Insurance and Superannuation Commission

A GUIDE TO THE

INSURANCE (AGENTS AND BROKERS) ACT 1984

Australian Government Publishing Service
Canberra

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ISBN 0 644 35401 1

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First published internally 1986
Second edition 1989
Third edition 1991
Fourth edition 1992
Fifth edition 1994
Sixth edition 1996

Produced by the Australian Government Publishing Service

Foreword

This guide provides an outline of the key requirements of the *Insurance (Agents and Brokers) Act 1984*, together with information to assist agents and brokers in meeting those requirements.

It does not attempt to provide an authoritative interpretation of the Act. Users who require such information are urged to consult the Act and Regulations and to seek legal advice if necessary.

For information on the administration of the Act, users should consult the Insurance and Superannuation Commission's *Annual Reports* and *Selected Statistics on the General Insurance Industry*. These publications are available from Commonwealth Government Bookshops in all capital cities.

From time to time information is also provided, by means of circular, to persons registered under the Act. These circulars can be obtained by contacting the Commission's Canberra office, the address of which is listed at the back of this booklet.

Copies of the Act and Regulations are also available from Government Bookshops. In addition, there are a number of commercial annotated editions of the Act including, but not limited to:

Annotated Insurance Contracts Act: by Mann, P. and Lewis, C. Sydney: The Law Book Company Limited 1994.

Australian and New Zealand Insurance Reporter: CCH Australia Limited.

Insurance Legislation Manual: by Kelly, D. St. L. and Ball, M.L Sydney: Butterworths 1995.

The Insurance Contracts Act 1984, the Insurance (Agents and Brokers) Act 1984 and their Regulations: A Handbook: by Madafiglio, P. Ed. Sydney: Minter Ellison 1996.

The Phillips Fox Annotated Australian Insurance Law Statutes: by Masel and Gill. Sydney: Legal Books 1994.

Richard Smith
Deputy Commissioner
February 1996

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Useful definitions

ISC
The ISC is the Insurance and Superannuation Commission, the Government agency with responsibility for supervising the insurance industry in Australia.

Insurer
An insurer may be either a life or general insurance company which operates in Australia and is supervised by the ISC.

Insured
An insured is a consumer (customer) who has purchased an insurance product or has had dealings with an intermediary for the purpose of obtaining insurance cover.

Intermediary
An intermediary is an insurance agent or broker.

Broker
A broker is a person who acts on behalf of insureds by providing objective professional advice about insurance products, arranging insurance policies and dealing with claims. A broker is required to be registered with the ISC.

Agent
An agent is a person who markets insurance products to the public on behalf of insurers. Brokers may also market insurance products on behalf of insurers but are required by the legislation to inform their customers of this when doing so.

Multi-Agent
A multi-agent is an agent who has agency agreements with more than one insurer.

Overseas Insurer
An overseas insurer is a general insurance company which is based overseas and not subject to Australian law or supervision.

Foreign insurance agent
A foreign insurance agent is a person registered with the ISC to place business with an overseas insurer as agent of that insurer.

1. Purpose of the Act

The purpose of the *Insurance (Agents and Brokers) Act 1984* (the Act) is to improve the stability of, and increase public confidence in, the intermediary distribution system for insurance products.

It provides a basis for the insuring public to have confidence in agents and brokers by making insurers responsible for the actions of agents; by monitoring the financial stability of brokers; and by establishing the foundations for healthy competition with other distribution methods.

The Act defines relationships among operatives in the insurance industry and imposes certain responsibilities upon them. In particular, the Act:

- makes clear that an insurance broker is agent of the insured, while an insurance agent acts for the insurer;
- provides rules governing the behaviour of agents, brokers and insurance company employees;
- restricts the right to carry on insurance broking business to registered brokers, who must act in the interests of their clients, maintain professional indemnity insurance and submit annual accounts;
- holds insurers responsible for the activities of their agents;
- requires insureds to be clearly informed where a broker is associated with an insurer;
- requires insureds to be clearly informed if business is placed offshore; and
- requires the registration of agents of overseas insurers (who must also maintain professional indemnity insurance).

The Insurance and Superannuation Commission (ISC) has responsibility for the administration of the Act. ISC contact information can be found at the back of this booklet.

2. Background

The Act was introduced following the acceptance by the Government of the Australian Law Reform Commission's *Report No 16 'Insurance Agents and Brokers'* published in 1980.

Amendments dealing with the placement of insurance overseas were made by the *Insurance Legislation Amendment Act 1989*, and an ISC review of the Act resulted in further amendment by the *Insurance Laws Amendment Act 1994*.

This guide reflects the Act, the *Insurance (Agents and Brokers) Regulations*, as amended, to October 1994, and the *Life Insurance (Consequential Amendments and Repeals) Act 1995*.

2.1 1994 amendments

The *Insurance Laws Amendment Act 1994* amended the Act, amongst other things, to:

- introduce a 37-day limit on the time during which insurance agents may hold premium moneys, in place of the previous 'as soon as is reasonably practicable' requirement. Exemption from this limit may be granted to underwriting agents, subject to certain pre-conditions being satisfied;

- clarify insurers' responsibility for the actions of multi-agents as well as those of sole agents acting on their behalf;

- ensure that clients of brokers and unauthorised foreign insurers are better protected by requiring higher standards of compulsory professional indemnity insurance cover and requiring cancellation of such contracts to be notified to the ISC:

  - The higher standard of cover requires that brokers' professional indemnity cover includes an Australian State or Territory jurisdiction clause and a 'no avoidance of claims' clause aimed at precluding avoidance of liability of the underwriter on technical or other grounds (thus providing a higher level of security for a consumer with a claim against a broker). In addition, premium funders are no longer able to cancel the contract, and the minimum level of cover now required in the regulations is increased to $1 million.

  - The amendments provide for a minimum period of run-off cover to be prescribed. A mandatory period of run-off cover has not been prescribed at this time because of the high cost and limited availability of cover.

- provide for the ISC to determine the type and form of audited accounts to be furnished by registered intermediaries and increase the power of the ISC to inspect documents and obtain information about the activities of intermediaries;

- provide the ISC with the scope to refuse, suspend or cancel the registration of an intermediary who becomes insolvent or bankrupt, provides unsatisfactory accounts or otherwise fails to satisfy the ordinary obligations of an insurance intermediary. Decision-making principles providing guidance as to these ordinary obligations are at Appendix 5.

3. To whom does the Act apply?

The Act applies to life and general insurance intermediaries other than those dealing solely in reinsurance, health benefits or State/Territory insurance. It applies to contracts of insurance which are subject to Australian law.

Certain sections of the Act extend to activities of insurers and their employees.

4. How does the Act protect insureds?

If an intermediary failed to arrange or renew a policy, gave wrong information or accepted premiums without passing them on to the insurer, insureds would face an increased chance of financial loss.

