



# Australian Risk Applications

"Business solutions to risk"

## AUSTRALIAN RISK APPLICATIONS PTY LIMITED FINANCIAL SERVICES GUIDE (FSG)

Preparation date # 10/01/2024

### PURPOSE OF THIS FSG

*This FSG is designed to assist you in deciding whether to use the services offered by us. It contains important information, including about:*

- *us and the services we can provide and some important terms that apply when we provide them*
- *how we and others are paid in relation to our services*
- *how we manage conflicts of interest we may have*
- *our internal and external dispute resolution procedures and how you can access them*
- *arrangements we have in place to compensate clients for losses*

*This is an important document, replaces any prior FSG issued to you by us, and remains valid until we provide you with a new FSG replacing it. We may provide you with a Supplementary FSG to update it. We rely on you to read the information and ask us if you have any queries.*

*When you agree to use our services, you confirm to us that you have read this FSG and agree to its terms, other than to the extent expressly agreed with you in writing.*

*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.*

*If we arrange insurance (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.*

#### **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 'Remuneration' section along with details of relevant associations and also about how we manage conflicts of interest.

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*Offices in ~ Sydney ~ Melbourne*



## **ABOUT US**

Australian Risk Applications Pty Limited ABN 72 078 765 321 (referred to as “Australian Risk Applications”, “ARA”, “we”, “us” and “our”) is an Australian Financial Service Licensee (AFSL No. 228991) focused on insurance and risk management.

## **CONTACT DETAILS, HOW YOU CAN GIVE US INSTRUCTIONS AND HOW WE COMMUNICATE WITH YOU**

### **Our contact details:**

Australian Risk Applications Pty Limited  
Address Suite 401, Level 4, 12 Mount Street, North  
Sydney, NSW 2060  
Telephone +(61) 2 9007 2491  
WEBSITE: [www.austrisk.com](http://www.austrisk.com)

### **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.

### **How we communicate with you**

Unless we agree otherwise with you, in providing our services we will provide all relevant information and documentation to your email address. If you opt out of electronic delivery, we will send all relevant information and documentation to you by post at your nominated address. We will communicate with you using the most recent details supplied by you. You must tell us if your contact details change.

## **OUR SERVICES**

### **Our Authorisation**

We are an Australian Financial Services Licensee and are authorised to provide advice and deal and provide claims handling and settling services 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 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.

In all cases we will act as agent of the insurer (or in some cases on our own behalf) and not for you in providing our services, **unless** before the time we provide our services we expressly notify you in writing that we are acting on your behalf.

We can only provide the insurance services below in relation to insurers we have on our approved insurer list (subject to eligibility).



To use our services, you need to contact us and agree with us on what services you wish to be provided with and on what terms.

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 services**

- **General advice service**

We may give you generalised recommendations or opinions or reports on a product that may influence your choice, but these are not based on our consideration of your personal circumstances. 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. We only provide you with a general advice service in relation to a product, unless we expressly tell you we are providing a personal advice service, which we explain below. Unless we expressly tell you otherwise, we act on our own behalf in providing any general advice.

- **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 will agree with you when we provide a personal advice service and what its scope 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. We will act on your behalf in providing this service unless we expressly tell you otherwise.

- **Dealing and arranging services**

**When acting for the insurer** - We may arrange for the issue, variation and/or renewal and/or disposal/cancellation of the relevant general insurance you request on behalf of one of our approved 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.

Where we act under a binding authority from the insurer, this means we can issue, vary and/or renew and/or dispose/cancel the insurance for the insurer as if we were them (subject to the scope of the authority given which may limit which of these activities we can do and the scope of our authority in relation to them).

**When acting for you** - If we are acting on your behalf we may 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 approved 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 handling and settling services**

**When acting for the insurer** – We may be authorised to provide claims handling or settling services on behalf one of our approved insurers. Where we act under a claims binding authority from the insurer, this means we can settle the claim for the insurer as if we were them (subject to the scope of the authority given which may limit what we can do and the scope of our authority).



**When acting for you** - 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 service**

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.

- **Premium funding services**

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 a preferred premium funder (e.g Iqumulate Premium Funding and Elantis Premium Funding) or simply refer you to them or another premium funder (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 service 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**

### **Overview**

The following sets out the types of remuneration we may receive for our services depending on our role and services provided, who else we may pay and our remuneration terms. We can be remunerated in a number of ways. They can vary according to the service provided and/or our arrangements with the relevant insurer and you.



