

Legal Update

10 February 2010

Proposed General Insurance Financial Claims Scheme Disclosure Requirements

The Financial Claims Scheme (FCS) was set up in October 2008 and was designed to protect certain policyholders and other claimants (certain individuals, small businesses, family trusts and not-for-profit organisations) from the insolvency of general insurers authorised under the *Insurance Act 1973 (Cth)* (Authorised Insurers).

On 15 January 2010 draft Regulations were released for public comment (until 16 February 2010) which contained the proposed FCA disclosure requirements that will apply from 17 April 2010.

Proposed disclosure obligations

The draft Regulations require:

- Product Disclosure Statements (PDSs) for "protected policies" under the FCS issued by Authorised Insurers to include statements that:
 - the policy holder may be entitled to payment under the FCS,
 - access to the FCS is subject to eligibility criteria, and
 - information about the FCS can be obtained from the APRA website www.apra.gov.au and the APRA hotline 1300 13 10 60.

At present all general insurance policies issued by Authorised Insurers are "protected policies" except for:

- policies required to be held under a law of a State or Territory that are protected through arrangements administered by the State or Territory,
 - pre-authorisation liabilities of a foreign general insurer e.g. a liability that was taken on by a foreign general insurer before it became authorised to conduct general insurance business by APRA,
 - a reinsurance or a retrocession of another policy,
 - an indemnification of another policy, or
 - policies exempted by regulations from time to time.
- PDSs that relate to a financial product issued by an unauthorised general insurer (ie effectively any insurer that is not an Authorised Insurer) (UFI), to include a statement that an insurer of that kind cannot be a declared general insurer for the purposes of Part VC of the *Insurance Act 1973 (Cth)* and, if the insurer becomes insolvent, the person will not be covered by the FCS provided under Part VC of that Act, and

- a statement to be provided to wholesale clients that the insurer cannot be a declared general insurer for the purposes of Part VC of the *Insurance Act 1973 (Cth)*, and, if the insurer becomes insolvent, the wholesale client will not be covered by the FCS provided under Part VC of that Act, where:
 - a financial service is provided to those clients in relation to a policy offered or issued by a UFI under the atypical or customised exemptions under regulation 4C or 4D of the *Insurance Regulations 2002 (Cth)* (these are exemptions from the requirement to be authorised as a general insurer under the Insurance Act), and
 - the:
 - » provider of the service would be required to give a statement of advice if the client was a retail client, or
 - » the contract is offered or issued to the wholesale client.

The explanatory statement to the Regulations proposes a commencement date of 17 April 2010.

Requiring authorised insurers to disclose information regarding the FCS is questionable when compared to the cost of compliance

for industry in having to issue new PDSs or Supplementary PDSs and meet other notice obligations (see s1017B) (to the extent relevant exemptions cannot be relied on).

Were an Authorised Insurer to fail, such information should easily be able to be provided to those seeking to claim at that time. This new disclosure requirement simply adds to what are already lengthy documents with no significant benefit for the affected persons.

The proposed wholesale client UFI disclosure is in effect an additional statement to be included with the current UFI disclosures required by Corporations Act Regulation 7.7.20A. Relevant UFI notices will need to be updated to take the above into account and the statement given prior to the relevant disclosure triggers (see above) from 17 April 2010.

The obligation is to meet the requirements by 17 April 2010 and many are likely to find this timetable hard to meet from a practical perspective.

IMPORTANT NOTICE

This document is designed to provide helpful guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date of release. You must ensure that you seek appropriate professional advice as to the currency, accuracy and relevance of this material for you.

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