To reduce insureds' exposure to these sorts of risk, the Act:

- makes clear that insurers are responsible for the actions of their agents;
- prohibits insurers from accepting business from an agent unless there is an agency agreement in place. Insurers are responsible for the actions of agents even where an agent exceeds his or her authority, or acts for more than one insurer;
- provides that moneys paid to insurance agents are subject to a trust in favour of an insurer and limits the period of time that agents may hold premiums and claims moneys.
- treats premiums paid to an intermediary as having been received by insurers where an insurance contract has been arranged by the intermediary;
- prohibits intermediaries from making false or misleading statements, including during the completion of proposal and claim forms;
- requires brokers to disclose to insureds any association with recommended insurers;
- allows insureds to obtain details of any commission that brokers receive from an insurer on a transaction;
- requires that insurance brokers and agents of foreign insurers be registered with the ISC;
- requires brokers and foreign insurance agents to take out professional indemnity insurance to cover any professional mistakes in their dealings with clients; and
- provides penalties for failure to comply with its requirements.

5. What other protection is available?

Additional consumer protection is provided under the Insurance Contracts Act, Trade Practices Act (TPA), State and Territory Fair Trading Legislation (laws which mirror the TPA) and the Life Insurance Act.

Insureds who want to clarify aspects of their dealings with insurers, or who may have problems with their insurance policies, have free access to independent complaints-handling processes. Contact details are provided at the back of this booklet.

6. How does the Act affect:

6.1 Intermediaries (agents and brokers) and their employees

The Act defines an insurance intermediary as a person who arranges insurance on behalf of one or more insurers (an agent), or on behalf of intending insureds (a broker), for reward.

The Act applies to intermediaries placing business with Australian insurers and to those dealing with overseas insurers not subject to Australian supervision.

Life and general insurance intermediaries who are not registered brokers are deemed to be an agent of the insurer and must have an agency agreement in place. Insurers are responsible for the conduct of their agents and employees (even where the agent or employee acts outside authority) but not for the conduct of brokers (or their representatives and employees) as brokers are regarded as agents of insureds.

Intermediaries and employees of insurers are prohibited from making false or misleading statements in respect of insurance premiums, proposals, contracts, or claims. Intermediaries are also prohibited from describing or promoting their business in such a way that an impression is created that the intermediary is an insurer, or that an agent is a broker.

The ways premiums are dealt with in the life and general industries and between individual insurers differ substantially. Credit terms between intermediaries and insurers are commercial arrangements that the Act does not interfere with. However, the Act does provide a statutory maximum period within which agents and brokers may hold premiums before passing them to insurers.

The maximum period is 37 days from when the money is received by agents, and 90 days (or as soon as is reasonably practicable thereafter) from policy inception for brokers. An agent or broker is regarded as having received premium moneys when any sub-agent, employee or other representative receives such moneys.

While general insurance brokers and registered foreign insurance agents are able to place business with overseas underwriters, life insurance intermediaries are prohibited from doing so by provisions of the *Life Insurance Act 1995*.

Agents, brokers, directors of insurance companies or corporate intermediaries, and employees of insurers or intermediaries risk prosecution for any personal involvement or authorisation of conduct that breaches provisions of the Act.

6.2 Agents and sub-agents

Unlike brokers, there is no legislative registration requirement for life or general agents who place business only with Australian insurers.

Despite any special relationship that agents may have with their clients, an insurance agent's responsibilities and obligations are to the insurance company or companies that he or she represents. This relationship should not be misrepresented. For example, an agent should not give the impression that he or she is acting for the insured.

The Act requires agents to provide insureds with details of the insurer with whom cover is to be placed before the contract is made, or as soon as is reasonably practicable after the contract is made.

A written agency agreement must be in place before an agent can place business with an insurer. This agreement must be provided to the ISC, or to insureds, on request.

The agency agreement must stipulate whether the agent has authority from his or her principal to appoint sub-agents. The Act provides that the actions of any such sub-agents are deemed to be actions of the agent, and thus the responsibility of the insurer.

Agents must issue receipts for any premium moneys received, and a receipt must show the name and place of business of the insurer involved. The moneys are subject to a trust in favour of the insurer and cannot be used by an agent for other business or private purposes. The moneys should not be held by the agent for more than 37 days.

The ISC may authorise, subject to the agreement of the insurer(s) involved, exemption from the 37-day credit restriction for underwriting agents and other special cases.

6.3 Multi-agents

There is no restriction on the number of insurance companies that life and general insurance agents may represent. However, the Act makes clear that insurers are liable for the actions of the multi-agents with whom they deal.

Multi-agents must notify each of their insurers of the names of all the other insurers with whom they deal or propose to deal. This written notice must also be given on the renewal, expiration or termination of agency agreements.

When selling policies, multi-agents must give insureds details of the recommended insurer before the contract is arranged. Where the business is being placed with Lloyd's, disclosure that the policy is with Lloyd's is sufficient.

There are additional responsibilities on life agents prescribed in the Life Insurance Act and set out in associated circulars issued by the ISC.

6.4 Life and general insurance brokers

A person (individual or corporate) who intends to carry on business as an insurance broker must first obtain registration under the Act.

Separate registration, which is renewable annually, is necessary for life and for general insurance brokers. Details of the registration process and associated obligations are discussed below under the heading ***What does registration as a broker entail?***

An insurance broker must advise the intending insured of any association that he or she has with an insurer with whom business is being placed. The objective is to ensure that relationships which may prejudice the broker’s impartiality or may create a conflict of interest are disclosed.

The test of association is quite wide, catching situations where the broker and insurer, or companies related to the broker or insurer, share common directors, employees, agents or beneficial interests in shares or stock. The *relationship* test is based on a 25% ownership or control test. This is described in section 38 of the Act.

An insurance broker must, after placing a contract of insurance:

- provide the insured with details of any fees or other amounts charged for services in connection with the contract;
- on request of the insured, provide details of any commission or other remuneration from the insurer for placing the business;
- inform the insured of the name and place of business of the insurer.

Any broker who acts as agent for an insurer while arranging an insurance contract (eg under a binder) must advise the client that he or she is acting as agent of the insurer and not of the insured in the transaction.

An insurance broker cannot receive payments (including gifts) from an insurer except as remuneration for services rendered in arranging a particular contract of insurance or settling a claim. Such payments cannot vary according to the number of contracts, amount of premiums or sums insured that are placed with a particular insurer.

The objective is to ensure that the broker's impartiality is not influenced by incentives or volume based remuneration, and to ensure that the broker's obligation to its client is not compromised.

All registered insurance brokers must have an Insurance Broking Account with a bank or some building societies into which all insurance broking premium and claims moneys received from clients and insurers are paid. Moneys may only be withdrawn for payment to people (including the broker) who are entitled to receive them.