## **Remuneration types**

### ***Commission and/or fees earned by us which are included as part of the premium***

Unless we tell you otherwise, we will be remunerated by commission and/or fees which are included in the premium amount payable by you, whenever you enter into an insurance policy arranged by us (including renewal and variations affecting the premium payable).

The commission and/or fee may be a percentage of the insurer's base premium (i.e. premium excluding stamp duty, fire services levy, GST or any other applicable government charges, taxes, fees or levies) or a percentage of the value of property to be insured and/or a charge per item or unit insured.

The percentages and charges can vary for each product type and different insurers may pay us different commission and/or fees for the same type of products.

Any commission and/or fee added is included in the premium amount set out in your invoice and we receive it when you pay the premium or at a later time agreed with the insurer.

The commission and/or fee for insurance provided to you as a retail client ranges from 0 to 30% percent – depending on the product. For other business it may be higher.

The commission and/or fee does not represent our profit margin as it also reimburses us for administrative and other expenses, we incur in providing our services.

We may share what we receive with our representatives who act for us in providing our services.

### **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. It will be noted in the invoice that we send you and is payable in addition to the premium and any commission/fee we may receive as part of the premium described above, unless we expressly tell you no commission/fee is payable by the insurer in writing.

We may charge you:

- an administration fee;
- a set amount for specific services;
- an amount based on a rate for the time we spend providing the service; or
- an amount on some other basis, such as percentage of premium or insured value of the subject matter of the insurance.

All fees are payable after we have provided the service or at such earlier time, we agree with you in writing. Unless stated otherwise in writing, all fees in our invoices are exclusive of GST. We may share fees with our representatives who act for us in providing our services.

### **Services and support benefits**

From time to time, we or our associates 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.

We or our associates 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, we 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. We have and monitor compliance with our Conflict of Interest 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 (ranging from 0-3%) 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. We may share it with our representatives who act for us in providing our services.

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

#### **Envest**

We are majority owned by Envest Pty Ltd (ACN 610 997 138) (Envest) which is an entity that owns majority and minority interests in a number of financial services businesses, including insurance brokers, underwriting agencies (on behalf of local and overseas insurers), and claims administration service providers (Envest Group member). For details of members of the Envest Group see <https://envest.com.au>. We will inform you before or at the time we provide our services, if we are providing you with services in relation to an Envest Group member, in particular if we are arranging insurance through them where they are acting as agent of your insurer or as our wholesale broker.



### **Ardonagh Group**

The Ardonagh Group is an insurance distribution platform based in the UK. Ardonagh Australia owns the Invest group of companies which we are part of. Please refer to the Ardonagh website for more information on the Ardonagh Group <https://www.ardonagh.com/>

### **Aviso Group**

We are a member of the Aviso Group Pty Ltd ABN 32 616 963 172 (Aviso Group) which is an Invest subsidiary and comprised of multiple brokers Australia wide that are licensed to use the Aviso Group trademarks and intellectual property. See <https://avisogroup.com.au> for details.

### **Steadfast Group**

We are a Steadfast Group Limited (Steadfast) Network Broker. As a Steadfast Network Broker we have access to services including model operating and compliance tools, procedures, manuals and training, legal, technical, HR, contractual liability advice and assistance, group insurance arrangements, product comparison and placement support, claims support, group purchasing arrangements and broker support services. These services are either funded by Steadfast, subsidised by Steadfast or available exclusively to Steadfast Network Brokers for a fee.

Steadfast has arrangements with some insurers and premium funders (Partners) under which the Partners may pay Steadfast a fee to access strategic and technological support and the Steadfast Broker Network. Steadfast is also a shareholder of some Partners. You can obtain a copy of Steadfast's FSG at [www.steadfast.com.au](http://www.steadfast.com.au).

### **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 as described above.

### **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. We may share it with our representatives who act for us in providing our services.

### **Referrals**

Where a third party has referred you to us, we may pay them an agreed percentage of our remuneration or an agreed amount for the referral as a commission or fee. This amount will be paid after we or they provide services to you. A commission or an agreed fee may also be paid on renewal and in some cases on variation.

If we refer you to another service provider we will be remunerated by them by way of a commission or fee for doing this unless we tell you we are not. The amount is generally a percentage of their remuneration the amount of which



may depend on the circumstances. A commission or an agreed fee may also be paid on renewal and in some cases on variation. We may share it with our representatives who act for us in providing our services.

### **More information**

You can ask us to give you more particulars of our remuneration or other benefits.

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 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.

