

Doing Business in Australia

A Guide for Insurtechs



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Disclaimer:

This is a guide and overview of the Australian market including the laws, regulations and market conditions relating to insurtechs. Whilst it directs the reader to legal and regulatory concepts, it is a summary only. It is no substitute for seeking legal or other professional advice on your own position.

Percentages and amounts are current at the date of publication.



1. Introduction

Insurtech Australia, in collaboration with Hamilton Locke, has prepared this guide to assist insurtech businesses to understand the process of setting up their operations in Australia.

This guide provides a high-level overview of the Australian insurance and insurtech sectors, the regulatory environment, federal government initiatives, cross-border provision of services and the upcoming reforms affecting privacy and data.

Insurtech Australia is helping Australia become world leaders in the insurtech industry, by helping insurtech businesses grow and connect, foster relationships across the ecosystem and advocate for the benefit of their members. They provide an invaluable resource to Australian and overseas insurtechs to connect with government and industry, and to support policy and advocacy for the ecosystem.

2. Overview of Australian insurtech sector

Insurtech is a combination of the insurance sector and technological innovations aiming to make insurance more efficient, affordable and accessible to customers. The Australian insurtech industry, like others around the world is focused on supporting the delivery of insurance products and creating efficiencies, including pricing agility, smarter loss prevention and organisational efficiency.

EY's report from 2019 shows insights and trends within the insurtech space, highlighting the industry's drive towards digitisation, automation and better customer engagement using digital processes and systems. In collaboration with insurtechs, incumbents can develop innovative insurance products and solutions that better serve policyholders.

Australian insurtechs are generally interested in improving the customer experience and this lends them to solving problems and challenges faced by customers such as the services they receive when they are most vulnerable following a claim event. Delivering optimised experiences is the focus of Australian insurtechs, rather than disruption of incumbent insurers.

Most of the industry believes insurtechs will play a major role in helping insurers become more agile, more digital and more mainstream. The insurance industry expects to see more partnerships between insurers and insurtechs to provide efficient insurance, smarter loss prevention and improved remediation. Insurtechs and incumbents will invariably share a similar goal of delivering services that better align with customer expectations.

EY's Australian insurtech ecosystem map from 2021 identifies the alignment of Australian insurtechs with key deliverables including pricing and underwriting agility, smarter loss prevention, claims, efficient insurance administration, innovative marketing and distribution and new products offering customers better value.

For further resources on the state of the Australian market visit: insurtechaustralia.org

3. Insurance sector players

The insurance sector can broadly be divided into product issuers, product advisers and service providers. Insurtechs can cross into a number of sector areas when offering their products and services through digitised solutions or platforms.

3.1 Product issuers (reinsurer, insurer and agents)

Insurance product issuers are life, health and general insurance providers.

Insurer: An insurer is an entity that issues insurance policies, handles claims and sells policies. They are responsible for providing financial coverage to the insured for an agreed sum in the case of an agreed event. They operate to help manage the risk of an insured by taking on this risk in exchange for a fee (an insurance premium).

Underwriting agency: An underwriting agency almost acts as an outsourced underwriting department for an insurer for a specialised line of cover. An underwriting agency may operate on an 'offer and acceptance basis' but would generally have a binder (or binding authority agreement) with one or more insurers. Where there is a binder in place, the insurer has appointed the underwriting agency as its agent to issue the insurance policies as if it were the insurer (within the bounds of the underwriting authority granted by the insurer).

Underwriting agencies may or may not be granted authority to handle and settle claims on the insurer's behalf.

Re-insurer: A re-insurer is an entity that provides insurance to insurers. A re-insurer allows for insurers to apportion their risk, making it possible to take on more business.

Lloyd's: Lloyd's of London is a collection of syndicate members that offer both insurance and reinsurance business in certain lines. Lloyd's syndicate members are not licensed insurers in Australia but are regulated locally under special arrangements so that they are still able to write insurance business in Australia. The syndicate members operate differently to an insurance company, instead they act as a marketplace where insurance buyers and sellers come together to secure insurance for the risk.

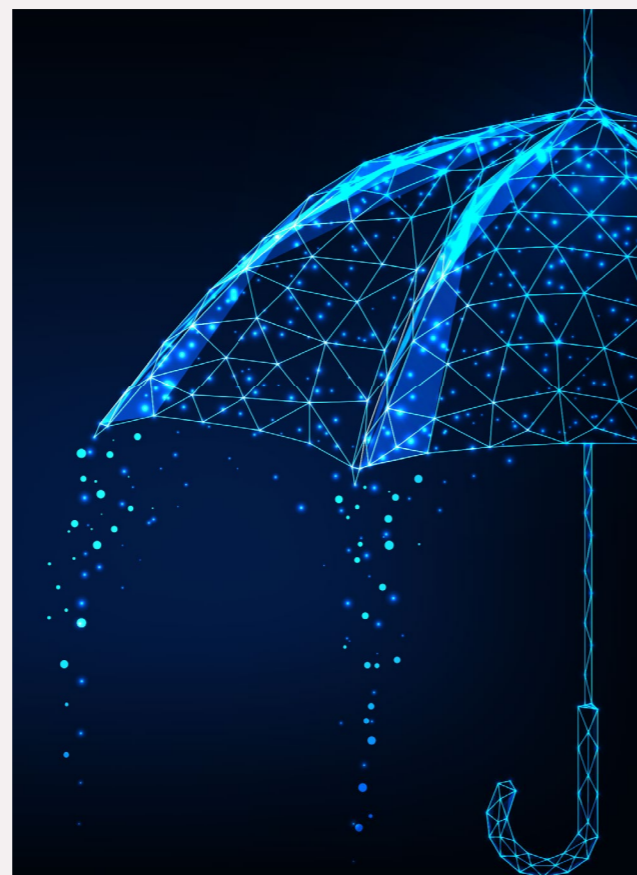
3.2 Product advisers (brokers)

Advisers on general insurance products are life and general insurance brokers. Brokers help their clients engage with insurers as agents of the insured to source insurance terms at the best price for their clients. They have a duty to act in their clients' best interests.

Cluster groups: A cluster group is a group of brokers that have joined together to provide each other with certain benefits and support. Cluster groups negotiate preferential policy terms with insurers for their members, which allow them to compete with bigger businesses. The two largest cluster groups in Australia are the Steadfast group and Austbrokers.

3.3 Service providers

There are a number of service providers that provide insurance related services in Australia. The main service provision is claims handling and settling services - these service providers typically act as claims managers, third-party claims administrators (TPA), loss assessors, loss adjusters, investigators and insurance fulfilment providers (e.g., smash repairers, builders).



4. Industry associations

4.1 Insurtech Australia

Insurtech Australia is the peak industry association for insurtechs in Australia. As a not-for-profit organisation dedicated to fostering innovation and growth in the insurtech ecosystem, Insurtech Australia brings together a diverse community of insurtech startups, insurers, brokers, hubs, accelerators, and investors.

4.2 Insurance Council of Australia (ICA)

The Insurance Council of Australia is the industry body representing Australian general insurers and Lloyd's. It represents its members by advocating and handling issues and developing industry positions through government lobby, public affairs, industry forums, issues management and consumer services.

