

# FINANCIAL SERVICES GUIDE (FSG)

The Financial Services covered by this Financial Services Guide are provided by:

## Our Authorised Representatives

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## For

**Capital Mutual Insurance Pty Ltd**

ABN: 68 690 056 092

Authorised Representative No. 001318044

Level 5, 580 St Kilda Road, Melbourne Vic 3004

Phone: 1300 133 577

## On behalf of and accordance with the authority of:

**MGA Insurance Brokers Pty Ltd (MGA)**

ABN 29 008 096 277

Australian Financial Service Licence No: 244601

176 Fullarton Road, Dulwich SA 5065

Phone 08 8291 2300

A reference to "we", "us" and "our" applies to MGA as well as and any Authorised Representative listed in this FSG unless the context indicates otherwise.

This guide is designed to assist you in deciding whether to use the financial services offered by us. It contains important information about:

- us and the services we can provide and some important terms that apply when we provide them;
- how we and our associates are remunerated in relation to our services;
- how we manage conflicts of interest; and
- how complaints are dealt with.

We explain what services we can provide and in what circumstance in this FSG.

If we arrange insurance for you (or otherwise where required by law), we will give you (amongst other things) a Product Disclosure Statement (PDS) and/or policy wording prepared by the product issuer explaining the insurance and Important Information to help you understand key matters.

If you are a retail client (as defined in the Corporations Act) and we agree to give you personal advice, we will provide you with a Statement of Advice (where required by law) or a record of our advice. This will contain our advice, the basis of our advice, and information on any remuneration, associations, or other interests, which might reasonably have influenced us in giving our advice.

## Lack of independence - notice

We are not independent, impartial, or unbiased under section 923A of the Corporations Act because we or our representatives or associates may: receive remuneration (such as commission) or other gifts or benefits from the product issuer or from other third parties for related services provided in connection with any advice service we provide; or have associations or relationships with the product issuers and others. These things might reasonably be expected to influence any advice we may provide to you. We tell you how we are remunerated for our services and what you pay in the 'Our Remuneration' section along with details of relevant associations.

This is an important document and replaces any prior FSG issued to you by us, so you need to read it carefully and keep it in a safe place. Contact us if you have any questions. This FSG remains valid until we provide you with a new FSG or Supplementary FSG to update it.

## **NIBA CODE OF PRACTICE**

MGA are a member of the National Insurance Brokers Association (NIBA) and subscribe to the NIBA Insurance Brokers Code of Practice in accordance with its terms. A copy of the Code which explains how it operates is available at [www.niba.com.au](http://www.niba.com.au) or by contacting our office.

## **HOW YOU CAN INSTRUCT US**

You need to give us instructions in writing by letter, email or by another method agreed by us. We will tell you what is possible when you contact us using our contact details at the front of this FSG.

## **HOW WE COMMUNICATE WITH YOU**

We will communicate with you using the most recent email or postal address supplied by you or by another method agreed by us. You must inform us if your contact details change.

## **OUR SERVICES**

### **Our Authorisation**

MGA hold Australian Financial Services Licence No 244601 which authorises us to provide advice and deal in relation to all general insurance. We are required to provide these financial services in accordance with the Corporations Act and other applicable law and are responsible for our representatives (including any Authorised Representative listed in this FSG) providing these services on our behalf.

We provide different services depending on the product concerned and our role may vary depending on the service provided. Before we provide any services, we will tell you our role and agree with you on what our services will be and the products they will relate to. We can only provide the insurance services below in relation to insurers we have on our approved insurer list (subject to eligibility).

We tell you how we are remunerated for our services and what you pay in the 'Remuneration' section along with details of relevant associations.

### **Overview of our services and roles**

#### **Providing advice to you**

There are two types of advice services we may provide and it's important to understand the difference:

- **Personal advice service**

This is essentially a recommendation or opinion provided by us on the suitability of the relevant insurance for you based on our consideration of your personal circumstances.

We act on your behalf in providing this service unless we expressly tell you otherwise. We will agree with you when this service is to be provided and what the scope of our personal advice will be. Before we provide any personal advice we will need to undertake a review of your needs so we can provide you with appropriate advice.

- **General advice service**

We may give you generalised recommendations or opinions or reports on the products that may influence your choice, but these are not based on our consideration of your personal circumstances. We will tell you when this is the case by providing a general advice warning. In such cases you always need to consider if the product is right for your personal needs as we have not done this for you.