Penalties of up to 2 years' imprisonment apply for non-compliance with the relevant provisions. Non-compliance with these provisions may also amount to fraud, theft, deception or other offences under the State crimes Acts and carry penalties of up to 10 years' imprisonment.

A general insurance broker may invest Insurance Broking Account moneys in a limited range of secure investments. These investments are further discussed in Appendix 3.

A broker may retain premium moneys for up to 90 days from the inception of the risk to which the premium relates. This 90-day period is a maximum. Given the amounts of money which may be involved, and the length of time taken for collection by insurers, it is open to insurers to require a shorter settlement period, including by electronic means.

Where it is not reasonably practicable for the broker to pay the insurer on time (for example, where premiums are not received within the 90-day period) payment must be made as soon as it is practicable to do so after the moneys are received.

Brokers must advise the insurer within 7 days if premium is not received within the 90-day period and pass claims moneys to insureds within 7 days, or as soon as is reasonably practicable thereafter.

Individual brokers, directors of corporate brokers and employees or agents of brokers are at risk of prosecution for any personal involvement or authorisation of conduct that breaches provisions of the Act.

Amendments to the Act are being developed to require all general insurance brokers to be party to approved external complaints resolution arrangements.

6.5 Life insurance brokers

The conduct of life insurance brokers is governed by the *Insurance (Agents & Brokers) Act 1984* and the Code of Practice for Advising, Selling and Complaints Handling in the Life Insurance Industry (see section 11 for further detail).

While initially the Code of Practice has been released in the form of an ISC circular (a document that industry agrees to abide by as best practice), consumer protection amendments to the *Life Insurance Act* 1995 are currently being developed that will:

- enable the Commissioner to pass the Code of Practice as a Commissioner's Rule under the *Life Insurance Act* 1995; and
- introduce penalties for non-compliance with Commissioner's Rules.

In addition, amendments to the *Insurance (Agents and Brokers) Act* and the *Life Insurance Act* 1995 are also currently being developed that will bring the requirements for life brokers more into line with the requirements applying to securities dealers under the *Corporations Law*.

6.6 Intermediaries (registered brokers or registered foreign insurance agents) placing business with overseas insurers

General insurance intermediaries may not place business with foreign insurers (ie. insurers falling outside the Australian supervisory regime) unless they are a registered broker or a registered foreign insurance agent.

Life insurance intermediaries are prohibited by the *Life Insurance Act* from placing business with foreign insurers.

Foreign insurance agents must renew their registration annually, satisfy professional indemnity insurance requirements, have their operations audited by a company auditor registered with the Australian Securities Commission and submit an annual return of business placed in Australia, and overseas, to the ISC.

Foreign insurance agents, and brokers placing business as an agent with an overseas insurer, must provide copies of their agency agreements to the ISC, and notify any changes to these arrangements, within 21 days.

The Act requires that an intermediary must obtain an acknowledgment from insureds whose policies are underwritten, in whole or in part, by a foreign underwriter. This acknowledgment ensures that Australian insureds are aware that the business, or a portion of it, is with an overseas insurer. It places insureds on notice that the contract may not be subject to Australian laws with respect to disputes, claims or insurer insolvency.

The statutory acknowledgment notice is reproduced on the following page.

Unauthorised Foreign Insurer

Client Acknowledgment

Insurance (Agents and Brokers) Act 1984

ACKNOWLEDGMENT BY AN INSURED THAT AN INSURANCE CONTRACT IS OR MAY BE ARRANGED OR EFFECTED WITH AN UNAUTHORISED FOREIGN INSURER

NOTICE TO THE INSURED

Your insurance contract *may be/*has been arranged or effected wholly or partly with an unauthorised foreign insurer that is not authorised under the *Insurance Act 1973* to conduct insurance business in Australia. Such insurers are not subject to the provisions of that Act, which establishes a system of financial supervision of general insurers in Australia.

It is a matter for your consideration whether you should obtain further information from the insurance intermediary involved, on such matters as:

a) name and postal address of insurer;

b) country of incorporation of insurer and whether that country has a scheme of financial supervision of insurers;

c) paid up capital of the insurer;

d) which country's laws will determine disputes under the contract.

ACKNOWLEDGEMENT

I, [*full name*] of [*address*] have read the above notice and I acknowledge that the insurance contract *may be/*has been arranged or effected wholly or partly with an unauthorised foreign insurer that is not authorised under the *Insurance Act 1973* to conduct insurance business in Australia.

Dated 19

(Signature of insured)

*Omit if not applicable

6.7 Life and general insurance companies

Premium moneys deemed received by insurer

In order to protect insureds from paying premiums a second time where an intermediary does not pass the money to an insurer, the Act deems premiums received by an intermediary as having been received by the insurer.

This deeming provision makes the payment of premium to an intermediary a discharge of an insured's liability under a contract of insurance. It does not necessarily operate as an acceptance of an offer to renew a contract, or otherwise to make a new contract.

Intermediaries should therefore have procedures in place to ensure that confirmation is received from the insurer to the effect that cover (or renewal) has been placed.

Liability for agents and employees

Insurers are liable for the actions of their employees and agents, and may be jointly and severally liable (with other insurers) for the actions of multi-agents who act on their behalf.

Where an intermediary is agent of one insurer only in respect of a particular class of business, liability is limited to that particular insurer. Joint and several responsibility exists only where no contract is on foot and an intermediary is appointed as agent in a class of business by more than one insurer, or where an agent's conduct relates to a class of business that is outside the scope of the multi-agent's agency agreements.

The actions of a sub-agent are taken to be the actions of his or her principal agent for these purposes. Agency agreements must therefore make clear whether an agent can appoint a person to act on his or her behalf.

While there is no restriction on the number of agency agreements a multi-agent may have in place, multi-agents must notify their insurers of the names of the other insurers with whom they deal or propose to deal. This written notice must also be given on the renewal, expiration or termination of agency agreements.

Agency agreements

Insurers are required to enter into an agency agreement before accepting business from intermediaries other than registered brokers. The ISC may request insurers to provide, within 7 days, copies of agency agreements.

Prosecutions

Persons, including directors, employees or agents of insurers or brokers, who knowingly allow, or aid and abet contraventions may be prosecuted under this Act or the *Crimes Act 1901*.

6.8 Lloyd's

Lloyd's is deemed by the *Insurance Act 1973* to be an Australian insurer. Business placed with the Lloyd's insurance market by an insurance intermediary is therefore treated in the same way as business placed with an Australian insurer.

Signed acknowledgments that cover is being placed with an overseas insurer are not required and disclosure of the insurer's identity to policyholders as 'Lloyd's' is sufficient detail to satisfy the provisions of the Act.

