

Module	LIFE INSURANCE
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
Legal Experts	<p>DOUGLAS GRATION Barrister at Victorian Bar</p> <p>https://www.vicbar.com.au/profile/7765 https://www.linkedin.com/in/douglas-gration-99750127/?originalSubdomain=au</p> <p>TEMOGEN HIELD Principal at My General Counsel</p> <p>https://www.mygeneralcounsel.com.au/ https://www.linkedin.com/in/temogenhield/?originalSubdomain=au</p>

Module Scope

Life Insurance - obtaining and keeping APRA

Does your organisation provide life insurance products?

Does your organisation currently hold or intend to acquire a licence from APRA to provide life insurance products?

Does your organisation have a governing board that meets the APRA requirements in terms of composition, policies and committees?

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

Life Insurance - provision of financial services

Does your organisation provide life insurance products?

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

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

Module Application

Life Insurance has 2 sub modules:

- › Obtaining and keeping APRA authorisation to carry on a life insurance business
- › Provision of financial services and customer protection obligations

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

The *OBTAINING AND KEEPING APRA AUTHORISATION TO CARRY ON A LIFE INSURANCE BUSINESS* sub module informs any entity, company or subsidiary of a non-operating holding company (NOHC) intending to operate as a life insurance provider in Australia of the life insurance and financial services laws and regulations that they will need to comply with to register and operate their business.

The *OBTAINING AND KEEPING APRA AUTHORISATION TO CARRY ON A LIFE INSURANCE BUSINESS* sub module covers the three step process required for a company to obtain registration as a life insurance provider with the Australian Prudential Regulation Authority (APRA) and once authorised issue life insurance policies and undertake liability under a life policy. The module also covers factors which preclude APRA from granting authorisations and why it is recommended that companies closely consult with APRA throughout the process, which can take between 3 and 12 months.

The obligations covered in the module are based on the following authorities;

- › Life Insurance Act 1995 (Cth)
- › Life Insurance Regulations 1995 (Cth)
- › Prudential Standards

The module includes the general life insurance obligations related to;

- › Ownership;
- › Governance;
- › The establishment and function of boards including an audit committee, remuneration committee and risk committee;
- › Holding requirements and management of capital and assets;
- › Reporting requirements to APRA and to members;
- › Establishment and review of a risk management framework;
- › Establishment and consistent review of required compliance processes and systems;
- › Utilising adequate information and accounting systems to maintain up-to-date records of all business undertaken;
- › The duty to give priority to the interests of policy owners;
- › The management of life insurance policies;
- › Financial management.

In addition the module covers life insurance obligations that are more specialised or that apply in specific circumstances;

- › Reinsurance management including referable reinsurance arrangements;
- › Governance arrangements for eligible foreign life insurance companies;
- › Establishment, operation, restructuring and termination of a statutory fund;
- › Policies on arm's length intra-group transactions and exposures;
- › Prohibitions on mixed insurance businesses;
- › Notifications to APRA in the event of any changes to the company;
- › Risk management related to business continuity;
- › Risk management related to information security and data risk;
- › Outsourcing of material business activities including the entering of agreements and the monitoring process;
- › Pandemic planning;
- › Implementation of the Internal Capital Adequacy Assessment Process (ICAAP);
- › The maintenance of adequate capital in relation to risk;
- › Appointment, functions and duties of an auditor;
- › Appointment, functions and duties of an actuary;
- › Transfers and amalgamations of life insurance businesses including applications to the court for confirmation;
- › Comply with any requirements of APRA and the Superannuation Complaints Tribunal;
- › Protection of whistleblowers;
- › The payment of industry levies and duties on premiums;
- › Margining and risk mitigation for non-centrally cleared derivatives.

The module also covers the authority of APRA to apply financial penalties and/or revoke a life insurance company's authorisation or that of an NOHC where either entity has failed to comply with either the conditions or requirements of its registration, applicable law, or prudential requirements or failed to pay specified fees and levies.