- **Arranging insurance**

When agreed with you, we will help you apply for (including seeking quotes) and/or arrange for the issue, variation and/or renewal and/or disposal/cancellation of the relevant general insurance you request our services for, from one of our listed insurers (subject to eligibility). The process differs depending on the type of insurance and we explain this to you when you apply for the insurance.

## **Claims assistance**

Where we have arranged insurance for you, we will also assist you through the insurance claims process for that insurance and will liaise with the insurer on your behalf with your consent. If a claim or circumstance which might give rise to a claim occurs, contact us and we can help you in your engagement with the insurer while we continue to act for you. We provide this assistance as part of our overall service for no separate charge unless we tell you otherwise. Any claims documentation, insurance company settlements and other information received by us on your behalf will be provided to you as soon as reasonably practicable.

## **Complaints assistance**

Where we have arranged insurance for you, if you have a complaint against the insurer regarding that insurance, we are here to assist you and will liaise with the insurer on your behalf with your consent. We provide this assistance as part of our overall service for no separate charge unless we tell you otherwise. Any complaints documentation and other information received by us on your behalf will be provided to you as soon as reasonably practicable.

## **Referral service**

We may not provide the above services and instead only refer you to another service provider (acting on our own behalf). In making any referral we do not advise or represent that the products and services of the other service provider are right for you and take no responsibility for the products and services they may provide to you. You need to make your own decision based on the information they provide.

## **Services provided on behalf of an insurer**

In some circumstances we may have an agreement with an insurer or their representative to arrange and issue, vary, or dispose of insurance policies for them. If we are given a "binding authority" from an insurer, this means we can enter into insurance policies on the insurer's behalf without reference to them, provided it is within the authority they have given us.

In the above cases we act on behalf of and in the interest of the insurer as our principal in providing the services, not yours. We will advise you when we act for an insurer and not for you.

## **Premium funding**

Premium Funding allows you to pay your premium via instalments. You will, however, have to pay interest to the premium funder on the amount borrowed and agree to the other relevant funding terms and conditions. A premium funding contract is separate to the contract of insurance and certain rights are assigned to the premium funding company through this arrangement. Please familiarise yourself with the terms and conditions of the funding contract. We may provide you with a quotation from our preferred premium funder or simply refer you to them (acting on our own behalf). You are not obliged to use that premium funder, and you can use one of your preference or ask us to look at alternatives for you. We do not provide any personal advice or represent that any of the funder's products and services are right for you or that they are the most appropriate.

You need to make your own decision based on the information provided.

## **Vulnerable customer support**

We seek to support clients who may be going through vulnerable circumstances such as financial hardship, family violence, illness, or communication barriers. If you need assistance, please contact us.

## **REMUNERATION INFORMATION**

The following sets out the types of remuneration we receive for our services depending on our role and services provided, who else we may pay and our remuneration terms.

### **Remuneration types**

#### **Commission from an insurer for insurance placement**

You must pay a premium to the insurer for the insurance. We may receive a commission from the insurer when your insurance is issued, varied, or renewed, unless we tell you that we are providing a "Fee only - no commission" service for that insurance.

The commission is a percentage of the insurer's base premium (i.e., the premium excluding amounts charged in relation to stamp duty, fire services levy, GST or any amounts payable in relation to applicable government charges, taxes, fees or levies). Different insurers can agree to pay us different commission rates for the same type of products. The rates also vary for each product type. The commission ranges from 0 to 30% percent – depending on the product.

The commission does not represent our profit margin as it also reimburses us for administrative and other expenses, we incur in providing our services. The commission is included in the premium amount, and we receive it when you pay the premium. MGA and any Authorised Representative listed in this FSG share this commission.

#### **Fee for service payable by you**

This is an amount (or amounts) we agree with you we will charge for a service that is not part of the premium payable by you and is payable in addition to the premium and any commission we may receive from the premium (unless we tell you in writing that we are providing a "Fee only – no commission" service for that insurance).

All fees are payable after we have provided the service or at such earlier time, we agree with you in writing and will be noted in the invoice that we send you. The amount of any fee we charge and how it might be calculated (e.g., set amount or based on a pre agreed rate for time spent etc) can depend on factors such as the complexity of your insurance needs, the size of your account with us and whether we receive commission from the insurer. Unless stated otherwise, all fees in our invoices are exclusive of GST. MGA and any Authorised Representative listed in this FSG share this fee.