7. What does registration as a broker entail?

Registration (renewable annually) is granted provided:

- professional indemnity insurance is in force in respect of the business. Additional information about this insurance is at Appendix 2;
- an *Insurance Broking Account* has been established at a bank or building society. All insurance moneys received by the broker must be paid into this account, which is subject to a trust in favour of those entitled to receive the moneys. A general insurance broker may apply insurance broking account moneys to the categories of investments set out at Appendix 3;
- agreement has been obtained from an auditor registered with the Australian Securities Commission to audit the broker's books;
- a registration fee ($800 for a company or partnership, $400 for an individual) is paid; and
- the applicant (or its directors, employees or agents) has not been convicted of an offence making them unfit for registration, are not bankrupt or insolvent, have not failed to fulfil the ordinary obligations of an insurance intermediary or have not had any association with a previously failed brokerage. (The ISC has discretion not to register in these circumstances.)

Separate registration is required in respect of general and life brokerages.

Registered brokers are required to maintain financial accounts, have these accounts audited and make them available for inspection by the ISC. Brokers are required to provide the ISC with audited annual accounts of their business within 4 months of balance date. Extensions of time are granted only in extenuating circumstances and where application is received before the due date of the accounts.

Renewal of registration may be refused where the accounts are not to the Commissioner's satisfaction. Additional information about these accounts is at Appendix 3.

Reminders about expiry of registration and professional indemnity insurance, and submission of accounts, are provided by the ISC as a service to brokers. However, it remains the responsibility of individual brokers to comply with the Act and the non-receipt of a reminder is not an adequate defence for failure to comply with the deadlines provided in the Act.

Copies of the application form for registration and annual accounts forms are available from the ISC's Canberra office. More detailed information to assist brokers with this form and in complying with the Act generally is provided at Appendices 1–4.

8. What does registration as a foreign insurance agent entail?

Registration (renewable annually) as a foreign insurance agent is a similar process to that for the registration of a general insurance broker. Registration is granted provided:

- professional indemnity insurance is in force in respect of the business. Additional information about this insurance is at Appendix 2;
- agreement has been obtained from an auditor registered with the Australian Securities Commission to audit the agent's books;
- a registration fee ($800 for a company or partnership, $400 for an individual) is paid; and
- the applicant (or its directors, employees or agents), has not been convicted of an offence making him or her unfit for registration, is not bankrupt or insolvent, has not failed to fulfil the ordinary obligations of an insurance intermediary or has not had any association with a previously failed brokerage. (The ISC has discretion not to register in these circumstances.)

Registered foreign insurance agents are required to provide the ISC with an audited annual return of their business within 4 months of their balance date. The ISC may also inspect their books, accounts and records.

The ISC provides registration and professional indemnity insurance renewal notices and annual return reminders as a service to registered foreign agents. However, individual agents remain responsible for complying with the Act, and the non-receipt of a reminder is not an adequate defence for failure to comply with the deadlines provided in the Act.

Additional requirements imposed upon registration as a foreign insurance agent are set out in the section **Intermediaries placing business with overseas insurers** above. Registration requirements are covered in detail in Appendixes 1, 2 and 5.

9. Who may audit and what are their responsibilities?

Registered company auditors who are independent of the entity being audited (ie not related and not indebted to) may be approved to audit the annual accounts of brokers and registered foreign insurance agents. Once an auditor has agreed to become the auditor for a registered entity, the ISC should be advised of the auditor's name and Australian Securities Commission registration number.

The requirements for auditors' reports are set out in the Regulations to the Act and are reproduced at Appendix 3.

The reliance placed on auditors to properly audit and to qualify their reports if, for example, there is failure to properly account for insurance moneys, is quite high. Where auditors appear to have failed to properly fulfil their responsibilities, the ISC may refer details to the Australian Securities Commission for investigation.

10. Can the ISC refuse, suspend or cancel registration?

The ISC may refuse to register, or may suspend or cancel the registration of a broker or a foreign insurance agent if:

- there is a conviction in relation to an insurance matter or dishonest conduct, or the intermediary is bankrupt or insolvent;
- the intermediary has failed to discharge the ordinary obligations of an insurance intermediary as set down in the decision-making principles at Appendix 5;
- a broker fails to submit satisfactory *audited accounts* or does not satisfy the Commissioner that it has in place appropriate professional indemnity insurance; or
- the registration fee is not paid.

In addition to its examination of accounts and returns, the ISC has a program of site inspections the outcome of which can influence renewal or cancellation deliberations. If the ISC is of the view that the Act is being breached or an intermediary is not fulfilling the ordinary obligations of an insurance intermediary, it may use its power to request information or to enter and search premises to obtain material on which to base decisions, including the decision to prosecute.

The Act provides for brokers and other intermediaries to be afforded natural justice. The ISC will give affected parties the opportunity to put their case before making an adverse decision. The Act provides that ISC decisions may be reviewed by the Administrative Appeals Tribunal.

11. Industry Codes of Practice

Life insurance

The Code of Practice for Advising, Selling and Complaints Handling in the Life Insurance Industry (Code of Practice) was introduced by way of ISC circular in 1995, with full effect from 1 January 1996.

The Code of Practice introduces new industry-wide requirements in the areas of:

- advising and selling practices;
- training, competency and continuing education;
- inquiries, complaints and disputes handling arrangements; and

- monitoring and reporting on Code compliance.

The Code of Practice applies to life companies and life brokers in respect of their conduct and the conduct of their life insurance advisers. (Life insurance advisers have been defined to include agents, brokers and any other natural persons who, for reward, provide advice in respect of, or arrange, life policies).

Under the Code of Practice life insurance advisers are required to:

- disclose the capacity in which they act;
- 'know their client' - through means of a needs analysis and fact find;
- document the advice provided to the customer, including the basis on which that advice was given; and
- undertake basic, product specific and on-going education.

Life brokers are responsible for the conduct of their life insurance advisers and have obligations to ensure that their life insurance advisers:

- complete the required paper trail;
- provide appropriate advice;
- have adequate knowledge to demonstrate basic and product specific competencies; and
- receive adequate continuing education.

In addition, life brokers must handle inquiries in a timely manner, have internal complaint-handling mechanisms which meet minimum standards and must ensure that complainants have access to effective and independent external and free dispute resolution mechanisms.

Compliance with the Code of Practice is monitored and enforced by the ISC.

12. What information can the ISC make public?

Copies of certain information provided to the ISC by brokers and foreign agents is publicly available for an initial charge of $10.00 plus $1.00 per page. The ISC's address, phone and fax numbers are listed at the back of this booklet.

The public information includes details from the register of life and general insurance brokers and the register of foreign insurance agents. Copies of accounts, annual returns, professional indemnity insurance contracts and foreign agency agreements are also available.

All other information is subject to secrecy provisions.

13. Related legislation

Insurance Act 1973—provides for the authorisation and monitoring of general insurance companies in Australia for purposes of prudential supervision.