It has developed a General Insurance Code of Practice, which insurers can choose to subscribe to. Subscribers as well as their agents must comply with the Code whenever selling insurance products or handling claims. Compliance is independently monitored and enforced by the General Insurance Code Compliance Committee (GICCC).

4.3 National Insurance Brokers Association (NIBA)

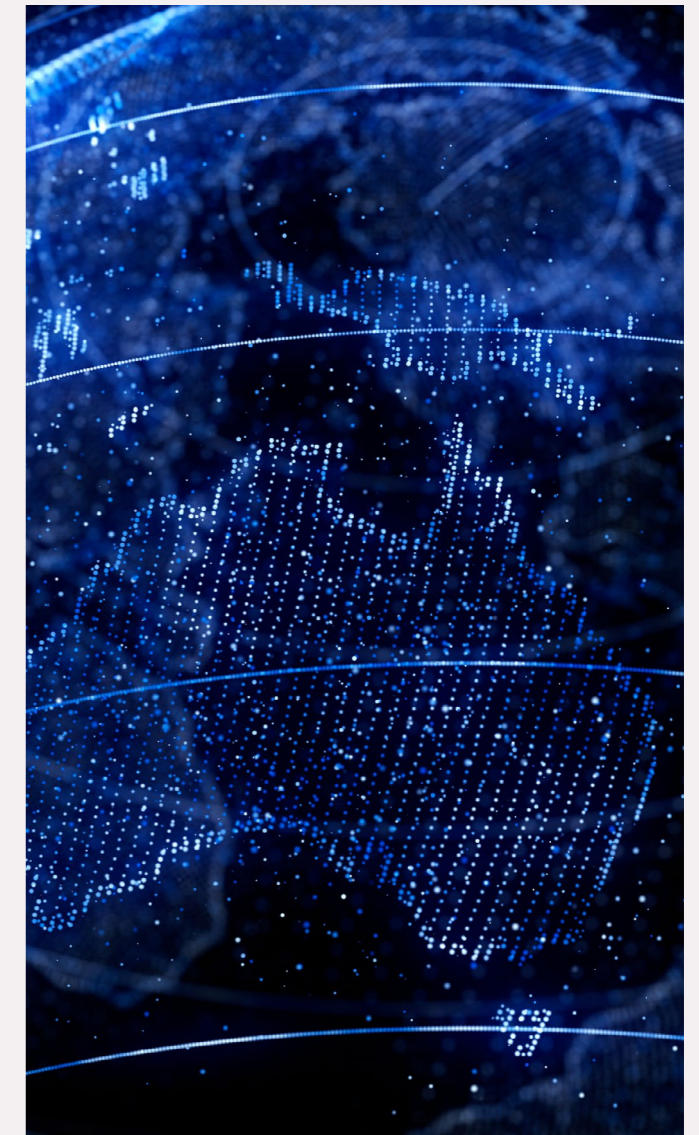
NIBA is the peak body representing the insurance broking profession and represents over 15,000 individual insurance brokers. NIBA member firms all hold their own Australian Financial Services Licence.

NIBA supports its members by representing the interests of brokers to government and regulators. It also provides additional support to members by offering training and developing community connections.

It has developed the Insurance Brokers Code of Practice, and NIBA members are required to abide by it. Their compliance is independently monitored and enforced by the Insurance Brokers Code Compliance Committee (IBCCC).

4.4 Underwriting Agencies Council (UAC)

The Underwriting Agencies Council is the representative organisation for Australian underwriting agencies. It represents managed general agencies or underwriting agencies who act as agents of insurers including Lloyd's coverholders - usually they are acting under a delegated binding authority on the insurer's behalf. UAC is established for networking purposes, industry engagement, educational events and to access marketing support.



4.5 Council of Australian Life Insurers (CALI)

Life insurers were previously represented by the Financial Services Council, however, they have now established the Council of Australian Life Insurers as a dedicated industry peak body. CALI promotes the interests of the life insurance industry through representation, engagement and advocacy to improve customer outcomes.

4.6 Australian and New Zealand Institute of Insurance and Finance (ANZIIF)

ANZIIF is the leading insurance and finance membership, training, education and professional development organisation in Australia. It provides conferences, seminars, education pathways and qualifications, training and networking opportunities to members and non-members to support the careers of insurance professionals.

5. Regulatory environment

The regulation of the insurtech industry is broadly split into two distinct areas: prudential regulation and markets/consumer protection.

Firstly, general insurance product providers are prudentially regulated by the Australian Prudential Regulation Authority (APRA) under the *Insurance Act 1973* (Cth). Life insurance product providers are regulated by APRA under the *Life Insurance Act 1995* (Cth). Whilst insurance/financial services and consumer protection is regulated by the Australian Securities and Investments Commission (ASIC) under Chapter 7 of the *Corporations Act 2001* (Cth).

Insurers, underwriting agencies, insurance advisers and claims handling and settling services providers must hold an Australian Financial Services Licence granted by ASIC (unless an exemption applies). Additionally, it is a requirement to comply with disclosure and conduct requirements under the *Corporations Act 2001* (Cth).

Unless exempt, insurers are required to hold an insurance licence issued and regulated by APRA to conduct insurance business in Australia. Many insurtechs partner with incumbents who already have these licences when developing their market proposition or expanding from their home country into the Australian market.

5.1 Government regulators/industry bodies

Australia operates in a highly regulated environment with a number of regulatory bodies, each performing an important role and function.

The main government agencies that oversee the insurance and financial services sector, including insurance, are APRA, ASIC and the Reserve Bank of Australia (RBA).

Australian Securities and Investments Commission (ASIC)

ASIC is the national corporate, markets and financial services regulator. In its role as regulator, ASIC administers the following relevant laws:

- *Corporations Act 2001* (Cth);
- *Australian Securities and Investments Commission Act 2001* (Cth);
- *Business Names Registration Act 2011* (Cth).

ASIC's functions and powers are set out in

the *Australian Securities and Investments Commission Act 2001* (Cth). It is responsible for overseeing the unfair contract terms regime and consumer protections contained in that Act. ASIC also has a strong consumer protection focus to ensure that the sale of financial products and services to Australians is not misleading or deceptive. ASIC has significant enforcement and disciplinary powers that it can exercise to protect consumers from being misled and mis-sold products and in relation to unfair contracts in consumer and small business contracts such as insurance policies.

ASIC is also responsible for administering parts of the following relevant legislation affecting the offer of insurance to Australian insureds:

- *Insurance Contracts Act 1984* (Cth); and
- *Life Insurance Act 1995* (Cth); and
- *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (Cth).

ASIC's role as regulator extends to market supervision and ensuring compliance with market integrity rules. This is often done with the support of other regulators such as the Australian Stock Exchange (ASX) and the Australian Competition & Consumer Commission (ACCC).