#### **Services and support benefits**

From time to time, MGA may enter into arrangements with insurers or premium funders and other third parties to provide them with services or support such as developing new products or services, improving efficiency, or enhancing portfolio performance. These services may include:

- preferred supplier status;
- back-office administrative support;
- data and analytical services;
- product development services;
- consulting services and business strategy meetings;
- opportunities to present at our conferences or provide training seminars to our representatives;
- website or other marketing and promotional services; or
- claims services initiatives.

MGA may receive a fee from them for providing these services. The amount of any fee is not attributable to any particular product placement or volume or profitability and is generally negotiated between us and the relevant insurer or funder on a periodical basis. This is not a separate amount payable by you in addition to the premium for the policy or funding amount.

#### **Non-monetary benefits**

From time to time, MGA and our representatives may also receive non-monetary benefits from insurers and other third parties we deal with. These can include entertainment (e.g., lunches, sporting events, movies etc), conferences (e.g. attendance at a product issuer conference or sponsorship of our annual conference by a product issuer), accommodation and travel, business tools (e.g. software), gifts (e.g. product issuer or service provider branded promotional items and other occasional small gifts such as bottles of wine or hampers on special occasions etc). These benefits are provided by a wide range of insurers and other third parties that we have relationships with. In most cases they relate to our development of an understanding of the insurer or other third party and their product ranges and practices etc. Ultimately, this assists us in better servicing and representing you. MGA has, and monitors compliance with a Gifts and benefits policy that is designed to ensure that any conflicts that may arise from such benefits are avoided or appropriately managed.

#### **Premium funding remuneration**

If we refer you to a premium funder and you enter premium funding arrangements with them, we may receive commission which is a percentage of the amount funded excluding GST. In some cases, we may have a fee arrangement with the premium funder. The amount of commission and fees varies depending on our arrangement with the premium funder we refer you to.

MGA and any Authorised Representative listed in this FSG may share the fee or commission.

## **Other important associations and remuneration and benefits arising from these associations**

MGA are members of the Austbrokers network of insurance brokers. AUB Group Limited is a shareholder in our holding company MGA Management Services Pty Ltd (ABN 47 008 210 482). Where MGA provides services, this may lead to a benefit to associated entities providing connected services. These include MGA EziPay Pty Ltd (ABN 12 119 047 960), Millennium Underwriting Agencies Pty Ltd (ABN 38 079 194 095), Whittles Management Services Pty Ltd (ABN 99 064 789 377 and entities identified to you as part of the Whittles Group.

AUB Group Limited (ABN 60 000 000 715) (AUB) is a sole shareholder of Austbrokers Member Services Pty Ltd ACN 123 717 653 (AMS), a company that provides marketing, distribution, and training services to members of Austbrokers. Some insurers pay a fee to AMS, being an agreed dollar value (before government fees or charges). Different insurers may pay different fees to AMS.

The fees received from insurers fund the provision of AMS services to Austbrokers members. We and other Austbrokers members benefit from this support as it helps ensure we can continue to provide you with our extensive range of services. Austbrokers members may also be entitled to share in any excess of the fees received by AMS in any one annual period (if any) after deduction of all relevant AMS costs and expenses in providing its services in that period.

In some cases, we may refer you to or advise you to use the services of one of our related body corporates or associated entities such as those listed above. We may indirectly benefit from any such referral or advice if it improves the group or associated entity's performance. If you buy a product through these entities, they and we (relevant to any referral, arrangement or advice service provided in relation to the product) may receive remuneration of the types specified above. Entities acting for the insurer under binder may also receive commission or fees based remuneration from insurers as well as remuneration related to claims handling and settling services. We will advise you when one of the above MGA related companies and other associated entities are involved.

### **Our staff's remuneration**

Our staff receive an annual salary that may include bonuses based on performance criteria (including sales performance) and achievement of company goals. They may also receive certain non-monetary benefits. In limited cases the Authorised Representative listed in this FSG may share their remuneration with their staff who assist them in providing financial services.

### **Who else do we pay?**

Where we appoint general insurance distributors to arrange insurance on our behalf, they may receive up to 55% of the commission and/or fees we earn.

### **Wholesale broker arrangements**

We may use the services of a wholesale broker. We may receive a share of any commission they receive from the insurer and/or charge a fee. In some cases, we may only charge a fee for our services. We will tell you what remuneration we receive in relation to such arrangements.