Life Insurance Act 1995 —performs a similar function to the Insurance Act but in respect of life insurers. It also contains consumer protection elements.

Insurance Contracts Act 1984 —provides the legal framework upon which contracts of life and general insurance are based. It deals with communication between the insurer and the insured, and fairness and equity in relation to the insurance contract.

Trade Practices Act 1974 —promotes competition and efficiency in markets and provides consumer protection. Its two broad objectives are:

- to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service; and
- to safeguard the position of consumers in their dealings with producers and sellers.

Provisions addressing the second of these objectives are mirrored in State and Territory Fair Trading Legislation.

Appendix 1 - REQUIREMENTS RELATING TO APPLICATIONS FOR REGISTRATION

Section 19 of the Act provides that a person (whether a natural person or a corporation) is not to carry on business as an **insurance broker**, whether alone or in partnership, in relation to life insurance business or general insurance business unless he or she is registered to do so.

Section 31B provides that persons are not permitted to represent, in Australia, overseas insurance companies that are outside the supervision of the ISC unless they are either a registered broker or **a registered foreign insurance agent**.

The registration requirements for brokers and registered foreign insurance agents are similar except that the latter are not required to maintain a trust (insurance broking) account or to submit their annual audited financial accounts to the ISC. The audited accounts must, however, be available for inspection by the ISC.

The registration process requires:

- the lodgement of a completed application form;
- payment of the registration fee (currently $400 for natural persons and $800 for companies and partnerships);
- evidence that professional indemnity insurance that is acceptable to the ISC has been taken out; and
- a copy of any foreign insurance agency agreements to be produced.

In support of an application, the following information and documents should also be provided:

- certificate of incorporation for the company, together with subsequent certificates showing any name changes;
- an outline of the broking or foreign insurance agency business plan covering the nature and sources of expected business and proposed underwriters;
- an outline of the accounting and financial control systems in place;
- an outline of the relevant experience and qualifications of the persons who will be managing the business;
- a letter from a registered company auditor who is independent of the business, accepting appointment as auditor and providing the auditor's Australian Securities Commission registration number, name, practice or business name, postal address, telephone and facsimile numbers; and
- where broker registration is being sought, suitable evidence that an Insurance Broking Account has been established with a bank or building society.

Choice of Business Name

In choosing a company or trading name for a broking or foreign agency business, it is important to decide on a name that is unlikely to mislead members of the public as to the services being offered. In other words, the public should not gain the impression from a broker's name that the broker is an insurer, or that an agent is a broker or insurer.

Use of the terms *insurance* or *underwriting* (or forms of these terms) in the name of an applicant or a proposed trading name, without any qualifications which make it clear that the business is that of a broker or foreign insurance agent, makes the name unacceptable under sections 30 or 39 of the Act.

Trustees

An applicant trading as a trust should ensure that the name of the trust is provided.

Insurance Broking Accounts

When establishing insurance broking accounts, a broker should ensure that the provisions of sub-section 26(2) are complied with. These require the accounts to have the words *Insurance Broking Account* included in the title. The accounts can only be maintained with a bank, or a building society in which trust funds are allowed (by a law of the Commonwealth, State or Territory) to be invested.

Convictions, bankruptcy and insolvency

If the applicant, or a director, employee or agent of the applicant has been convicted of an offence in respect of insurance, or other dishonest conduct, or is bankrupt or insolvent, full details should be included with initial and renewal applications.

Application forms

Copies of the necessary application forms are available on request from the ISC Canberra office. Contact details are at the back of this booklet.

Appendix 2 - PROFESSIONAL INDEMNITY INSURANCE

Insurance brokers and agents of unauthorised foreign insurers must have insurance covering breach of their professional duty as an insurance intermediary. This protects policyholders by providing financial support to brokers and agents who may be subject to claims for damages arising from their professional mistakes.

It is an offence to trade without professional indemnity insurance that has been accepted by the Commissioner. Registration cannot be granted or renewed unless satisfactory evidence of professional indemnity insurance is provided.

Acceptable policy

An acceptable professional indemnity policy must provide cover in respect of breach of professional duty to policyholders consistent with the cover, excess and other requirements set out below.

Appropriate policies issued by Australian insurers will be accepted, although supporting financial information may be required for foreign insurers.

Administrative arrangements

The ISC requires evidence of professional indemnity insurance at the time of initial registration, and evidence that cover has been renewed when it falls due.

Jurisdiction

The policy must have an Australian State or Territory jurisdiction clause.

Cancellation

The policy is subject to the sections 59 and 60 cancellation provisions of the *Insurance Contracts Act*.

However:

- the insurer must give the ISC at least 3 days notice before cancelling the policy;
- the insurer is unable to avoid the contract for breach of duty of disclosure or misrepresentation; and
- a premium funder may not cancel the policy.

Run-off cover

Run-off cover is not currently required.

Level of cover

The minimum level of cover is A$1million, or 15% of premium income in the previous financial year, whichever is the greater. The maximum required cover is A$5 million. Cover may, of course, exceed this amount.

Premium income is the total amount of premium recorded by the intermediary and includes government charges and commission. The previous financial year is the previous financial year (if any) of the intermediary for Australian Securities Commission and similar purposes.

Excess

The policy excess or deductible should not exceed the greater of A$10 000 or 2.5% of brokerage income without the Commissioner's approval.

Brokerage income is the income from brokerage, fees, commission and interest from the Insurance Broking Account and any investments made from that account.

Commissioner's approval

Approval of a higher excess will be considered where the broker demonstrates that this is appropriate and that it has the capital (net tangible assets) to support the excess, or has a guarantee from a bank or other secure entity to support the excess.

Evidence of cover

The ISC should be given a copy of the policy certified by the insurer, or an intermediary acting under a binder, to be a true copy. Alternatively, the ISC should be given a statement from the insurer, an intermediary acting under a binder or the broker's auditor, certifying the existence of the policy and providing details of it.

The ISC accepts for these purposes certificates of currency provided direct to it by the insurer or placing intermediary. Arrangements are in place for the major placing brokers to provide these direct.

Required details

The information to be provided is:

- name of the insured—this must exactly match the name of the registered intermediary as shown on the application for registration;
- dates of commencement and expiry of the policy—as the Act requires professional indemnity cover to be in force at all times, any gaps should be explained;
- sum insured—see level of cover above;
- amount of excess—see excess above;
- name of insurer—all insurers to be shown;

- reinstatement—at least one reinstatement is needed to ensure that cover remains in the event of a claim. In the case of group policies covering a number of intermediaries, multiple reinstatements must be provided;
- exclusions—details should be provided;
- retroactive date—it is desirable that this cover the period the broker has been in business;
- activities covered—must include the broking activities (life or general) and foreign insurance agency as appropriate;
- non-avoidance of claims—confirmation of this clause to be provided;
- Australian jurisdiction—confirmation to be provided.