Given that ASIC is one of the largest regulators in this space, it is responsible for overseeing a large array of financial services. A critical component of its function as regulator is the publication of numerous regulatory guides, information sheets and instruments that provide additional guidance on the financial services laws. ASIC can issue legislative instruments (previously 'class orders') to:

- Exempt a person(s) from certain provisions of the *Corporations Act 2001* (Cth) or other Acts administered by ASIC;
- Modify or clarify the operation of certain provisions; or
- Make declarations about a person(s) who is subject to a particular provision.

ASIC maintains a number of public registers, which can be accessed online, to locate certain information regarding registered companies, registered bodies, registered foreign companies, managed investment schemes and non-registered entities. ASIC's professional registers provide information about 'professionals', such as financial services licensees, credit licensees, auditors and authorised representatives.

Australian Prudential Regulation Authority (APRA)

APRA is the independent statutory authority, also known as a prudential regulator, that oversees banks, credit unions, building societies, general, private health and life insurance companies, reinsurance companies, friendly societies, and most members of the superannuation industry (not self-managed superannuation funds).

APRA is tasked with protecting the interests of depositors, policyholders and superannuation fund members, administering the following legislation:

- *Banking Act 1959* (Cth);
- *Insurance Act 1973* (Cth);
- *Life Insurance Act 1995* (Cth);
- *Private Health Insurance Act 2007* (Cth); and
- *Superannuation Industry (Supervision) Act 1993* (Cth).

APRA monitors for, and seeks to reduce, financial institutions failing by developing a number of prudential standards that entities regulated by APRA need to comply with.

Critically, APRA is responsible for prudentially regulating insurers and reinsurers operating in Australia.

Reserve Bank of Australia (RBA)

The RBA is Australia's central bank, established under the *Reserve Bank Act 1959* (Cth), whose duty is to contribute to the stability of the currency, full employment, and economic prosperity and welfare of Australia.

The RBA is accountable to the Governor of the RBA and is responsible for monetary policies, financial system and payment system policies and other financial matters, with a view to meeting an agreed medium-term inflation target. The RBA works to maintain a strong financial system, an efficient payment system and regulates the issue of bank notes.

Australian Consumer and Competition Commission (ACCC) and Data Standards Body (DSB)

The ACCC is the chief competition regulator. The ACCC promotes competition and fair trade within markets to benefit consumers, business and the community as a whole. The ACCC also regulates national infrastructure services.

The ACCC is responsible for administering the *Competition and Consumer Act 2010* (Cth) with

a mandate to protect consumer and business rights and obligations, perform industry price monitoring and regulation and prevent illegal or anti-competitive behaviour. It is also responsible for the Consumer Data Right (CDR) initiatives which will create opportunities for insurtechs, fintechs and digitised businesses to share consumer data on a permissioned basis.

The ACCC's work complements the work of ASIC and the various state and territory consumer affairs agencies.

The DSB is a non-regulatory key industry body which works to set the standards for the CDR, though the CDR's lead regulator, the ACCC. The ACCC works with both the Office of the Australian Information Commission (OAIC) and DSB. DSB and the CDR promote market competitiveness by advocating for greater control for consumers over their own data, transparency on price structures and promoting incentives to switch providers. More details about this initiative can be found in the Consumer Data Right section below.

The Office of the Australian Information Commission (OAIC)

The OAIC was established as an independent government agency in 2010, supported by two statutory officers: the Freedom of Information Commissioner and the Privacy Commissioner. The purpose of the OAIC is to uphold privacy and information access rights by administering the following legislation:

- *Privacy Act 1988* (Cth);
- *Freedom of Information Act 1982* (Cth); and
- *Australian Information Commissioner Act 2010* (Cth).

The OAIC is accountable to Australia's Attorney-General and handles complaints, conducts investigations, reviews decisions made under the *Freedom of Information Act 1982* (Cth), monitors agency administration and advises the public, organisations and agencies.

The OAIC is responsible for conducting privacy investigations, reviewing decisions, handling complaints, and providing guidance and advice. It will also be responsible for enforcing the privacy protections built into the CDR framework once this has been rolled out for the insurance sector.



Australian Financial Complaints Authority (AFCA)

AFCA is a free, fair and independent dispute resolution scheme for consumers and small businesses who acquire certain insurance products. All Australian Financial Services Licence holders, Australian Credit Licence holders, credit representatives and superannuation trustees are required by law to be a member of AFCA.

AFCA considers complaints raised by customers against financial firms (who are members) regarding the financial products and services purchased or provided by the member. It is an alternative system of resolution to the typical litigation process of filing a statement of claim or attending a tribunal.

For AFCA to consider a complaint, it must:

- Meet its threshold requirement (e.g., being lodged within time);
- Be within its monetary jurisdiction; and
- Not be excluded by AFCA's Rules.

AFCA is often contacted for complaints which have not been resolved through internal dispute resolution or where the complainant is seeking a recovery against the financial firm

The Australian Taxation Office (ATO)

The ATO is the federal revenue collection agency. The ATO's remit is to manage and shape the tax and superannuation systems that support and fund services for Australians, such as collecting revenue, administering the goods and services

tax (GST), administering a range of transfers and benefits to the community, administering the superannuation system and acting as custodian of the Australian Business Register.

In the financial services sector, the ATO monitors the superannuation guarantee, which requires employers to contribute minimum of 10.50% of employees' earnings base into a superannuation fund selected by the employee (*Superannuation Guarantee Act 1992* (Cth)) and regulates self-managed superannuation funds.

State/Territory Revenue Offices

In addition to goods and services tax (GST), the purchase of insurance policies in Australia may also attract stamp duty and emergency services levy in some states. These taxes are payable to the relevant State Revenue Office or Fire Brigade/Service. More information on these taxes can be found in the Insurance Duty section below.

5.2 Regulatory framework

Australia has a complex framework of laws and regulations combined with industry codes which dictate and determine how insurance products can be offered to Australian insureds. The primary objective is to promote consumer protection and market certainty and to ensure the participants are appropriately licensed and supervised. Some activities are regulated financial services and others may be exempt.

Advice on the establishment of the business and the extent to which those activities require licensing and compliance with these laws is critical to success in launching a business in Australia.

Legislation (statute law) and regulations

The Australian insurance industry is mainly regulated by legislation at a federal or Commonwealth level with some regulation at a state or territory level (such as workers' compensation insurance, domestic building insurance and compulsory third party motor insurance).