The *OBTAINING AND KEEPING APRA AUTHORISATION TO CARRY ON A LIFE INSURANCE BUSINESS* sub module covers the obligations of life insurance providers in Australia. It does not cover the obligations of entities providing general or other specialised forms of insurance.

Provision of financial services and customer protection obligations

The *PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS* sub module informs the Australian life insurance entity or organisation of their legislated legal obligations. The module also demonstrates effective practical advice and assistance to the life insurance organisation to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the organisation entity.

To fulfil its purpose the module focuses on providing practical assistance to the life insurance entity intending to establish and maintain a robust foundational framework that determines;

- › How the organisation will function;
- › Who is the responsible decision maker;
- › What matters are relevant to the decision-making process; and
- › Whether the desired outcome has been achieved.

The organisation, their employees and authorised individuals are all expected to be familiar with the broad landscape of legal obligations to which they are subject as well as more specific obligations relevant to the particular sector they are operating in. The aim of the sub module is to equip the subscriber with knowledge of their obligations and the skills they require to establish relevant systems and processes to ensure compliance throughout their organisation.

The life insurance industry is governed by the Life Insurance Act 1995 (Cth) and the Life Insurance Regulations 1995 (Cth) and is regulated by the Australian Prudential Regulation Authority (APRA). The legislation is supported by prudential standards and reporting standards covering various areas of life insurance. Australian life insurance companies are also subject to the rules and regulations covering the financial services industry in the corporations law which is regulated by the Australian Securities and Investments Commission (ASIC).

APRA is responsible for prudential supervision of individual financial institutions and for promoting financial system stability in Australia. ASIC is responsible for financial market integrity, business conduct and disclosure, and consumer protection in the financial system.

The broad scope of the *PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS* sub module is to provide the entity with answers to these questions;

- What are our legal obligations?
- From where are our legal obligations derived?
- How can we ensure that we are complying with our legal obligations? and
- What are the consequences if we are not complying with our legal obligations?

The *PROVISION OF FINANCIAL SERVICES AND CUSTOMER PROTECTION OBLIGATIONS* sub module covers all legislated legal obligations of life insurance entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with through the implementation and maintenance of best practice processes throughout the organisation. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply in particular circumstances.

The module fulfils this objective by comprehensively covering three areas;

- Legislation;
- Obligations; and
- Consequences.

1. The legislative and regulatory landscape from which the primary legal obligations are derived;

- Life Insurance Act 1995 & Regulations 1995 (Cth);
- Corporations Act 2001 & Regulations 2001 (Cth);
- Australian Securities and Investments Commission Act 2001 & Regulations 2001 (Cth);
- Insurance Contracts Act 1984 & Regulations 2017 (Cth);
- Insurance Act 1973 (Cth);
- The Financial Services Council: Life Insurance Code of Practice;

- › Australian Securities Investments Commission (ASIC) Regulatory Guides;
- › Electronic Transactions Act 1999 & Regulations 2000 (Cth);
- › Retirement Savings Accounts Act 1997 (Cth);
- › Superannuation Industry (Supervision) Act 1993 (Cth);
- › Spam Act 2003 (Cth);
- › General Insurance Code of Practice;
- › National Consumer Credit Protection Act 2009 & Regulations 2010 (Cth);
- › ASIC Supervisory Cost Recovery Levy Act 2017 & Regulations 2017 (Cth);
- › Australian Prudential Regulation Authority Act 1998 (Cth);
- › Public Governance, Performance and Accountability Act 2013 (Cth);
- › Corporations (Fees) Act 2001 (Cth);
- › Autonomous Sanctions Act 2011 & Regulations 2011 (Cth); and
- › Privacy Act 1988 (Cth).

Additionally the module also covers commonwealth and state legislated obligations related to;

- › Unclaimed money;
- › The public trustee; and
- › Discrimination.