Appendix 3 - ANNUAL AUDITED ACCOUNTS

Insurance brokers must provide satisfactory audited accounts of their insurance broking business as a pre-condition to renewal of registration.

Accounting period

The accounts must be for the accounting period (financial year of the broker) ending during the period of current registration.

Lodgement period

The accounts must be provided within 4 months of the end of the accounting period, i.e., within 4 months of the broker's balance date.

Extension of time

The ISC may extend the 4 month period where an application for extension is received within that period. The application should include reasons why an extension should be granted.

Form of accounts

The accounts are to be in a form approved by the ISC. The approved forms (profit and loss account, balance sheet and Insurance Broking Account) are available from the ISC's Canberra office. The ISC's address and phone and fax numbers are listed at the back of this booklet.

Copies will normally be provided to registered brokers prior to balance date where this date is known to the ISC.

Satisfactory audited accounts

These include:

- accounts that are in an approved form;
- accounts that are arithmetically correct;
- accounts that show that the sum of:
  - the amount of an account maintained by the broker under subsection 26(1); and
  - the amount of prescribed investments by the broker; and
  - amounts due to the broker from insurance debtors

  is equal to, or exceeds, all the broker's insurance liabilities;

- accounts that indicate that the broker is able to meet its financial obligations as they fall due;
- accounts that contain such other information as is required by the approved form; and
- accounts that are audited by an approved auditor.

Accounting records

Registered brokers must keep sufficient records of their insurance broking transactions and financial position to allow the accounts to be prepared and audited.

Audit certificate

The audit certificate should:

(a) state whether the accounts to which the report relates are, in the opinion of the auditor, in accordance with the Act, and give particulars of any matters that are not, in the opinion of the auditor, in accordance with the Act; and

(b) state whether the accounting records of the broker have been, in the opinion of the auditor, properly kept and whether they record and explain correctly the transactions and financial position of the broker and give particulars of:

1. any accounting records that, in the opinion of the auditor, have not been so kept; and

2. any transactions that, in the opinion of the auditor, are not correctly recorded and explained; and

(c) state whether the auditor has obtained the information and explanations that the auditor requested from the broker for the purposes of the audit, and give particulars of information and explanations that the auditor requested but did not obtain; and

(d) state whether, in the opinion of the auditor, the accounts referred to in paragraph (a) agree with the accounting records of the broker in respect of the period to which those accounts relate, truly represent the transactions and financial position of the broker in respect of that period, and give particulars of any failure in this regard.

Approved auditor

The auditor must be a registered company auditor who has no interest in the broker that could conflict with the proper audit of the business.

The audit certificate and accounts should be signed in the auditor's own name (ie not the name of the firm) and the auditor's ASC registration number should be provided.

Written explanation

Where accounts are not satisfactory, and the failure of the accounts is not due to the dishonesty, recklessness or financial mismanagement of the broker, the ISC may accept a written explanation and renew the registration.

Going concern

The accounts should indicate that the broker is able to meet its financial obligations as they fall due.

The Commissioner may query accounts showing total liabilities in excess of tangible assets to ensure that:

- shareholder or similar loans are subordinated;
- loans or overdrafts are secured by assets external to the brokerage; and
- intangible assets (including goodwill) are reported in compliance with relevant accounting standards.

Such inquiry may be avoided by provision of appropriate notes to the accounts.

Insurance Broking Account Form

The Insurance Broking Account form reflects the transactions in the statutory Insurance Broking Account and hence compliance with sections 26 and 27 of the Act.

All premiums, claims and other insurance broking moneys received by the broker must be paid into the account and only withdrawn for purposes of payment to those entitled to the moneys, or for investment in *prescribed investments.*

The form reflects cash rather than accruals (i.e. premiums due and other debtors are not included).

Part A shows the opening and closing balances and a summary of the year's transactions. Where prescribed investments are deposited to, or withdrawn from the account (eg rolled over through the account) these are to be included as receipts (withdrawal from prescribed investments) or withdrawals (payment to prescribed investments). The form must add through and balance to the Statement of Assets and Liabilities.

Part B analyses the closing balances in the account and prescribed investments. There would not normally be negative items—these may indicate a deficiency of moneys in the account, and the amount of moneys due to insurers which are greater than 90 days from policy inception should not normally be significant.

Part C provides details of prescribed investments held at balance date. This should reconcile with Part A. Penalties of up to imprisonment for 2 years are available for failure to comply with sections 26 and 27.

Prescribed Investments

General insurance brokers may invest Insurance Broking Account moneys in a limited range of secure investments. These include:

- government securities;
- bank deposits;
- shares or deposits with a building society, where the building society is one in which trust funds are allowed to be invested;
- a bank-backed bill of exchange, promissory note or other negotiable instrument;
- a cash management trust established prior to 1 July 1986, or which is established and managed by a bank, life office or member of the stock exchange.

Any shortfall on the realisation of such investments must be made good by the broker.

Annual return

Registered insurance brokers and foreign insurance agents are required to provide an annual return of business placed (whether as agent or broker) with overseas insurers.

To assist the supervisory process, 'nil' returns are sought from brokers who do not deal with overseas insurers.

Edit Checks

The following information may be of assistance in the completion and audit of the accounts and annual return.

Statement of Assets and Liabilities

- ADP code 59 (Insurance Broking Account and Prescribed Investments) must agree with code 95 (total amount carried forward) of the Insurance Broking Account Part A form.
- The sum of ADP codes 59 and 60 (premiums due) must be equal to or exceed ADP code 38 (moneys due to insurers and insureds). If not, the audit certificate may need to be qualified on the basis that section 26 of the Act is not complied with.
- Any non-insurance broking bank account balances should be included at ADP code 61 (business/working account and cash).
- An explanatory note should be provided where there are unusual changes to shareholders'/proprietors' funds and reserves.

Insurance Broking Account Form

- Important formulae to remember:

    1. ADP code 93 = 77 + 85 - 92

    2. ADP code 94 = (78 + 89) - (82 + 83)

    3. ADP code 95 = 93 + 94.

    The closing balance (ADP 95) must equal ADP code 59 of the Statement of Assets and Liabilities.

- The formulae may be affected by the treatment of interest in the accounts. Where investment interest accrues directly to the prescribed investment and is included as part of that investment at code 94, the amount of interest should be disclosed by note to the account.

- If investment income is paid into the Insurance Broking Account, it should be shown at ADP code 84.

Appendix 4 - PREMIUM ACCOUNTING GUIDELINES

These guidelines have been developed jointly by the National Insurance Brokers Association and the Insurance Council of Australia to assist in the process of accounting for premium moneys in a timely manner.