Various participants in the insurance industry, including insurtechs, are regulated by the following Australian legislation and regulations:

- *Insurance Act 1973* (Cth) and *Insurance Regulations 2002* (Cth) which provide the framework for the authorisation and prudential regulation of general insurance and re-insurance business.
- *Life Insurance Act 1995* (Cth) and *Life Insurance Regulations 1995* (Cth) which provide the framework for the registration and prudential regulation of life insurers and life reinsurers.
- *Insurance Contracts Act 1984* (Cth) and *Insurance Contracts Regulations 1995* (Cth) which requires certain contractual rights, duties and protections to be applied to contracts of general insurance and life insurance which are governed by Australian law.
- *Marine Insurance Act 1909* (Cth) which regulates contracts of marine insurance.
- *Corporations Act 2001* (Cth) and *Corporations Regulations 2001* (Cth) which are the principal sources of legislation regulating Australian companies, financial services and markets. The *Corporations Act 2001* (Cth) also regulates the sale of certain general and life insurance products by imposing licensing, disclosure and conduct requirements.
- *Electronic Transactions Act 1999* (Cth) which governs the use of electronic communications (e.g., electronic signatures) in transactions. Each state and territory in Australia has its own Electronic Transaction Act, which generally mirrors the Commonwealth Electronic Transactions Act.
- *Australian Securities and Investment Commission Act 2001* (Cth) which provides consumer protections and prohibits misleading or deceptive conduct and unconscionable conduct by financial services providers.
- *Privacy Act 1988* (Cth) which governs the handling of personal information by private sector organisations and Commonwealth government agencies.
- *Insurance Acquisitions and Takeovers Act 1991* (Cth) which sets out rules for acquisitions

of Australian companies authorised to carry on insurance business under the *Insurance Act 1973* (Cth) or the *Life Insurance Act 1995* (Cth).

- *Financial Sector (Shareholdings) Act 1998* and *Financial Sector (Business Transfer and Group Restructure Act) 1999* (Cth) which regulate the shareholding of financial services entities, such as banks and insurance companies.
- *Health Insurance Act 1973* (Cth) which introduced a national public health insurance scheme (Medicare). *Private Health Insurance Act 2007* (Cth) and *Private Health Insurance (Prudential Supervision) Act 2015* (Cth) establish the regulatory regime for private health insurance providers in Australia.

In addition to legislation and regulations, many Australian regulators also issue policy guidance in the form of legislative instruments, practice guides, standards, rulings, determinations and regulatory guides. Some of the guidance is mandatory and has the effect of law, whilst others are useful reference points to understand the policy position of the regulator and are intended to inform the regulated population.

Industry Codes of Practice

The following industry codes of practice apply to participants in the general insurance, life insurance broking sectors:

- General Insurance Code of Practice (GICOP) which sets out the standards that general insurers and their agents must meet when providing services to their customers, such as being open, fair and honest. GICOP sets out timeframes for insurers to respond to claims, complaints and requests for information from customers. At the time of writing, Treasury is exploring making certain provisions of GICOP enforceable so that a contravention of such a provision would constitute a breach of the law.
- Life Insurance Code of Practice which requires life insurers, friendly societies that offer life insurance products and other industry participants who have adopted the Code to provide high standard, timely, honest, fair and transparent services to customers.
- National Insurance Brokers Code of Practice (NIBA Code) which develops and promotes high standards of professional practice for insurance brokers in Australia. The NIBA Code deals with consumer and client protection issues such as terms of engagement, remuneration disclosure and arrangements, conflicts of interest, training, education and professional standards.

6. Establishing an insurance business in Australia

6.1 Incorporation

There are several different ways to operate as an insurtech in Australia and it varies depending on the nature of your business activities.

Generally, there are five types of companies in Australia, being:

- A company limited by shares (public and private);
- A company limited by guarantee (public);
- An unlimited company (public and private);
- A no liability company (certain mining companies); and
- A corporate collective investment vehicle (for collective funds).

Most businesses in Australia operate as a private company limited by shares (known as a proprietary limited company). Unless there is a particular reason to establish a different company structure, most businesses seeking to establish a local subsidiary or local company will use a private company. A shelf company service can be used to quickly create a new proprietary limited company (usually within 24 hours).

It is possible for a foreign company to seek registration as a foreign company in Australia and this involves registering an existing overseas company to carry on business in Australia. Tax advice should be taken before proceeding with this option. More details on this option are below.

All companies that carry on business in Australia must be registered with ASIC. ASIC will issue a local subsidiary company with an Australian Company Number (ACN).

The ATO issues an Australian Business Number (ABN) and Tax File Number (TFN) to businesses operating in Australia. This allows the company to make certain filings with the ATO. You are required to include the ACN or ABN on certain documents which are used by the company, such as tax invoices.

A locally registered company is required to:

- Appoint directors and other officers (the number and residency of these vary depending on the company type – generally at least one director must be an Australian resident);
- Have a registered office in Australia;
- Nominate an Australian state or territory where it is incorporated;

- Register a name; and
- Provide shareholder information (where applicable).

Directors must also apply for a Director Identification Number or Director ID. This identifies the individual using a 15 digit number and applications for a Director ID must be supported by acceptable identification documents. Applications are made with the Australian Business Registry Services (ABRS) on their website. Overseas directors are required to submit a hard copy application form, along with certified copies of acceptable overseas identification documents (such as passport, birth certificate and foreign government identification).

Where a company is incorporated overseas, it is possible to instead register a foreign branch. This process is similar to the one mentioned above but requires additional documents to be provided, including:

- A certificate of incorporation or registration of the foreign entity;
- A copy of the foreign entity's constitution; and
- Various documents and agreements appointing a local agent and directors.

Once registered, ASIC will give the company an Australian Registered Body Number (ARBN).

An annual company review fee is payable to ASIC to keep the company registered. The amount varies depending on the company type.

6.2 Foreign investment review board

The Australian Government's Foreign Investment Review Board (FIRB) is responsible for screening proposed investments by foreign persons and determining whether they are in the national interest under the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* and its associated legislation and regulations.

Certain transactions by foreign persons must be notified to, or granted clearance by, FIRB before they are completed. These include starting a new Australian business, acquisitions of a direct interest in an Australian company, unit trust or business, acquisitions of interests in 'Australian land', and acquisitions of a direct interest in a 'national security business'.

Monetary thresholds apply to certain acquisitions by private foreign investors, however there is no threshold for acquiring



interests in a 'national security business' (among certain other categories). In addition, 'foreign government investors' are required to seek FIRB approval for any investment, regardless of the value of the investment. Broadly, a 'foreign government investor' is an entity controlled by any related body of a foreign government, including entities where a foreign government, separate government entities or foreign government investors from:

- one country hold a 20% or more interest, or
- multiple countries hold a 40% or more interest.

Early engagement with the FIRB process is critical as applications cannot be completed without it and the 30-day statutory decision timeframe is regularly extended.

6.3 Licences and authorisations

An insurance business may need to hold one or more licences to offer insurance services to customers in Australia.

Insurance Licence

Under the *Insurance Act 1973* (Cth), you must hold an insurance licence to carry on an insurance business in Australia. An insurance business undertakes liability for any loss or damage contingent upon the happening of a specific event. This requirement applies to insurers and underwriters who have the financial responsibility for the insurance contracts that are provided. It does not apply to insurance intermediaries such as managed general agencies who have a delegated binding authority from a licensed or regulated insurer.

Insurance business also covers:

- Inducing others to enter into contracts of insurance with the insurer;
- Publishing or distributing a statement relating to the insurer's willingness to enter into a contract of insurance; and
- Procuring the publication or distribution of such a statement.

You should take legal advice to confirm whether you are carrying on an insurance business in Australia. If you partner with an APRA-regulated insurer who will underwrite the insurance products you offer to Australian customers, that insurer will hold this licence and this means you do not require it when you are acting as their agent. Regardless, you may still have to hold an Australian Financial Services Licence or ascertain whether you can rely on an exemption from that licensing requirement (see below).