A broker may use our services as a wholesale broker and where they do, we may share any commission we receive from the insurer with them, unless they only charge a fee for their services.

### **Referrals to us**

If you have been referred to us, we may pay the referrer up to 50% of the commission and/or fees we earn.

### **Personal advice disclosure**

If we provide you with personal advice as a retail client, then at the time the advice is provided to you, or as soon as practicable afterwards, we will at least tell you either:

- the amount of any remuneration (including commission) or other benefits we or other persons receive that might reasonably be expected to be, or have been capable of, influencing us in providing the advice; or
- if the amount is not known, the manner of calculation.

In other cases, we will disclose this information to you in other documentation (such as advice disclosure documentation) issued to you by us.

## More information

You can request particulars of the remuneration (including commission) or other benefits from us within a reasonable time after you are given this FSG and before any financial service identified in this FSG is provided to you.

## REMUNERATION TERMS

### Invoice

Where you have asked us to arrange your insurance (including any variations and renewals) on your behalf we will invoice you for the premium, statutory charges (e.g., stamp duty, fire/emergency services levy, GST) and any fees we charge for doing this.

You must either arrange premium funding, or pay the premium in accordance with the terms set out on our invoice, unless advised otherwise. If you do not pay the premium on time, we are obliged to inform the insurer that you have not done so. The insurer then has the right to cancel the contract of insurance. This means that you will not be insured from the date the cancellation takes effect. The insurer may also charge a short-term penalty premium for the time on risk.

Where we act for the insurer, we or the insurer will issue an invoice for the premium, statutory charges (e.g., stamp duty, fire/emergency services levy, GST) and any fees we charge along with details of payment terms.

### Our Remuneration refund and set off rights

If you cancel the insurance, unless otherwise agreed with you in writing, we treat our commission and fees as being fully earned from the time of our arrangement of the entry, variation, or renewal the insurance policy for you. This means we are entitled to retain all fees and commission for the full period of insurance for any product placed by us on your behalf, even if an insurance policy is amended, cancelled, or otherwise ends in accordance with its terms or law before the expiry date of the period of insurance.

Unless agreed otherwise, if you terminate our engagement after we arrange your insurance and before payment of premium, we may charge you a fee in the amount equivalent to the commission that would have been payable to us by insurers. You agree that we may offset any commission or other amounts payable by you to us such as a fee from any premium refund you are entitled to from an insurer.

We may set off monies owed to you as return premiums against monies owed by you.  
The above rights apply to any policies cancelled as a result of a premium funding default.

## MONEY HANDLING ARRANGEMENTS AND INTEREST/INVESTMENT INCOME ON TRUST FUNDS

We handle all money received from you or the insurer in relation to insurance in accordance with the requirements set out by the Corporations Act 2001 (Cth) which requires us to pay your premiums (and certain money paid to us by insurers for your account) into a trust account or other permitted investment pending payment to the insurer or you (as applicable). We may earn and retain interest or an investment return on this money. The length of time we hold any money can vary according to the type of insurance and the different arrangements we have in place with insurers. The amount of the interest or investment return we receive is not attributable to any particular product placement and will generally not be known as this is generally calculated by the relevant financial institution.

We adopt industry practice in calculating local statutory charges. We try to tell you the correct amounts of premium and statutory and other charges that apply to your insurance. In the event that we misstate that amount (either because we have made an unintentional error or because a third party has misstated the amount), we reserve the right to correct the amount (except to the extent prohibited by law). Where permitted by law, you shall not hold us responsible for any loss that you may suffer as a result of any such misstatement.

## HOW DO WE MANAGE CONFLICTS OF INTEREST?

We take any potential conflicts of interest seriously and have a Conflict-of-Interest Policy, which we and our representatives must comply with. Compliance is audited on a regular basis.

Conflicts of interest are circumstances where some or all of your interests as our client, are or may be inconsistent with, or differ from, some or all of our interests.

Our procedures and training are all designed to properly manage any conflict of interest and it is important to note that we have legal duties we owe you when we act as your professional adviser on your behalf.

A key conflict faced when we act on your behalf is where we receive benefits from someone other than you — this can potentially influence us to act in their or our interests rather than yours. Where we arrange a policy an insurer can pay us commission (see above for details). It is the major form of insurance broker remuneration and can create a potential conflict of interest.