### **REMUNERATION TERMS**

#### **Invoice**

**When acting for the insurer in relation to insurance-** We or the insurer will issue an invoice for the premium and statutory charges (e.g., stamp duty, fire/emergency services levy and GST) along with details of payment terms.

**When acting for you in relation to insurance -** We will invoice you for the premium, statutory charges (e.g., stamp duty, fire/emergency services levy, GST) and any fees we charge you separately to the premium. You must pay us by the date for payment specified on our invoice. 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 and may also charge a short-term penalty premium for the time on risk. Subject to applicable law, the policy ends from the time of cancellation. However, cancellation does not affect any rights that you had under the policy when it was in force. Refer to the policy for details of what the insurer's rights are regarding refunds on cancellation. See below for our rights regarding our remuneration on cancellation.

**When you obtain premium funding –** Where you choose premium funding from one of our preferred or referral funders, before you enter into the premium funding contract the funder will issue you with details of your required repayments (which will include any commission/fees we may receive for the contract) and when they must be paid.

#### **Our Remuneration refund and set off rights**

Unless otherwise agreed with you in writing and to the extent permitted by applicable law:

- we treat our commission and fees payable to us by the insurer and fees payable to us by you, as being fully earned from the time of our arrangement of the entry, variation, or renewal of the insurance for you and you agree that we may retain all such amounts for the full period of insurance, even if the insurance is amended, cancelled, or otherwise ends in accordance with its terms or law before its agreed period of insurance (including for premium funding defaults);
- if you terminate our engagement after we arrange the insurance and before payment of premium, we may charge you a fee in the amount equivalent to the commission or fee that would have been payable to us by insurers and any fee payable by you to us; and





- any amount you owe us under or in relation to this Agreement or under any other agreement we have entered into with you is outstanding, we may (without prejudice to any other remedy available) recover some or all of the amounts paid or outstanding by deducting or offsetting it from any payments we receive on your behalf (such as claims monies or premium refunds) under this Agreement. We may deduct or offset such amounts at any time, including after you notify us that you are terminating our services and we will advise you in writing of the deduction or offset as soon as is reasonably practicable thereafter.

### **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 identify the correct amounts of premium and statutory and other charges that apply to your insurance. In some cases, we may tell you if an exemption from statutory charges may apply but it is your responsibility to determine what exemptions may be relevant to you. In the event that we misstate an amount because we have made an unintentional error, because a third party has misstated the amount or an exemption has not been identified and applied, we reserve the right to correct the amount (except to the extent prohibited by law). To the extent 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 our client's interests, 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 our clients when we act as your professional adviser on their 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.



## **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.

## **PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS**

We 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.

## **OUR COMPLAINTS AND DISPUTES PROCESS**

If you have any complaints about the service provided to you, our complaints and disputes process is as follows:

- Contact us and tell us about your complaint.
- If your complaint is not satisfactorily resolved within 24 hours, please contact our Complaints Officer, Michael Murrell, on telephone number (02) 9007 2491 or put your complaint in writing and send it to: - The Complaints Officer Address Suite 401, Level 4, 12 Mount Street, North Sydney, NSW 2060. Please mark the envelope "Notice of Complaint".
- We will try and resolve your complaint quickly and fairly. To assist us in resolving your concerns quickly and efficiently, please provide as much information as you can about your complaint. We will acknowledge receipt of your complaint promptly, within one business day of receiving it or as soon as practicable thereafter. 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. We are members of AFCA. AFCA is a free independent external disputes resolution service provided to customers to review and resolve complaints, subject to its rules. For details you can visit their website at [www.afca.org.au](http://www.afca.org.au) or contact them:

Australian Financial Complaints Authority  
PO Box 3 Melbourne, VIC, 3001  
Telephone: 1800 931 678 (free call)  
Email: [info@afca.org.au](mailto:info@afca.org.au)

You may refer a complaint to the 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.



## **YOUR PRIVACY**

### **Generally**

We are committed to protecting Your privacy in accordance with the requirements of the Privacy Act 1988 (Cth) (“**Privacy Act**”) and the Australian Privacy Principles (**APPs**), as amended, replaced or superseded from time-to-time. This provides an overview of how we collect, hold, use and disclose Personal Information. Our Privacy Policy provides more detail and it is available on our website. **Personal Information** is information or an opinion about an identified individual, or an individual who is reasonably identifiable a) whether the information or opinion is true or not; and b) whether the information or opinion is recorded in a material form or not. It includes Sensitive Information as defined in the Privacy Act which includes, amongst other things, information about an individual’s racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

### **Why we collect, hold, use and disclose your Personal Information**

The primary purpose for collecting, holding, using and disclosing your Personal Information is to enable us to provide our services described in this FSG to you or where reasonably necessary for or directly related to one or more of our insurance service functions and activities. If the required personal information is not provided, we or any involved third parties may not be able to provide appropriate services or you may be in breach of your duty regarding disclosure to insurers.