Even in situations where you are taken to be carrying on an insurance business in Australia, there are several exemptions to the requirement to hold an insurance licence in Australia. Life insurance, health insurance or the provision of benefits for funeral services is not covered by the Act (as these types of insurances are covered by different legislation). Exemptions can be found in the *Insurance Act 1973* (Cth), the *Insurance Contracts Act 1984* (Cth) and the *Insurance Regulations 2002* (Cth) as well as other insurance laws such as the *Life Insurance Act 1995* (Cth) and *Health Insurance Act 1973* (Cth).

Lloyd's of London holds an exemption from being licensed by APRA as it has been approved and is supervised by APRA. There are other exemptions described below that apply to overseas or foreign insurers.

Overseas or foreign insurers

Direct offshore foreign insurers (DOFIs) and unauthorised foreign insurers (UFIs) are typically not authorised insurers in Australia, nor are they subject to prudential requirements under the *Insurance Act 1973* (Cth). As such, policyholders do not benefit from the protections provided by the *Insurance Act 1973* (Cth) including access to the Financial Claims Scheme in the event of insurer insolvency.

For foreign insurers to operate within the Australian market, they are required to be authorised by APRA or be a Lloyd's of London underwriter. To achieve authorisation, insurers can establish a locally incorporated subsidiary or obtain an authority by operating as a branch. Otherwise, they must access an exemption.

One exemption that can be accessed by foreign insurers is where the insurance contract meets one of the following exemptions:

- Contracts for which the policyholder is a "high value insured". This is someone who has:
 - annual operating revenue of AU\$200 million;
 - gross assets of AU\$200 million; or
 - at least 500 employees in Australia;
- Contracts for atypical risks;
- Contracts for other risks that cannot be reasonably placed in Australia because:
 - there is no Australian insurer that will insure the risk; or
 - the terms on which an Australian insurer will insure are substantially less favourable to the insured than the terms of an unauthorised foreign insurer; and

- Contracts that are required by the law of a foreign country to be issued by an insurer authorised under the laws of that country to issue that kind of contract.

Reliance on these exemptions can be nuanced and you should seek legal advice, if you intend to rely on them.

Even once a DOFI and UFI can claim one of the above exemptions, it is important to navigate the requirements relating to an Australian Financial Services Licence. Foreign insurers will often access this market by partnering with an Australian Financial Services Licence holder who can offer the insurance under their Australian Financial Services Licence (this is known as an 'intermediary authorisation arrangement').

Australian Financial Services Licence

A person is taken to carry on a financial services business in Australia when they induce people in Australia to use any financial service the person provides. The regulated financial services that relate to the operation of an insurance business include:

- Providing financial product advice;
- Dealing in a financial product – this includes issuing, applying for, varying or disposing of an insurance product; and
- Providing a claims handling and settling service.

Product issuers, product distributors, insurance intermediaries and claims handling and settling services providers are invariably required to hold an Australian Financial Services Licence if they carry on a financial service business in Australia.

Insurtechs that are technology services businesses may not require an Australian Financial Services Licence if they do not provide a regulated financial service. Legal advice should be taken on whether you require this type of licence.

Financial product advice

Financial product advice is provided when you make a recommendation or a statement of opinion which is intended, or could reasonably be regarded as intended, to influence a person in making a decision in relation to a particular financial product. There are two common forms of financial product advice – personal and general advice.

Personal advice is financial product advice where the adviser has considered one or more of the customer's objectives, financial situation and needs, or a reasonable person might expect that the adviser has considered one or more of those matters.

For example, if a travel agent recommends that their customer buys travel insurance due to the customer's health situation and the fact they're travelling to the US, this is personal advice. Some insurance brokers provide personal advice to their clients, however, it is not typical for an insurer or their agent to provide personal advice.

General advice is any other financial product advice that is not personal. An example of general advice is marketing, advertising and promotional material that influences a customer to buy a particular product. Insurers, agents and brokers all typically provide general advice.

Providing a customer with factual information about an insurance product is not advice.

Dealing in a financial product

There are three main ways in which insurance businesses will "deal" in a financial product:

- Issue, vary, apply for, acquire or dispose of a product; or
- Apply for, acquire, vary or dispose of a financial product on behalf of another; or
- Arranging for a person to engage in either of the above dealing activities.

The one that applies will depend on the role of the party and the activities they perform. An insurer or underwriter issues insurance, but an insurance broker applies for the insurance on behalf of their clients.

Claims handling and settling services

A claims handling and settling service can be a regulated financial service if you engage in certain activities relating to an insurance claim. These activities include:

- Making a recommendation or stating an opinion in response to an inquiry about a claim or potential claim;
- Making a recommendation or stating an opinion that could influence a decision about making or continuing with a claim;
- Representing someone in pursuing a claim;
- Assisting another person to make a claim;
- Assessing whether an insurer is liable under an insurance product;
- Making a decision to accept or reject all or part of a claim;
- Quantifying an insurer's liability under an insurance product;
- Offering to settle all or part of a claim; or
- Satisfying a liability of an insurer under a claim.

There are exemptions that may apply to a service provider or broker which means that this type of authorisation may not be required. If you propose to operate a business in this area, seek advice on whether any exemptions are available to you.

Retail and wholesale clients

Financial services are either provided to retail clients or wholesale clients and the disclosure obligations that apply to the financial services provider vary significantly depending on the type of client which receives the services / buys the product.

Retail clients are individuals or small businesses who purchase insurance policies that have been designated as retail insurance products. In general, these types of products include:

- Motor vehicle insurance;
- Home building and contents insurance;
- Personal and domestic property insurance;
- Travel insurance;
- Consumer credit insurance; and
- Sickness and accident insurance.

A small business is a business which employs less than 20 people (other than businesses that manufacture goods, where the limit is 100 people).

Anyone who is not a retail client is a wholesale client.

It is possible to avoid the requirement to hold an Australian Financial Services Licence, if you act as an agent of an APRA-regulated insurer (or Lloyd's) and you deal exclusively with wholesale clients.

Applying for an Australian Financial Services Licence

Applying to ASIC for an Australian Financial Services Licence can be a costly and time-consuming process. Depending on the type of licence and authorisations being applied for, the assessment process at ASIC can take between 4 and 12 months. If there is a need to get to market more quickly, there may be exemptions available to avoid licensing, but this will usually involve partnering with an Australian Financial Services Licence holder.

An Australian Financial Services Licence application has three stages:

- Completion of the online application;
- Preparation of core proofs; and
- Preparation of additional proofs (some of which need to be supplied at the time of lodgement, while others may be supplied upon request from ASIC).

An application fee will be payable at the time of lodgement. This amount varies based on the type of application being made and the authorisations sought.

While applications can be prepared by the applicant, engaging the services of a compliance consultant or legal practitioner with experience with this type of application reduces the risk of the application being rejected or delayed because information is missing or unclear. It is important to take advice on the authorisations and the selection of responsible managers to support the application.

