



1 February 2012

## FAQ - Financial Claims Scheme for General Insurers

### What is the Financial Claims Scheme?

The Financial Claims Scheme (FCS) was established by legislation in October 2008. Its purpose is to protect certain policyholders and other claimants (individuals, small businesses, family trusts and not-for-profit organisations) who make valid claims on a general insurer in a situation where the insurer is insolvent.

### When does the Financial Claims Scheme apply?

The FCS applies when APRA determines that the general insurer is insolvent and when the Minister determines that the FCS will be applied to the general insurer. The FCS would only be used in a situation where a general insurer is insolvent and where the best course of action is to close the insurer and wind it up.

### Who is responsible for administering the Financial Claims Scheme?

APRA is responsible for the administration of the FCS and for making payments to policyholders.

### Who provides the money to make payments under the Financial Claims Scheme?

The Government initially provides the funds to make payments under the FCS. Monies paid under the FCS are then recovered from the general insurer in the winding up process. There is provision to make up any shortfall by applying a levy on the general insurance sector.

### Which insurers are covered by the Financial Claims Scheme?

The FCS applies to insurance policies (other than certain types of excluded policies) provided by general insurance companies authorised by APRA. Please refer to the APRA website for a full [list of authorised general insurers](#).

The FCS does not apply to insurance policies issued by life insurance companies.

### Which types of insurance policies are covered by the Financial Claims Scheme?

The FCS applies to any insurance policy issued by a general insurer, other than insurance policies excluded from the scheme. Regulations made under the *Insurance Act 1973* specify the types of policies excluded from the scheme. The scheme excludes:

- insurance policies required to be held under State/Territory law and protected through State/Territory arrangements, such as compulsory third party insurance and workers' compensation;



- insurance policies being pre-authorisation liabilities of a foreign general insurer;
- reinsurance and retrocession policies; and
- insurance policies being an indemnification of another policy.

In addition, policies are excluded from the scheme where APRA determines it is reasonable to conclude that the policy was issued primarily to render the policyholder entitled to payment under the FCS.

### **What types of policyholders and other claimants are protected under the Financial Claims Scheme?**

The FCS applies to certain categories of policyholders with eligible insurance policies issued by general insurers supervised by APRA. It also applies to certain categories of third parties who are able to claim against a general insurer pursuant to a policy issued to another party by that insurer. The eligible claimants include:

- individuals who are Australian citizens or permanent residents;
- non-resident individuals who have insured against risks located in Australia;
- Australian-based small businesses, as defined in section 328-110 of the *Income Tax Assessment Act 1997*;
- Australian-based not-for-profit organisations; and
- trustees of Australian-based family trusts established to hold property for private residential purposes.

Insurance policies held by medium and large businesses will not be covered by the FCS unless the claim is under \$5,000, in which case all policyholders with valid claims are covered.

### **What protection does the Financial Claims Scheme provide?**

The FCS covers eligible policyholders and other claimants for the amount payable by a general insurer in respect of a valid claim. The FCS applies to all valid claims by eligible policyholders and other claimants lodged with the insurer but not yet paid at the time the FCS is invoked and within a specified period after the commencement of FCS. Eligible policyholders and other claimants have to lodge a claim within 12 months after FCS has been declared in respect of the insurer.

FCS does not apply to the unexpired insurance premium paid to the insurer before its failure. However, policyholders may be entitled to claim for some or all of the unexpired premiums in the winding up of the general insurer.

### **How is the FCS amount payable determined?**

APRA will determine the amount payable to eligible policyholders and claimants by determining the amount of the insurer's contractual liability to such person. This will be done on the basis of a standard claims assessment process. Claims will be assessed by a party appointed by APRA. This could be the failed insurer, another designated insurer or an agency appointed to process the claims.

Policyholders and claimants will be advised of how claims should be made under the FCS.



If the insurance claim is under \$5,000, APRA will pay the amount that the policyholder or claimant would have been able to claim from the failed insurer under a valid claim.

If the insurance claim is over \$5,000, APRA will first determine whether the policyholder or claimant is eligible under the FCS. In the case of eligible policyholders and other claimants, the amount paid will be the full amount that the policyholder or claimant would have been entitled to for a valid claim under the insurance policy. If the policyholder or claimant is not eligible to be covered by the FCS (eg if the policyholder is a large corporation), they would need to submit a proof of debt in the liquidation of the general insurer. Subject to that proof of debt being accepted by the liquidator, the policyholder or claimant would then be eligible to rank with other unsecured creditors in the liquidation of the insurer.

Claimants under the FCS do not have to be policyholders of the failed general insurer. They only need to have a valid claim under an insurance contract with that insurer at the time of its failure or within 12 months after the declaration of FCS. For instance, individuals making a claim under their company's employer's liability insurance policy with the failed insurer would be eligible for payment under the FCS.

### **Will policyholders be given time to find alternative insurance cover?**

Yes. It is recognised that policyholders will need some time to find alternative insurance cover. The FCS will continue to cover policyholders and claimants for valid claims for 28 days following the declaration of FCS for a general insurer. After this time, policyholders will be expected to establish alternative insurance cover.