



<http://understandinsurance.com.au/regulations-and-obligations>

## Regulations and obligations

An insurance policy is a legal contract between an insurance company and a customer, and places strict obligations on both parties.

The general insurance industry in Australia is governed by a number of laws (most importantly the Insurance Act 1973, the Insurance Contracts Act 1984 and the Corporations Act 2001).

The two key regulators are the [Australian Prudential Regulation Authority \[ http://www.apra.gov.au/pages/default.aspx \]](http://www.apra.gov.au/pages/default.aspx) (APRA) and the [Australian Securities and Investments Commission \[ http://www.asic.gov.au/ \]](http://www.asic.gov.au/) (ASIC).

APRA sets prudential standards for the general insurance industry. For example, it determines how much capital an insurer must hold in reserve to pay claims, and this in turn can have a significant impact on the premium an insurer must charge.

ASIC is responsible for licensing financial services providers, including those who offer insurance and provide advice on these products. It also regulates consumer protection in the financial services industry as well as regulating investment banks and finance companies.

Insurance companies must abide by various other laws and regulations. For example, they are bound by Australia's privacy laws to protect the confidentiality of information they gather.

The [General Insurance Code of Practice \[ http://www.codeofpracticereview.com.au \]](http://www.codeofpracticereview.com.au) is a voluntary Code that protects the rights of policyholders. Insurer compliance is monitored by the [Financial Ombudsman Service's \[ http://www.fos.org.au/centric/home\\_page.jsp \]](http://www.fos.org.au/centric/home_page.jsp) Code Compliance and Monitoring team, which has a separate role to help resolve disputes between insurers and customers.

Insurance companies that sign up to the Code promise to act in an open, honest and fair manner in all of their dealings with consumers. Every member of the [Insurance Council of Australia \[ http://www.insurancecouncil.com.au/ \]](http://www.insurancecouncil.com.au/) is a signatory to the Code.

Insurance brokers have their own [Code of Practice \[ http://www.niba.com.au/html/43303.cfm \]](http://www.niba.com.au/html/43303.cfm).

### Utmost good faith

The duty of good faith is central to and regulates all aspects of the contract of insurance, from inception through to the terms of the contract, to each party's responsibilities in the event of a claim under the contract of insurance. It applies to almost all forms of general insurance.

Information that is of vital importance is only known to one party to the contract. To make the dealing as fair as possible, the principle of utmost good faith was developed whereby the party possessing the knowledge owes a duty to disclose the material and relevant facts to the other party of the contract so that the other party can make an accurate assessment of what they are undertaking.

The duty of good faith is now an implied statutory term inserted into every general insurance contract in Australia under section 13 of the Insurance Contracts Act 1984. Section 13 requires both the insurer and the insured to act towards the other, in respect of *any matter arising under or in relation to it*, with the utmost good faith. Therefore, like the common law, the duty spans from the pre-contractual stage (duty of disclosure) to the post-contractual stage (the making and handling of claims). In addition, being a contractual term, damages are allowed to the innocent party in case of a breach.

## Insurer obligations

Insurers have many obligations under Commonwealth, state and territory laws that deal with the financial integrity and conduct of the general insurance industry, and under the industry [General Insurance Code of Practice \[ http://www.codeofpracticereview.com.au \]](http://www.codeofpracticereview.com.au) .

Your insurance company must only ask you for personal information that is relevant to the application. You can access the information that the company has relied on in assessing your application, and you can correct that information if it is wrong.

The insurance company must keep all of the information that you provide confidential, and in a secure place. The company must also not use that information for anything else except to assess your application for an insurance policy.

Insurance companies have to conduct their sales processes in a fair, honest and transparent manner. Information about insurance products should be made available to you when you ask for it.

If the insurance company chooses not to provide you with insurance cover, the company will give you its reasons and refer you to another insurer, the [Insurance Council of Australia \[ http://www.insurancecouncil.com.au/ \]](http://www.insurancecouncil.com.au/) or the [National Insurance Brokers Association \[ https://www.niba.com.au/html/default.cfm \]](https://www.niba.com.au/html/default.cfm) for information about alternative insurance options.

In case you are not happy about your insurer's decision or conduct, your insurer will tell you about how you can make a formal complaint to your insurer's internal dispute resolution department. See [resolving disputes](#) for more information.

Agents who act on behalf of insurance companies will often receive a fee or commission for their service. If you purchase your policy through an agent, such as a broker, then the agent is obliged to tell you what fee or commission they receive from the insurance company.

Visit [www.findaninsurer.com.au \[ http://www.findaninsurer.com.au \]](http://www.findaninsurer.com.au) to find insurers that offer the general insurance products you require

## Your obligations

Buying insurance involves entering into a legal contract, so there are obligations on both the insurance company that provides the policy, and the person who buys the policy.

Entering into an insurance contract involves duty of utmost good faith, meaning that the people (or companies) on both sides of the contract promise to be fair and honest in the way that they deal with each other.

Before you enter into or renew a contract of insurance with an insurer, you have a legal duty (under the [Insurance Contracts Act 1984 \[ http://www.comlaw.gov.au/series/c2004a02944 \]](http://www.comlaw.gov.au/series/c2004a02944) ) to tell the insurer everything that you know that might influence the insurer's decision about whether to accept your risk. This is called your duty of disclosure.

Your policy is based on what you tell your insurer, so you are expected to answer all of the questions that the insurer asks you, fully and accurately.

For example, you would be expected to tell the insurer if you have received a speeding ticket in the past or if you have previously made an insurance claim, because these pieces of information influence the insurers' understanding of the risk it is taking, if it chooses to insure you.

The only exceptions to this include information that:

- That reduces the amount of risk to the insurance company
- Is common knowledge
- Your insurer already knows
- You don't know
- Anything the insurer tells you it doesn't need to know or is not relevant

If you withhold relevant information or do not provide accurate information, your insurer can reduce the amount payable in respect of, or deny, any claim you may make or cancel your policy.

As with any contract, you are expected to read your policy carefully before you enter into an insurance contract so that you understand what claims you can make and what your policy will cover, and what it will not cover.

Insurance companies provide consumers with a Product Disclosure Statement (PDS) for each policy which clearly explains what each policy will and won't cover.

If there is anything in your policy that you don't understand, ask your insurance company to explain the policy to you further.

Finally, when you purchase an insurance policy, you are obliged to pay for that policy. If you fall behind in your policy payments, the policy may lapse and then the insurer is not obliged to cover you for any claims.