Responsible managers are the individuals who have responsibility for the significant decisions about the provision of the financial services under the licence and they must have appropriate qualifications and skills in the areas covered by the authorisation(s). It is useful to assess whether qualifications and experience to meet ASIC's competence requirements.

More information on how to apply for an Australian Financial Services Licence is available on ASIC's website. See the Resources section below for relevant links.

Alternatives to applying for an Australian Financial Services Licence

ASIC's Regulatory Sandbox

To facilitate innovation, the Australian government has created a 'Regulatory Sandbox' which provides an exemption from the need to hold an Australian Financial Services Licence and allows businesses to test innovative financial services or products over a 24-month period.

The eligibility criteria and conditions to apply for and participate in the regulatory sandbox include:

- The financial services and products are considered to be eligible, such as:
 - providing personal or general advice; and
 - dealing in general insurance products;
- An aggregate customer exposure of no more than AU\$5 million;
- An individual retail client exposure limit of AU\$10,000;
- Holding professional indemnity insurance; and
- Being a member of an external dispute resolution provider (e.g. AFCA).

ASIC assesses applications for the Regulatory Sandbox against the following tests:

- The **net public benefit** test – this test involves ASIC considering why the financial service or product will result in a benefit to the public. ASIC will consider whether the benefit outweighs any detriment to the public that may result by allowing the financial service to be provided without an Australian Financial Services Licence.
- The **innovation** test – this test involves ASIC considering whether the financial service or product is new or a new adaptation or an improvement of another service.

It could be worth exploring whether a proposed initiative will benefit from utilising the Regulatory Sandbox, however, unless there is a significant level of innovation, it may be difficult to have your application approved.

Partnering with an Australian Financial Services Licence holder

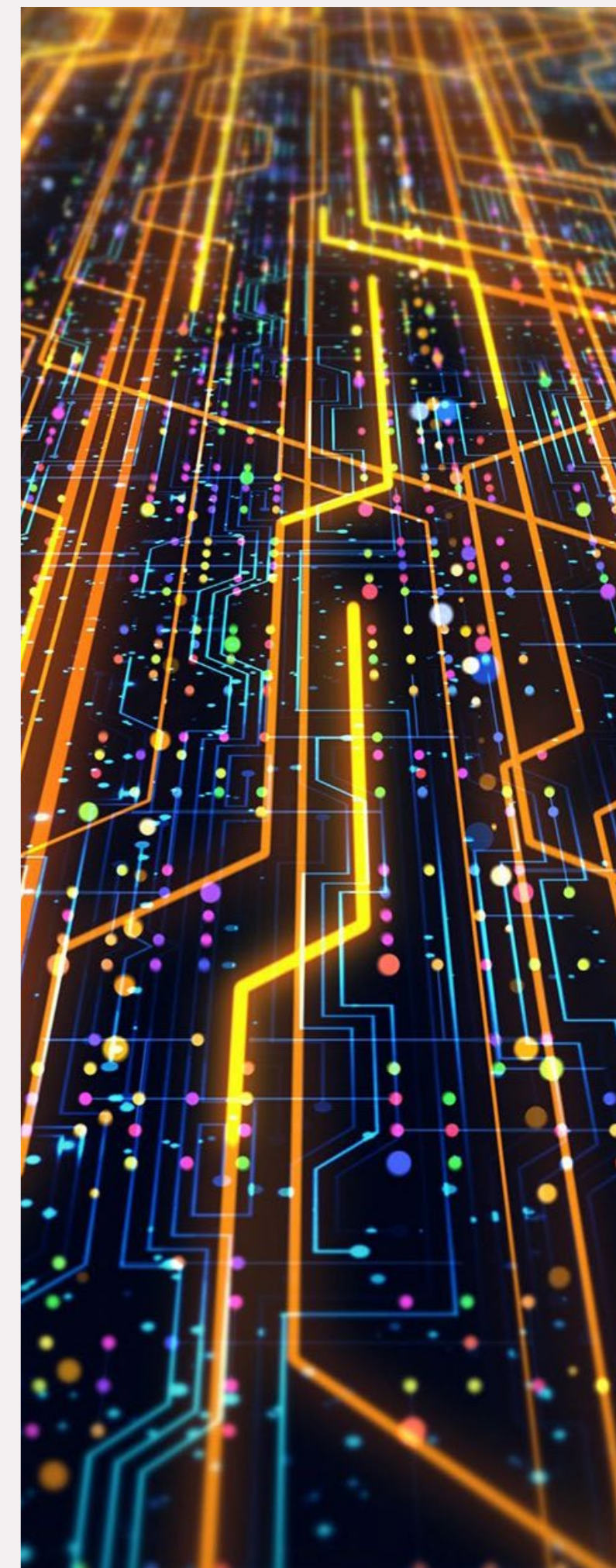
Where insurtechs are looking to test their product or are looking for proof of concept within the Australian marketplace, it may be easier to partner with an existing Australian Financial Services Licence holder, rather than utilising the ASIC Regulatory Sandbox.

Insurtechs who do this do not need to have their own Australian Financial Services Licence as they will be authorised to provide their services or products under an existing licensee's Australian Financial Services Licence authorisations. This is called being appointed as an 'authorised representative' of an Australian Financial Services Licence holder.

An Australian Financial Services Licence holder is ultimately responsible for the provision of the financial services and products by its authorised representatives. For this reason, licensees will generally require you to comply with their policies and procedures, use their trust account and meet other compliance requirements, such as training and professional indemnity insurance to make sure they can meet their licence obligations.

Typically, you will be required to enter into an Authorised Representative Agreement with the Australian Financial Services Licence holder and to indemnify them in relation to liability arising from the services you provide under their licence.

A person who "arranges" or "deals in" general insurance products and does not provide any financial product advice (including general advice) may only need to be appointed as a general insurance distributor. If you need to 'white-label' your products or services using your branding, you will need to be authorised representative because 'white-labelling' is considered to be a form of general advice.





The Australian Financial Services Licence holder will inform you which structure is appropriate for your proposed financial services activities.

Partnering with an insurance business

Depending on the activities that you will be performing for an insurance business, you may be required to enter into one or more of the following types of agreements:

- Authorised Representative Agreement (referred to above);
- Binding Authority Agreement (also known as a 'Binder');
- Distributor Agreement;
- Services Agreement; or
- Claims Management Agreement.

It is advisable to seek advice from an Australian lawyer with industry knowledge and experience prior to entering into any of these agreements to ensure the agreement terms are fair and reasonable and they are commercially acceptable.

6.4 Insurances

A business operating in Australia may be required to hold certain types of insurance by law or because the businesses you deal with may require it as a condition of entering into a commercial relationship with you. This guide describes some of the most common policies required. Consult an insurance broker for more information about the right insurances for your Australian business.

Workers' compensation

Workers' compensation insurance is compulsory if you have Australian-based employees. See the Employment Laws section below for more information. The rules vary between states and territories, so you need to check with your broker or the relevant regulator for the requirements that apply to you.