1. General Statement

Brokers and insurers acknowledge that the duties imposed by the *Insurance (Agents and Brokers) Act* 1984 (the Act) require that they exercise all practicable means to ensure compliance with the Act.

These Guidelines are supplementary to and do not replace any provision of the Act. In the event of an inconsistency between the Guidelines and the Act, the Act shall prevail.

2. Date of Commencement

These Guidelines apply from 1 April 1992.

3. Effective Date

The effective date of all account transactions shall be in accordance with the Transaction Ageing Schedule attached.

4. Statutory Charges

A reference to 'premium' in these Guidelines includes a reference to all statutory charges.

5. Part Payment

(a) A part payment occurs where the broker receives premium on an approved instalment basis in relation to a contract of insurance effected with one or more insurers, or a number of contracts of insurance effected with one or more insurers.

(b) Subject to clause 5(c) and the requirements of the Act, the broker shall pay the insurer as directed by the insured.

(c) Brokers must obtain the insurer's agreement as to the manner and timing of payment at the time of arranging or effecting insurance, but in any event, no later than the date by which the broker is required by the Act to pay the insurer.

(d) Subject to the above, the oldest account items shall be settled first.

(e) The effective date of quarterly or other periodic instalment payments will be the commencement date of the quarter or period.

6. Return Premiums

Except where agreed between broker and insurer, return premiums shall be credited to the broker's account. The credit should be taken up by the broker in the month it is credited to avoid the situation where refunds to clients could be paid from other premiums.

7. Extra Premiums

Except where otherwise agreed between broker and insurer, extra premiums received by the broker shall be paid in full and not be subject to part payment.

8. Direct Payment

Where the insured pays moneys directly to the insurer, the insurer shall credit the payment to the broker's account.

9. Short Period Premiums

Premiums for short periods 'time on risk' are to be paid not later than the next account settling date.

10. Certificates of Currency/Copy Policies

It is recommended that fees or charges for certificates of currency or copy policies not be included in insurers' statements of account to brokers as these are not premium for the purposes of section 27 of the Act.

11. Payment of Accounts

Brokers should pay at least monthly, however, payment may be made at more regular intervals in a calendar month.

12. Standard Form of Payment

Insurers and brokers agree that the following information should be provided in respect of each transaction being paid:

(a) Insurance company

(b) Insurer's branch

(c) Policy number

(d) Name of insured

(e) Class of insurance

(f) Amount being paid

(g) Effective date

(h) Payment type

1. Whole payment
2. Deposit payment

3. Balance premium
4. Instalment number
5. Part payment
6. Extra premium

(i) The information specified at 12(a) to (h) above is to be supplied in respect of any credits, including return premiums.

13. Payment after relevant period

Premiums due for payment received between account settling dates will be paid within fourteen days of receipt of the premium by the broker or such earlier date as may be required by the insurer.

14. Payments of premium where the amount is not known

Payment by the broker of premiums where the amount is not known must be made in accordance with sub-section 27(4) of the Act. In order to complete the transaction:

(a) the insurer undertakes to advise the broker of the amount of the premium;

(b) the broker will seek advice as to the amount of the premium;

(c) the broker will provide the insurer with all documents to enable the latter to complete the transaction and so enable the insurer to advise the broker of the amount of premium and debit the broker's account.

15. Premiums and charges not collectable by brokers

When the broker has not been able to obtain payment by a policyholder, the broker must advise the insurer in writing within seven days of the end of the relevant period allowed for payment:

(a) In the event the insurer then assumes responsibility for collection, the broker agrees to forgo commission and/or brokerage.

(b) The insurer and the broker may make such other arrangements in respect of the premium collection and brokerage thereof as may be suitable to the circumstances of the non-payment.

16. Insurers' monthly statements

In order to assist in account reconciliation, insurers' statements should be regularly reviewed by brokers and insurers to ensure that only current and relevant transactions are carried forward.

TRANSACTION AGEING SCHEDULE

Section 27 of the Insurance (Agents and Broker) Act requires registered insurance brokers to pay premium moneys which they have received to the insurer:

- within 90 days of cover commencing, or the first day of the period to which an instalment relates; or
- where it is not practicable to pay within the 90-day period, as soon as it is reasonably practicable to do so.

The effect of paragraph 13 of the Premium Accounting Guidelines is that premiums received outside the 90-day period are to be paid to the insurer within 14 days of receipt.

Against this background, the effective dates for ageing transactions for purposes of determining the 90-day period should generally be taken to be:

- for new policies—from the date of inception of the policy;
- for renewal policies—from the date of inception of the renewal contract;
- for instalment premiums (including workers compensation instalments)—from the first day of the period to which the instalment relates;
- for deposit premiums—from the date of inception of the policy to which the deposit relates;
- for adjustment premiums (including policy extensions, endorsements and reinstatement)—from the date of inception of the adjustment;
- for declaration premiums—from the date of commencement of the month, year or other period to which the declaration relates;
- bordereau premiums—from the date of inception of the underlying policies.

Appendix 5 - DECISION-MAKING PRINCIPLES AND ORDINARY OBLIGATIONS OF AN INSURANCE INTERMEDIARY

When contemplating using its power under the Act to:

- refuse a broker's registration under section 21(2);
- suspend or cancel a broker's registration under section 25(1A);
- refuse a foreign agent's registration under section 31D(2);
- suspend the registration of a foreign agent under section 31H(1A); or
- direct an insurance intermediary to provide certain information to it under section 34(A1);

the ISC is bound by a set of decision-making principles. These principles, along with the concomitant ordinary obligations of an insurance intermediary, are laid down in the *Insurance (Agents and Brokers) Decision-making Principles* and are quoted on the following pages.

In brief, the ordinary obligations of insurance intermediaries require them to act in the interest of their clients with honesty, and to exercise reasonable care and skill. They also require that these standards be met by intermediaries' employees and agents.

The Commissioner may use his discretion with respect to these powers where he has reason to believe that an intermediary has seriously, deliberately, recklessly or repeatedly breached one or more of the ordinary obligations.

Decision-making principles

4. (1) For the purposes of section 41A of the Act, the decision-making principles with which the Commissioner must comply in making a decision under subsection 21(2), 25(1A), 31D(2) or 31H(1A) of the Act are as follows:

(a) the Commissioner must consider whether the insurance intermediary has met the ordinary obligations of an insurance intermediary, as mentioned in clause 5;

(b) the Commissioner must assume that the insurance intermediary has met the ordinary obligations of an insurance intermediary unless the Commissioner reasonably believes that the intermediary has:

(i) seriously breached; or

(ii) deliberately, wilfully, or recklessly breached; or

(iii) repeatedly breached;

an ordinary obligation.