We have the number of procedures in place to manage this potential conflict of interest. For example, we tell you about this remuneration arrangement in this Guide and you can ask for more detailed information if you need it before you proceed. Where we provide personal advice on your behalf we have a legal duty as a professional to put your interests ahead of our own and can only provide you with advice that is appropriate for you having regard to the scope of advice agreed with you. If we can't provide such a service we will tell you. If you are a retail client, the Statement of Advice (or personal advice statement) we give you containing the personal advice also confirms details regarding the remuneration received.

## **PRIVACY**

We value the privacy of personal information and are bound by the Privacy Act 1988 (Cth) when we collect, use, disclose or handle personal information to offer, provide, manage, and administer the many financial services and products we and our group of companies are involved in (including those outlined in this FSG). Further information about our privacy practices can be found in our Privacy Policy that can be viewed on our website at [www.mga.com](http://www.mga.com) or alternatively, a copy can be sent to you on request. Please contact our Privacy Officer below, our office or visit our website if you wish to seek access to, or to correct, the personal information we collect or disclose about you.

### **What if you do not provide some personal information to us?**

If the required personal information is not provided, we or any involved third parties may not be able to provide appropriate services or products.

### **How we collect your personal information**

Collection can take place by telephone, email or in writing and through websites (from data you input directly or through cookies and other web analytic tools).

We will collect your information directly from you or your agents. We may obtain personal information indirectly and who it is from can depend on the circumstances. We will usually obtain it from another insured if they arrange a policy which also covers you, related bodies corporate, referrals, your previous insurers or insurance intermediaries, witnesses in relation to claims, health care workers, publicly available sources, premium funders, and persons who we enter into business alliances with.

We attempt to limit the collection and use of sensitive information from you unless we are required to do so in order to carry out the services provided to you. However, we do not collect sensitive information without your consent.

### **Who we disclose your personal information to**

We share your personal information with third parties for the collection purposes noted above where it is reasonably necessary for, or directly related to, one or more of our functions or activities.

We do not use or disclose personal information for any purpose that is unrelated to our services and that you would not reasonably expect (except with your consent). We will only use your personal information for the primary purposes for which it was collected or as consented to.

These third parties can include our related companies, our agents or contractors, insurers, their agents and others they rely on to provide their services and products (e.g., reinsurers), premium funders, other insurance intermediaries, insurance reference bureaus, loss adjusters or assessors, medical service providers, credit agencies, lawyers and accountants, prospective purchasers of our business and our alliance and other business partners. If we are seeking insurance from an overseas insurer or to a reinsurer who is located overseas, your information may be given to the overseas insurer (like Lloyd's of London who are based in the United Kingdom), reinsurer, or the overseas broker. By providing personal information to us, you acknowledge that we may not always be able to guarantee that overseas parties are subject to requirements similar to those contained in the Privacy Act and consent to the disclosure on this basis.

We also use personal information to develop, identify and offer products and services that may interest you, conduct market or customer satisfaction research. We do not use sensitive information to send you direct marketing communications without your express consent.

#### **More information, access, correction or complaints**

By providing us with personal information you and any other person you provide personal information for, consent to this use and these disclosures unless you tell us otherwise.

If you wish to withdraw your consent, including for things such as receiving information on products and offers by us or persons we have an association with, please contact the Privacy Officer

**Privacy Officer**  
**MGA Insurance Brokers**  
Telephone number: (08) 8291 2300  
Post: Locked Bag 4001, KENT TOWN DC SA 5071.  
Email: [privacy@mga.com](mailto:privacy@mga.com)

#### **WHAT SHOULD I DO IF I HAVE A COMPLAINT?**

If you have any complaints about the service provided to you, you should take the following steps.

1. Contact us and tell us about your complaint.
2. If your complaint is not satisfactorily resolved within 5 business days, please contact the Complaints Officer

**Complaints Officer**  
**MGA Insurance Brokers**  
Telephone number: (08) 8291 2300  
Post: Locked Bag 4001, KENT TOWN DC SA 5071.  
Email: [idr@mga.com](mailto:idr@mga.com)

We will try and resolve your complaint quickly and fairly.