Business insurance pack

In Australia, a business insurance package (also known as a 'business pack' or 'bizpack') combines different types of insurance under one policy to offer broad financial protection for the main risks involved in running a business. It can include the following coverage options: property loss or damage, business interruption, glass, burglary, general property, public and products liability, machinery and electronic equipment breakdown and employee dishonesty.

Public liability insurance

If you own a business, you may be liable for any financial loss, damage or injury sustained by another person or property damage as a result of your business' activity or products, including occupier's liability when you rent business premises and work from them and contractor's risk where you visit the business or other premises belonging to someone else. Public liability insurance covers you and your business against the financial risks of being found liable for death or injury, loss or damage to property or economic loss resulting from your negligence. Having this insurance is often a condition in consulting/services and procurement agreements.

Professional indemnity insurance

Professional indemnity insurance protects against liability for damages arising from errors or omissions or professional negligence. It will also cover the legal costs associated with defending you against claims arising from an act, omission or breach of duty.

Unless exempt, an Australian Financial Services Licence holder must hold adequate professional indemnity (PI) insurance to provide financial services to retail clients. They may also require their authorised representatives to hold their own PI insurance at their own cost if they are providing a regulated financial service to retail clients.

PI insurance required as a licence condition must meet ASIC's requirements, which are set out in ASIC Regulatory Guide 126: Compensation and insurance arrangements for AFS licensees. When determining whether the PI insurance is adequate, the following will need to be considered:

- The nature, scale and complexity of the financial services business, including the volume of business, the number and kinds of clients;
- The kinds of services provided and the number of representatives (including authorised representatives);
- The business' other financial resources;
- The amount and scope of cover and the terms and exclusions; and
- The maximum liability that could result from claims heard by AFCA.

Directors and officers insurance

This insurance protects directors and officers of a company against legal liabilities they may sustain personally while managing a company. Many companies may choose to purchase management liability insurance because it can provide coverage for company officers, alongside other insurance for crime, legal liability, statutory liability for wrongful acts and employment practices liability.

Cyber insurance

With the rise of cybersecurity incidents, scams and cyber extortion, cybersecurity insurance (also known as 'cyber liability insurance') is becoming more common among small to medium sized businesses. It covers you for risks associated with doing business online, including data liability, fines and investigations, electronic data recovery, digital media liability and outsource service providers.

If you will be acting as an authorised representative of an Australian Financial Services Licence holder and/or will enter into an arrangement with a local insurer that involves handling or storing their customer information (e.g., managing their claims process), then you will probably be required to hold cyber insurance.

7. Employment and workplace

There are three standard types of employment in Australia: full-time, part-time and casual.

A full-time employee is engaged for 38 ordinary hours per week on an indefinite ongoing basis, subject to rights of termination.

A part-time employee is the same, except they work less than 38 hours per week and receive their minimum entitlements (discussed in more detail below) on a pro-rata basis depending on their hours of work.

A casual employee works on the basis that they have no firm advance commitment to continuing and indefinite work, and they are able to accept and reject work that may be offered by an employer from time to time.

Regardless of the type of employment, the employee-employer relationship in Australia is generally set out in written employment contracts. While it is possible to have an oral employment contract, this often leads to issues regarding the nature of minimum entitlements owed and each parties' respective rights on termination. Specifically for insurance businesses, it is common for written employment contracts to include conditions such that where an employee is required to have particular training and qualifications, they must maintain those qualifications and continuous training requirements for the duration of their employment.

Minimum entitlements and general obligations

There are various legal instruments in Australia which establish the minimum entitlements of employees and employers, and their respective rights and obligations. The table below sets out a summary of the key instruments that should be considered when setting up a business in Australia.

Fair Work Act 2009 (Cth)	This is the key piece of legislation that governs minimum employment entitlements for the majority of employees in Australia. The <i>Fair Work Act 2009</i> (Cth) sets out the National Employment Standards and gives legislative effect to the obligations imposed by modern awards and enterprise agreements.
Modern awards	Modern awards cover employers and employees on an industry, or sometimes occupational, basis. For example, the Banking, Finance and Insurance Award 2020 (BFI Award) applies to employers and their employees in the banking, finance and insurance industry. Modern awards set out minimum entitlements that supplement those set out in the National Employment Standards, including rates of pay, overtime and penalty rates, hours of work, leave entitlements, consultation obligations, redundancy entitlements and termination notice.
Employment contracts	As mentioned above, most employees in Australia are engaged on written contracts of employment, which usually contain terms regarding confidentiality, assignment of intellectual property etc. Contractual terms that are inconsistent with the National Employment Standards, or any applicable modern award or enterprise agreement, will have no effect.

	Full-time and part-time employees	Casual employees
Maximum hours of work	38 hours (plus reasonable additional hours).	
Public holidays	Employees are entitled to a day off (with pay) for all public holidays declared in their state or territory (generally between 12 to 16 public holidays are declared each year).	
Leave	<p>Annual Leave: Four weeks of paid annual leave each year (five weeks for shiftworkers, and pro-rated for part-time employees). This accrues from year to year and must be paid out to employees on termination.</p> <p>Personal/Carer's (sick) Leave: 10 days of paid leave each year (pro-rated for part-time employees). This accrues from year to year but is not paid on termination.</p> <p>Parental Leave: 12 months' unpaid parental leave for employees who have been employed for at least 12 months.</p> <p>Long Service Leave: This type of leave varies between states, but generally after 10 years' service employees receive 2 months' leave. In some states, employees will be eligible for a pro-rata amount after 7 years' service. This must be paid out to employees on termination.</p> <p>Other Leave: Employees are also entitled to other forms of leave, including community service leave, family and domestic violence leave and compassionate leave.</p>	<p>Casual employees are provided significantly limited leave compared to full-time and part-time employees.</p> <p>Leave for casuals includes family and domestic violence leave, community service leave, carer's leave, and compassionate leave.</p> <p>In most circumstances, leave provided to casual employees is unpaid.</p>
Minimum notice of termination	Between 1 week and 5 weeks' notice of termination, depending on the employee's period of service and their age.	Not applicable.
Redundancy pay	Determined by reference to the employee's period of service, ranging from 4 weeks' pay for an employee with more than 1 year's service but less than 2, up to 16 weeks' pay for an employee with more than 9 years' service but less than 10.	Not applicable.

Banking, Finance and Insurance Industry Award 2020

The BFI Award covers employers throughout Australia in the banking, finance and insurance industry in respect of work by their employees in the classifications listed in the award. The banking, finance and insurance industry is broadly defined, and includes all forms of insurance.

The BFI Award provides a list of indicative positions, which at the lowest classification includes filing clerks and assistant receptionists, and at the highest classification includes branch managers and senior analysts. The higher an employee's classification, the higher their minimum rate of pay is.

Employees covered by the BFI Award receive, amongst other benefits, higher rates of pay, have a span of hours where their ordinary hours can be worked (i.e., if employees work after 7pm, they are entitled to overtime), annual leave loading, and must be consulted where their employer is making a major change in production, organisation or structure that is likely to have a significant effect on employees.