### **How we obtain your Personal Information**

We collect your Personal Information at various points including, but not limited to, when you are applying for, changing or renewing an insurance policy with us or when we are processing a claim or handling any complaint. Personal Information is usually obtained directly from you, but sometimes via a third party. When information is provided to us via a third party we use that information on the basis that you have consented or would reasonably expect us to collect your Personal Information in this way. We take reasonable steps to ensure that you have been made aware of how we handle your Personal Information.

### **When we disclose your Personal Information**

We may disclose the information we collect to third parties where it is reasonably necessary for, or directly related to, the services we provide to you. This can include the policyholder (where the insured person is not the policyholder, i.e. group policies) to joint policyholders, our related companies (and persons they rely on to provide their services), 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. They are prohibited from using your Personal Information except for the specific purpose for which we supply it to them and we take such steps as are reasonable to ensure that they are aware of the provisions of our Privacy Policy in relation to your Personal Information. We will transfer your personal information to third parties overseas where it is necessary to provide our services. For example, we sometimes use the internet to collect and process information. In addition, some insurers or reinsurers are based overseas and we need to provide your personal information to them to arrange your cover. The countries in which these recipients of your personal information are located will depend on the types of services we provide to you, the location of the insurer or reinsurer and the location of other services providers. We are unable to identify this location until such time as the services have been provided and this may be subject to change whilst the services are being provided. 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.

**When you give us Personal Information about other individuals**

In such a case we rely on you to have made or make the individual aware that you will or may provide their personal information to us and the types of other parties and service providers we may provide it to, the relevant purposes we and the other parties and service providers will use it for, and how they can access it. If you have not done or will not do either of these things, you must tell us before you provide the relevant Personal Information to us.

**Your decision to provide your Personal Information**

In dealing with us, you agree to us collecting, using and disclosing your Personal Information, which will be collected, stored, used and disclosed by us as set out in this Privacy Statement and our Privacy Policy.

**Access to and correction of Your Personal Information**

Please contact us if you would like:

- a copy of our Privacy Policy;
- to cease to receive marketing offers from us or persons with whom we have an association; or
- to seek access to, update or correct your Personal Information held by us.

**How to Make a Complaint**

If you have a complaint or would like more information about how we manage your Personal Information, please review our Privacy Policy for more details, or contact us. We will notify you as soon as possible if your Personal Information is involved in a data breach that is likely to result in serious harm to you. For further information on privacy visit the Australian Government Office of the Australian Information Commissioner Website at <http://www.oaic.gov.au/>

**IMPORTANT SERVICE TERMS****Any direct engagement by you with insurers**

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 we act on your behalf in relation to the insurance and the 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.



It is important to note that an insurer's rights under a policy are subject to applicable law. In particular, it can only rely on any rights it has regarding the operation of or breach of a term of a policy to the extent permitted by applicable law, including any right to refuse or reduce a claim and/or cancel a policy. The law can be complex and legislation such as the Insurance Contracts Act 1984 (Cth) (the IC Act) can restrict an insurer's rights depending on the circumstances (e.g see sections 13, 14 and 54). You need to seek your own advice regarding all relevant legal rights you may have where an insurer seeks to refuse or reduce a claim and/or cancel a policy.

### **Sanctions regime**

We have a duty to take care to avoid breaching the *Autonomous Sanctions Act 2011* (Cth) and Australian laws implemented under the UN Security Council sanctions regimes. The sanctions regime prohibits particular commercial activities involving nominated countries and/or regions and dealings as well as designated persons and entities associated with the sanctions regime. Commercial restrictions may include providing finance to state owned or controlled entities that promote sanctioned country economy, entities that are engaged in military equipment activities or state owned or controlled entities involved in the crude oil sector, transport, telecommunications, energy and certain natural resources sectors. The sanctions regime also includes travel bans for individuals and export, import and services restrictions. While we periodically review our client list to identify clients who may be subject to sanctions, we may not be aware of important aspects of your supply, import or transfer of goods or range of different services provided to sanctioned countries, individuals and entities. Policies will not cover anyone the subject of such sanctions or where to cover the person would be illegal. If you are in any doubt whether you may be engaging in conduct that contravenes an Australian sanctions law, please advise us immediately and seek appropriate advice. For more information, please refer to the Department of Foreign Affairs Sanctions [webpage](#).