3. A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply. You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time.
4. AFCA is a free independent external disputes resolution service provided to customers to review and resolve complaints, subject to its rules. For details:

Online: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Phone: 1800 931 678  
Mail: Australian Financial Complaints Authority  
GPO Box 3, Melbourne VIC 3001

You may refer a complaint to AFCA at any time. Time limits apply. For example, AFCA may not consider your complaint referred to AFCA more than 2 years after we provide a final IDR response to you, unless AFCA considers special circumstances apply. If in doubt, contact AFCA. If AFCA tells you that under its rules it cannot assist you or consider your dispute, then you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

#### **PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS**

MGA have professional indemnity insurance in place which covers us and our representatives for claims made against us and/or them by clients in relation to our and/or their conduct in the provision of our services described in this FSG (subject to the policy terms). The insurance continues to cover claims in relation to our representatives who no longer work for us, but who did at the time of the relevant conduct (subject to its terms). This insurance satisfies the requirements for compensation arrangements under s912B of the Corporations Act 2001.

## OTHER IMPORTANT SERVICE TERMS THAT APPLY WHEN WE ARE ACTING ON YOUR BEHALF

### Any direct engagement by you with insurers where we are acting on your behalf

Where we act on your behalf, in the event that you have direct interaction with insurers without our involvement, we shall not be responsible for the outcome and consequences of such direct interactions.

### Approved Insurer list

We only arrange insurance with insurers that meet our minimum internal standards, unless otherwise agreed with you (e.g., where cover is arranged with an unauthorised foreign insurer). We do not guarantee the solvency or continuing solvency of any insurer and you should note that the financial position of an insurer can change. If an insurer ceases trading, we will do our best to assist you. Please note that in cases of insurer insolvency, premiums held by us may be deemed by law to have been paid to that insolvent insurer and cannot be returned to you. Similarly, claims monies held by us may be returnable to the insolvent insurers or their liquidators by operation of law, rather than you.

### Legal and taxation issues

Any information we provide on insurance regulatory and tax issues will be based on information available publicly and our experience from working on similar matters for other clients. We are not qualified to provide, and will not provide, legal, accounting, regulatory or tax advice. We recommend that you obtain your own advice on such matters from relevant professional advisers.

### Jurisdiction

South Australia, unless this FSG lists an Authorised Representative, in which case the laws of the State or Territory in which the Authorised Representative's office listed in this FSG is located. The courts of Australia have exclusive jurisdiction.

## IMPORTANT INFORMATION ON INSURANCE

Where we agree to act on your behalf in relation to any insurance it is a term of that arrangement that you agree to read this Important Information on insurance section and ask us if you have any queries relevant to that insurance. This will help us help you.

### Duty of utmost good faith

Remember that every insurance policy is based on the principle of utmost good faith requiring each party (which means both you and the insurer) to act towards the other party in respect of any matter arising under the contract, with the utmost good faith. If you fail to do so it may prejudice your rights under the policy and in particular, any claim.

### Disclosure and representations duty

Your **legal duty** regarding disclosure and representations to the insurer.

You have a legal duty in relation to what you disclose and the representations you make, to an insurer where you are applying to renew, extend, vary/change, replace or reinstate your insurance.

You are responsible for the accuracy and completeness of all the information you provide to us and to the insurer.

### What happens if you don't meet your duty?

If you don't the insurer may (to the extent permitted by law):

- reject or not fully pay your claim; and/or
- cancel your insurance or if the failure was fraudulent, treat it as if it never existed.

## Two key things to focus on in meeting your duty:

### 1. Answering an insurer's questions

Answers to an insurer's questions usually help them decide whether to provide you with insurance and if so, on what terms. When answering them make sure you:

- read all guidance provided by the insurer and/or ask us if you are unclear;
- take reasonable care to make sure your answers are true, honest, up to date and complete in all respects.

You may breach your obligations if you answer without any care as to the truth of the answer or if you only guess or suspect the truth. If in doubt, pause the application and obtain the true facts before answering or ask for assistance or clarification; and

- if another person is answering for you (including us), you should check the questions have been answered correctly on your behalf by them. If not, let us know immediately.

We rely on you for the accuracy of all information supplied.

### 2. Avoiding misrepresentations

You must take reasonable care not to make a misrepresentation to an insurer. A misrepresentation includes a statement that is in any way false, misleading, dishonest or which does not fairly reflect the truth. E.g., a statement of fact that is not true, a statement of opinion that is not the subject of an honestly held belief or a statement of intent that never existed at the time provided.

A misrepresentation made knowingly by you without belief in its truth or recklessly without caring whether it is true or false can be fraudulent.