2.The specific areas where legal and regulatory obligations apply to the Australian life insurance providing entity;

- › Licensing and authorisation of financial services providers;
 - Australian Financial Services Licenses;
 - Providing financial services;
 - Authorisation of representatives; and
 - Prohibitions on life insurance companies.
- › Obligations of Financial Services Licensee;
 - General obligations;
 - Manner of providing services;
 - Information to Australian Securities Investments Commission (ASIC);
 - Licence number;
 - Protection for whistleblowers; and
 - Notice requirements.
- › Financial record keeping and financial statements.
- › Financial services disclosure;
 - Financial Services Guide;
 - Statement of Advice;
 - Warning to client.
- › Financial product disclosure;
 - Product Disclosure Statement (PDS);
 - Cooling off periods;
 - Policy changes and cancellation rights; and
 - Money received for a product.
- › Advertising financial services;
 - Product Disclosure Statement (PDS);
 - General advice provided to the public;
 - Hawking;
 - Misleading and deceptive conduct or representations;
 - Bait advertising;

- Restrictions on certain words or expressions; and
 - Dealings involving employees.
- Consumer protection in relation to financial services;
 - Unconscionable and dishonest conduct;
 - False, misleading or deceptive conduct or statements;
 - Conditions and warranties;
 - Referral selling;
 - Harassment and coercion;
 - Assertion of right to payment for unsolicited services;
 - Rebates, gifts and prizes;
 - Conflicted remuneration.
- Obligations and remedies under the Insurance Contracts Act;
 - Duty of utmost good faith;
 - Duty of disclosure;
 - Remedies;
 - Interim contracts;
 - Arbitration provisions;
 - Pre-existing sickness or disability;
 - Life policies for benefit of third parties;
 - Prohibition on contracting out;
 - Managing claims;
 - Cancellation of policies;
 - Information and notices; and
 - Cancellation, non-acceptance or non-renewal.
- Internal and external dispute resolution.
- Unclaimed money requirements in each state or territory.
- Consumer credit insurance;
 - Australian credit licence;
 - Limits on commission;
 - Automatic termination;
 - Inducing entry; and
 - Providing information and reasons to debtor.
- Calculation of ASIC Supervisory Cost Recovery Levy;
 - Regulatory costs;
 - The corporate sector;
 - Deposit-taking and credit sector;
 - Investment management and superannuation
 - Financial advice sector;
 - Market infrastructure and intermediaries' sector;
 - Insurance sector;
 - Large institutions sector; and
 - Annual dashboard report.
- Payment, waiver and recovery of the ASIC Supervisory Cost Recovery Levy and penalties;
 - Liability;
 - Returns and default notices;
 - Substantiation notices;
 - Review of decisions;
 - Partnerships, unincorporated associations, RSE licensees and multiple trustees; and
 - Cancellation and deregistration.
- Life insurance code of practice;
 - Policy design and disclosure;

- Sales practices and advertising;
 - Applications;
 - Policy changes and cancellation of rights;
 - Consumers requiring additional support;
 - Claims;
 - Complaints and disputes;
 - Third parties;
 - Monitoring, enforcement and sanctions; and
 - Privacy principles and access to information.
- Privacy;
 - Client records;
 - Health records in NSW, Victoria and the ACT.
 - The implementation of policies ensuring the life insurance company does not discriminate.
 - Complying with autonomous sanctions.

3. Significant consequences can apply to Australian life insurance entities, their employees and authorised individuals 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. They can include monetary penalties, legal outcomes and even terms of imprisonment for individuals found to have committed serious criminal offences.

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 life insurance providing 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.

About LexisNexis Regulatory Compliance

LexisNexis Regulatory Compliance® helps you forge a clear path to compliance.

With LexisNexis® content know-how at the core, our compliance registers, alerts, and information-driven solutions make compliance uncomplicated for GRC professionals across the globe.