### **Limitation of liability**

Unless otherwise agreed in writing, to the maximum extent permitted by law and subject to any liability implied by law which cannot be excluded, you agree that our entire liability to you (whether related to our services or not), and whether arising in tort, common law or under statute and whether caused by reason of negligence, our acts, conduct or omissions, breach of our agreement with you, or arising from our failure to perform our services, will not exceed A\$10,000,000 in the aggregate.

Notwithstanding the above, you agree that we will not be liable to you for any loss, damage, liability, or expenses of any kind (Loss) arising from or in connection with provision of our services, except to the extent that such Loss is directly caused by us and naturally flows in the normal course of events from the occurrence giving rise to liability for such Loss. You also agree that our liability will be proportionate to the share of responsibility we have for any Loss you incur according to the extent to which we caused or contributed to the relevant Loss.

To the extent permitted by law, we will not be responsible or liable for any consequential, incidental, indirect or special damage or loss of any kind (inclusive of loss of profits, revenue, anticipated savings, loss of data, loss of reputation, goodwill, business or opportunities).

These provisions shall not apply to any liability for death or personal injury or fraud or fraudulent misrepresentation.

This limitation of liability clause shall survive termination of our agreement with you.

### **Intellectual property**

We will retain all ownership, title, copyright and other intellectual property rights in all materials developed, designed or created by us and brought into existence as part of, or for the purposes of performing the services



including but not limited to documents, reports, information and data stored by any means. You must not use any materials created by us in connection with this agreement for any purpose other than its internal purposes. You must not disclose materials created by us to any third party or reproduce or disseminate those materials without our prior written permission.

**Jurisdiction**

The laws of New South Wales will govern this Agreement and the courts of Australia have exclusive jurisdiction.

**Where we act on your behalf**

Where we tell you we will act on your behalf it is a term of providing our services that you agree to read the attached “Important Information on Insurance” section which provides some important information about insurance. If you have not please contact us as we rely on you doing so. Contact us if you have any questions.



## **IMPORTANT INFORMATION ON INSURANCE**

*Where we tell you we agree to act on your behalf in relation to any insurance (as opposed to when we act on behalf of the insurer and not you) it is a term of our agreement with you that read this Important Information on insurance section below and ask us if you have any queries relevant to that insurance. This will help us help you.*

### **YOU AND THE INSURER MUST COMPLY WITH THE 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 before you “enter into” your insurance. This means when you first buy it and each time you 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 fail to meet your duty or you make a misrepresentation and the insurer would not have entered into the contract, for the same premium and on the same terms and conditions, had the failure or misrepresentation not occurred, 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**

##### ***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.

### ***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 1984 (Cth) 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 catch insurance:

- obtained wholly or predominantly for the personal, domestic or household purposes of the insured; or
- which the insurer has opted in for as 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 details.

### **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.*

Where a person:

- failed to answer; or
- gave an obviously incomplete or irrelevant answer to,

a question included in a proposal form about a matter, the insurer shall be deemed to have waived compliance with the duty in relation to the matter.

Under such contracts insurers also have rights regarding any misrepresentations made by an insured.

Any statement made in answer to a question asked in relation to the insurance and a reasonable person in the circumstances would have understood the question to have the meaning that the person answering the question apparently understood it to have; that meaning shall, in relation to the person who made the statement, be deemed to be the meaning of the question.

A statement will not be taken to be a misrepresentation:

- if in fact untrue but was made on the basis of a belief that the person held, being a belief that a reasonable person in the circumstances would have held;
- unless the person who made the statement knew, or a reasonable person in the circumstances could be expected to have known, that the statement would have been relevant to the decision of the insurer whether to accept the risk and, if so, on what terms;
- by reason only that the person failed to answer a question included in a proposal form or gave an obviously incomplete or irrelevant answer to such a question.

See section 21, 22, s23A, 23, 24, 26, 27, 27AA and 28 for more detail.

### **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 that the policy requires disclosure to the insurer of, 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?**

This is not legal advice but reflects our understanding of the obligations. If any question asked in your insurance application process or guidance provided is not clear or you need additional assistance, please contact us. If appropriate you should, consider taking your own independent legal advice on your obligations.

### **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.

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



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

### **Waiver of rights terms**

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.

### **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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#### **Claim limited to 50% of \$50,000 = \$25,000**

Insurer pays	\$25,000
You pay	\$25,000



### **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.