#### What is the duty that applies to you?

A different duty can apply under the [Insurance Contracts Act](#) depending on the type of insurance being applied for. In some cases, a different duty may apply to different types of insurance in a policy. The insurer will normally identify if this is the case.

#### Consumer insurance contracts

These include insurance:

- obtained wholly or predominantly for the personal, domestic or household purposes of the insured; or
- which the insurer has opted in for as a consumer insurance contract – this will be stated to be the case by the insurer in the policy documentation.

For this insurance, an insured has a duty to take reasonable care not to make a misrepresentation to the insurer before the relevant contract of insurance is entered into. Whether or not an insured has taken reasonable care not to make a misrepresentation is to be determined with regard to all the relevant circumstances.

An insured is not to be taken to have made a misrepresentation merely because the insured failed to answer a question; or gave an obviously incomplete or irrelevant answer to a question. A misrepresentation made fraudulently is made in breach of the duty. See section 20B of the [Insurance Contracts Act](#) for detail.

#### Other insurance contracts

All other insurance is subject to a duty of disclosure on the insured under section 21 of the [Insurance Contracts Act](#) to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that:

- the insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or

- a reasonable person in the circumstances could be expected to know to be a matter so relevant, having regard to factors including, but not limited to:
  - the nature and extent of the insurance cover to be provided under the relevant contract of insurance; and
  - the class of persons who would ordinarily be expected to apply for insurance cover of that kind.

Some examples of matters that should be disclosed are:

- any claims you have made in recent years for the particular type of insurance;
- cancellation, avoidance of, or a refusal to renew your insurance by an insurer; or
- any unusual feature of the insured risk that may increase the likelihood of a claim.

#### **The duty of disclosure does not require the disclosure of a matter:**

- that diminishes the risk;
- that is of common knowledge;
- that the insurer knows or in the ordinary course of the insurer's business as an insurer ought to know; or
- as to which compliance with the duty of disclosure is waived by the insurer.

If you are not sure whether your insurer needs particular information, we recommend that you provide it to them anyway.

#### **When does the relevant duty apply until?**

The relevant duty applies until the time the insurer agrees to issue you with insurance for the first time.

It also applies again when you are applying to renew, extend, vary/change, replace or reinstate your insurance, up until the time they agree to this.

If you have made a statement and/or disclosure and this changes before the end of the above relevant time, contact us as you must tell the insurer about this change before the time ends.

Once you comply with your relevant duty you may still have obligations during the period of insurance to update the insurer about any changes in prior disclosures or representations made. Your policy will identify what these are. If anything changes you must contact us. For example:

- any claims you have made in recent years for the particular type of insurance;
- cancellation, avoidance of, or a refusal to renew your insurance by an insurer;
- any unusual feature of the insured risk that may increase the likelihood of a claim.

#### **Need more help?**

If any question asked in your insurance application process or guidance provided is not clear or you need additional assistance, please contact us.

## **SOME OTHER IMPORTANT THINGS TO BE AWARE OF REGARDING INSURANCE**

We set out below some important terms found in policies you should pay particular attention to and ensure you understand.

#### **Claims made and occurrence-based policies – What is the difference?**

Should the policy schedule state that the cover is written on a "Claims Made" or "Claims Made and Notified" basis, it is imperative that the insurer be notified immediately of any claim, incident or circumstances that may result in a claim, during the currency of the policy or any permitted extended disclosure period (if applicable).

*Claims Made Policies* - Directors' and Officers' liability policies, professional indemnity and some other liability policies are typically written on a "Claims Made" basis. They cover only those claims made against you during the period of insurance. In some cases, you also have to notify the insurer of the claim during the period of insurance.

Claims made policies do not (unless stated otherwise) provide cover in relation to:

- claims made after the end of the period of insurance even though the event giving rise to the claim may have occurred during the period;
- claims notified or arising out of circumstances notified under any previous policy;
- claims made against you prior to the commencement of the period of insurance;
- claims arising out of circumstances noted on the application for the current period of insurance or on any previous application.
- events that occurred prior to the retroactive date of the policy (if such a date is specified);

However, where you give notice in writing to the insurer of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the period of insurance, the policy will, subject to its terms and conditions, provide cover even if that claim is made after the expiry of the period of insurance.

*Occurrence Based Policies* - General Liability, Industrial Special Risks, Travel, Aviation, Contract Works, Marine policies and many other policies occurrence-based wordings.

