- ›

- ASIC is the primary regulator of financial services in Australia and is tasked with the role of licensing and monitoring financial services businesses;
- ASIC has issued a series of legislative instruments referred to as 'class orders';
- ASIC has issued a large number of regulatory guides that serve to assist financial services licensees in understanding how ASIC will exercise its powers and provide practical guidance on compliance issues;
- The Privacy Act 1988 (Cth) which establishes principles in relation to the collection, storage, use and disposal of personal information by public sector and certain private sector entities.

The PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION

OBLIGATIONS sub module covers the obligations of financial services licensees to establish a robust compliance framework to ensure they comply with their regulatory obligations. The framework should include systems for ensuring that the licensee;

- Is appropriately licensed for all financial services it provides and that any authorised representatives have been properly appointed;
- Provides services efficiently, honestly and fairly, and appropriately manages conflicts of interest;
- Has adequate technological, human and financial resources available on an ongoing basis;
- Maintains organisational competence;
- Has adequate breach reporting systems in place;
- Complies with disclosure requirements;
- Holds client money on trust, where required;
- Engages in lawful advertising practices;
- Maintains the required financial and other records;
- Has a complying internal dispute resolution system in place and is a member of the Australian Financial Complaints Authority external dispute resolution scheme; and
- Does not engage in prohibited conduct.

Additionally, the PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS sub module also covers the Insurance Contracts Act 1984 (Cth), and the Insurance Contracts Regulations 1985 (Cth), which impose obligations in relation to the following areas;

- Administration;
- Disclosure;
- Contract provisions;
- Claims;
- Expiration, renewal and cancellation of a contract;
- Subrogation; and
- The provision of information, notices and reasons.

In addition, an insurer that is a member of the General Insurance Code of Practice, must ensure that it complies with the requirements of this Code, which include providing all relevant information to insurers, dealing with claims efficiently and fairly, complying with the requirements of the Code complaints resolution, and reporting to the Code Governance Committee, when required.

The module also covers customer facing obligations such as;

- Discrimination;
- Taxation; and
- Electronic payments and security.

A general insurer providing financial services must ensure that it complies with general operational requirements and obligations. General operational requirements are covered in the module and include;

- › Ownership;
- › Assets;
- › Maintenance of adequate capital;
- › Governance and establishment of a board;
- › Risk management and review;
- › Reporting and disclosure;
- › Privacy principles;
- › Meeting all obligations to policy holders, stakeholders and the wider community; and
- › Timeframe requirements.

The module also covers obligations to establish, maintain, update and review policies and procedures to ensure that they comply with additional obligations, including;

- › Auditing;
- › Actuarial;
- › Staff training;
- › Data risks;
- › Business plans;
- › Outsourcing;
- › Offshoring arrangements;
- › Transfer or amalgamation; and
- › Levies.

Significant consequences can apply in the Australian provision of financial services sector to operators found to have breached or not complied with their legal obligations. These consequences vary considerably depending on the nature and extent of the breach or failure. The PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS sub module covers specific consequences in detail.

The PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS sub module covers obligations of Australian providers of general insurance and financial services. The module does not cover obligations that are specific to other specialised areas of insurance, for example life insurance.

The PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS sub module does not cover the rights or entitlements of individuals who have suffered damages or losses due to breaches of obligations by Australian insurance and financial services entities. The module does not cover the process that an entity or an individual would follow to report or seek compensation for the breach or their loss.

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