(2) For the purposes of section 41A of the Act, the decision-making principles with which the Commissioner must comply in making a decision under subsection 34A(1) of the Act are as follows:

(a) the Commissioner must consider whether the insurance intermediary has met the ordinary obligations of an insurance intermediary, as mentioned in clause 5;

(b) the Commissioner must assume that the insurance intermediary has met the ordinary obligations of an insurance intermediary unless the Commissioner reasonably believes that the intermediary:

(i) has not met; or

(ii) is not meeting; or

(iii) is not likely to be able to meet;

an ordinary obligation.

Ordinary obligations

5. (1) For the purposes of a decision under subsection 21(2), 25(1A), 31D(2) or 31H(1A) of the Act, the ordinary obligations of an insurance intermediary are as follows:

(a) exercising reasonable care and skill in relation to carrying out the business of an insurance intermediary;

(b) meeting the intermediary's fiduciary obligations to an insurer or insured, including:

(i) avoiding conflicts of interest;

(ii) if a conflict of interest occurs, disclosing that conflict;

(iii) subject to paragraph 32(1)(b) of the Act, disclosing a benefit the intermediary may receive from a transaction;

(iv) keeping the property of the insurer or insured separate from that of the intermediary;

(c) providing adequate training for the intermediary's employees and agents;

(d) ensuring that the intermediary's employees and agents act according to the standards required of the intermediary (for example, these ordinary obligations);

(e) not engaging in false or misleading conduct in relation to carrying out the business of an insurance intermediary.

(2) For the purposes of a decision under subsection 34A(1) of the Act, the ordinary obligations of an insurance intermediary are:

(a) the obligations mentioned in subclause (1); and

(b) the obligations to comply with the requirements of the Act.

Failure to comply with these ordinary obligations may give the Commissioner grounds to refuse an application for registration, or renewal of registration, or to suspend or cancel an existing registration of an insurance intermediary. It may also allow the Commissioner to direct an intermediary to provide information under section 34(A1).

Contact Information

Insurance and Superannuation Commission

Street address: AAA Building
212 Northbourne Avenue
BRADDON ACT 2601

Postal address: GPO Box 9836
CANBERRA ACT 2601

Document Exchange: DX 5766, CANBERRA

Telephone: 06 247 2299
Facsimile: 06 267 6956

General Insurance Claims Review Panel

Head office: PO Box 561
Market Street Post Office
MELBOURNE VIC 8007

Telephone: 03 9629 4109
1300 363863
Facsimile: 03 9621 2060

Life Insurance Complaints Service Limited

Head office: PO Box 579
Market Street Post Office
MELBOURNE VIC 8007

Telephone: 03 9629 7050
1800 335 405
Facsimile: 03 9621 2291

Insurance Brokers' Disputes Facility

Head office: Level 2, North
60 Jolimont Street
JOLIMONT VIC 3002

Telephone: 03 9650 6466

1800 064 169
Facsimile: 03 9654 7038

Financial Planning Association of Australia Complaints Resolution Scheme

Head office: PO Box 109
Market Street Post Office
MELBOURNE VIC 8007

Telephone: 03 614 2289
Toll free: 1800 337 301

Superannuation Complaints Tribunal

Head office: Locked Bag 3060
GPO
MELBOURNE VIC 3001

Telephone: 13 14 34
Facsimile: 03 9248 5170

Comments on this publication and suggestions for future editions would be most welcome. They should be forwarded to:

Assistant Commissioner
Contracts & Intermediaries Branch
General Insurance Group
Insurance and Superannuation Commission
GPO Box 9836
CANBERRA ACT 2601

Amendments to the Insurance (Agents and Brokers) Act 1984

Since the publication of 'A Guide to the Insurance (Agents and Brokers) Act 1984' [the Act], by the ISC in February 1996, a number of changes have been made to the Act. These changes were effected by amendments to insurance legislation made by the *Financial Laws Amendment Act 1997* and the *Insurance Laws Amendment Act 1998*. These changes were separately advised by the ISC to industry in Circulars G2/97, AB1/97, AB2/97 and AB1/98.

A summary of the changes is below. A full copy of the Circulars may be obtained from the ASIC Infoline on 1300 300 630.

Some of the major amendments under the *Financial Laws Amendment Act 1997* are:

1. It is a condition of registration and renewal of registration that general insurance brokers placing domestic or personal insurance business be party to a complaints resolution arrangement approved by the Commissioner. Domestic or personal insurance business is defined under the Insurance (Agents and Brokers) Regulations, [reg 4] as the 'standard cover' classes of business under section 34 of the Insurance Contracts Act 1984. Therefore, the classes of insurance business covered are: Motor Vehicle, Home Building, Home Contents, Sickness and Accident, Consumer Credit and Travel Insurance. The Insurance Brokers Dispute Facility is an approved complaints resolution arrangement for general insurance brokers. Note: It is an offence for a person (whether individual or corporate) to carry on business as an insurance broker placing domestic or personal insurance business if they are not party to a complaints resolution arrangement. [Section 19(1)(c)]

2. The Commissioner must be satisfied that a person seeking registration, or renewal of registration, as a general insurance broker in respect of domestic or personal insurance business is party to an approved arrangement for dealing with complaints before granting registration.[Section 21(1)(ba) and Section 21(1A)(da)]

3. The Commissioner can suspend a person's registration until the person becomes party to an approved complaints resolution arrangement, or can cancel the person's registration, where a registered general insurance broker is carrying on business that is domestic or personal insurance business and they are not party to an approved complaints resolution arrangement.[Section 25(1AA)]

4. An insurer dealing with a multi-agent is not jointly and severally liable for the multi-agent's actions where an insurance contract has been effected and the insurer is not party to the contract.[Section 11(1K)]

5. Deemed life insurance business is included within the definition of *class of insurance business*. [Section 9(a)]

6. The definition of *insolvent under administration* has been brought into line with the version of that definition as contained in the *Superannuation Industry (Supervision) Act 1993*.[Section 9]

Some of the major amendments under the *Insurance Laws Amendment Act 1998* are:

1. Agents must have written agreements with insurers and insurers are liable for the conduct of agents.

2. Life insurance policies without risk components, such as investment policies, are contracts of insurance for the purposes of the Act.[Section 9 and Section 9D]

3. All notices to insureds by intermediaries when they act under binders or agency agreements are to be clearly given.

4. Amounts received by a broker for and on their own behalf from an insurer or an insured can be paid into an Insurance Broking Account [IBA]. The IBA can be maintained with any bank, building society or credit union, none of which are liable for failure by a broker to maintain an IBA. The amounts in an IBA, plus prescribed investments of the IBA, must at all times be sufficient to pay any or all insurers and insureds entitlements to moneys from an IBA.[Section 26 and Section 28]

Note: This summary does not substitute for the reader obtaining a copy of the relevant Acts and their Explanatory Statements and seeking their own legal advice as to the precise requirements and the effect of the amendments on the reader's particular circumstances.