This means that when there is an incident/occurrence giving rise to a claim, the policy that responds is the policy that was in force at the time of the incident/occurrence.

### **Sums Insured – Average and Co-Insurance**

Some insurance contracts require you to bear a proportion of each loss or claim if the sum insured is inadequate to cover the full value of your insured property or exposure. These provisions are called 'average' or 'co-insurance' clauses. The types of policies that usually contain these conditions are those covering property or consequential loss/business interruption.

If you do not want to bear a proportion of any loss, when you arrange or renew your contract of insurance you must ensure that the amount for which you insure is adequate to cover the full potential of any loss. If you insure on a new for old basis, the sum insured must be sufficient to cover the new replacement cost of the property.

A simple example of the application of Average/Co-insurance is:

Full Value	\$200,000
Sum Insured	\$100,000

#### **Therefore, you are your own insurer for 50%**

Fire/Storm damage	\$50,000
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<b>Claim limited to 50% of \$50,000</b>	<b>\$25,000</b>
Insurer pays	\$25,000
You pay	\$25,000

### **Waiver of rights terms – Hold Harmless Clauses**

Some policies have a term which limits or excludes claims where the insured has limited its rights to recover a loss from another party in circumstances where that other party is responsible for the loss. This can occur where the insured has entered into a contract limiting the liability which the other contracting party would have had to them but for the contract. These 'hold harmless' clauses are often found in leases, maintenance and supply contracts. If you have entered into or propose to enter into a contract which might limit rights against another contracting party, please let us know, and we can let you know what assistance we may be able to provide. With important and significant contracts, you should obtain legal advice as to whether the contract exposes you to losses or expenses that would not be covered under the policy.

## **Interest of other parties**

Many policies exclude cover for an interest in the insured property held by someone other than the insured, unless that interest is specifically noted in the policy. For example, if property is jointly owned, or subject to finance, the interest of a third party such as the joint owner or financier may be excluded if it is not specifically noted on the policy. If you want the interest of any third party to be covered, please let us know the party and the interest they want covered under the policy, so that we can ask the insurer if they are prepared to note that party's interest on the policy. We do not act on behalf of or for the benefit of such third parties unless we expressly agree to do so in writing.

## **Cooling off period**

A cooling off period may apply to an insurance policy issued to you as a retail client. During the period you may choose not to proceed with the policy. Details of your cooling off rights are included in the relevant Product Disclosure Statement (**PDS**) document. In some cases, an insurer can deduct certain amounts from any refund. Ask us if you do not understand your rights.

## **Other insurance clauses**

If you have more than one policy covering the same loss, insurers may have clauses restricting their obligations to pay a claim. You should tell us if you have other policies covering the same loss.

## **Limits on assigning your rights**

Some policies stop you from assigning any benefits, rights, or obligations under your policy unless you have the insurer's written permission to do so. Contact us if you wish to do this.

## **Standard cover and unusual terms**

For policies subject to the Insurance Contracts Act 1984:

- the Regulations to the Act set out standard terms for the cover which is provided by motor vehicle, home buildings, home contents, sickness and accident, consumer credit and travel insurance. If an insurer wants to alter these terms or offer less than the minimum amount of insurance, they must clearly inform you in writing that they have done so. They can do this by providing you with a PDS or a copy of the insurance contract.
- If an insurer wants to rely on a term in a contract of insurance which is not usually included in contracts that provide similar cover, they must clearly inform you in writing of that term. Again, they may do so by providing you with a copy of the insurance contract.

## **Unauthorised Foreign insurers**

If one or more of the insurance companies concerned with a particular policy is an unauthorised foreign insurance company not authorised under the Insurance Act to carry on Insurance business in Australia, we will notify you of this fact. An unauthorised foreign insurer is an insurer that does not directly carry on insurance business in Australia (i.e. they operate overseas only) and thus is not required to be licensed to do so under the [Insurance Act 1973 \(Cth\)](#). Such insurers are not subject to the Act which establishes a system of financial supervision of general insurers in Australia. You can obtain further information from us on the insurer such as where it is incorporated, its paid-up capital, whether it is subject to financial regulation, and the laws that will apply to any dispute.

## **General Insurance Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry. Your insurer may be subject to the Code and the obligations applied under it. See [www.insurancecouncil.com.au/cop](http://www.insurancecouncil.com.au/cop) for details.