A modern award, such as the BFI Award, does not cover employees who, because of the nature or seniority of their role, have not traditionally been covered by awards. This generally applies to senior executives, however, may also apply to management or other senior employees depending on the nature of their role, and their duties and responsibilities.

Payroll tax

Payroll tax is levied on wages paid (or payable) by employers to their employees, provided the total tax wages of an employer (or an employer group) exceeds a threshold amount. This threshold amount, and the applicable payroll tax rate, varies between states and territories.

In New South Wales during the 2022-23 financial year for example, an employer who pays wages in New South Wales must register for payroll tax if, during any 30-day month, the total Australian wages are above AU\$98,630 or during a 31-day month, the total Australian wages are above AU\$101,918. Payroll tax during the 2022-23 financial year is payable at 5.45%

Pay as you go (PAYG)

Generally, employers are required to withhold amounts from payments made to employees. These amounts are paid directly to the ATO on behalf of employees. This is designed so that income tax is paid as income is paid, rather than being paid as a lump sum at the end of the financial year.

Employers need to register for PAYG withholding by the day they are required to start withholding amounts (this can be done online).

Workers' compensation insurance

Workers' compensation insurance provides support to workers who suffer a work-related injury. Most employers in Australia are required to have a workers' compensation policy to protect them from the costs of workers' compensation claims made against them, although this varies from state to state and has some limited exemptions.

This insurance assists with the payment of weekly benefits (which are linked with an injured workers' pay), medical and hospital expenses, and other benefits provided to workers to assist in their recovery and return to work.

Employee share / equity plan

A number of tax concessions exist to allow participants to benefit from either holding equity on capital account (rather than revenue account) or deferring the revenue account taxing point. The principal concessions are achieved through the 'start up concession', 'loan funded share plans', 'premium priced options' or 'deferred options'. The selection as to which structure is most appropriate will depend on a number of factors including the characteristics of the company, its related group, the growth profile of the business and the intended motivational alignment.

The participant pool will also be relevant and must be carefully considered to ensure the issue of equity or equity-like, instrument complies with Australian securities law for offers made in the jurisdiction.

When structuring equity plans, financial services rules may also apply. Consult a specialist legal and tax adviser in relation to any proposed employee share or option plan.

Superannuation

Employers have an obligation to pay the superannuation guarantee to eligible employees each quarter to provide for their retirement. The current rate is 10.5% of an employee's base earnings. See the Resources section below for more information.



8. Taxation

State and federal tax laws apply to insurance businesses and, in some cases, tax is levied on the insurance premiums which are paid by customers and in relation to commissions and fees that are charged by intermediaries.

Insurance duty

Stamp duty is a tax imposed by the relevant state or territory that is payable on insurance transactions. It applies in all jurisdictions, other than the Australian Capital Territory, and is imposed in respect of particular types of insurance (e.g., general insurance and life insurance). The duty is collected by the insurer when a policy is purchased or renewed and remitted to the relevant Revenue Office. The amount of stamp duty payable depends on the type of insurance product. For example, in New South Wales, it ranges from 2.5% to 9% of the insurance premium.

In certain states or territories, a small business stamp duty exemption may apply. Duty is payable where the insurer is a foreign insurer and there is a local agent or broker placing insurance for an Australian-domiciled insured. Contact the relevant Revenue Office in your jurisdiction for more information.

An emergency services levy applies in Tasmania and New South Wales, and it is used to fund fire and emergency services. These are included in the premium paid by a customer to an insurer, who pays the taxes to their relevant fire authorities - NSW Fire Brigades and the NSW Rural Fire Service and Tasmanian State Fire Commission.

Goods and Services Tax (GST)

GST is a federal tax which applies a 10% charge on most goods, services and other items sold or consumed in Australia. GST applies at each stage of the production chain for most goods or services, including insurance. Registered suppliers are obliged to remit GST on supplies they make.

GST does not apply to limited categories, including:

- Exports;
- Certain financial supplies;
- Residential accommodation;
- Basic food; and
- A supply of a going concern.

The ATO has information on its website about if and when a business needs to register for GST. See the Resources section below for more information.

Income and Capital Gains Tax (CGT)

Income tax is charged in Australia both at individual level and at a corporation level. Taxpayers are required to lodge their annual income tax return every 12 months for a year-end of 30 June; these are generally subject to audits from the ATO for a period of 2 or 4 years from lodgement.

Subsidiaries of non-resident companies may request permission from the Commissioner of Taxation to lodge tax returns with a year-end other than 30 June (known as a substituted accounting period) to assist with accounting in their home jurisdiction (a country other than Australia).

Companies carrying on business in Australia or deriving Australian sourced income may be taxed at 30%. The tax rate is less for companies with an aggregated annual turnover of less than AU\$50 million.

CGT is incorporated in the income tax legislation within Australia and captures the disposal of assets acquired after 20 September 1985. Net capital gains can be set off against revenue losses, however capital losses can only be offset against capital gains.

Foreign Resident Withholding Tax

A non-resident withholding tax applies where insurance is placed with foreign insurers, and it is the local managed general agencies or brokers who are required to collect and pay this to the ATO where:

- The policy insures property located in Australia or the insured event can only happen in Australia; or
- The policy is purchased through an Australian-based agent of the foreign insurer (regardless of where the insured property is located or whether the risk insured is in Australia).

In most cases, a flat fee of 3% of the premium is charged to customers for the payment of this tax.

9. Intellectual property rights

Intellectual property rights are protected in Australia by a combination of legislative instruments and the common law. IP Australia is the government agency that manages the administration of legislative schemes for trade marks, patents, designs and plant breeders' rights, including the publicly searchable registers for such rights.

Australia is also a signatory to various international treaties, including the World Trade Organisation's Agreement on Trade-related aspects of Intellectual Property Rights (TRIPS), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the International Convention for the Protection of New Varieties of Plants, the Patent Co-operation Treaty, the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention for the Protection of Industrial Property.

Trade Marks

The *Trade Marks Act 1995* (Cth) governs the registration system for marks (including words, logos, shapes and colours) that distinguish the goods or services of a trade mark owner from those of another trader.

As a 'first to use' jurisdiction, priority in Australia will be given to those who are the first to use a trade mark and can demonstrate such use, even if another person has applied to register that trade mark first. While registration is not mandatory, it is generally advisable. Initial registration will last for 10 years, and the registration is renewable for successive periods of 10 years on an ongoing basis.

Australia is a member of the Madrid Protocol – an international system which enables a trade mark owner to seek protection for their trade mark in over 120 countries through a centralised system.

The owner of an unregistered (common law) trade mark can seek to enforce its rights through a passing off action under the common law or a claim for misleading or deceptive conduct in breach of the Australian Consumer Law (Schedule 2, *Competition and Consumer Act 2010* (Cth)).

Patents

The *Patents Act 1990* (Cth) governs the registration system for patents and gives the patent holder the exclusive right to exploit the patented invention (and authorise another to do so). Patentable inventions include devices, substances, methods or processes that are novel, useful, inventive and constitute

patentable subject matter. It can include an algorithm developed by an insurtech, provided that it meets the requirements for registration.

Previously, Australia had a two-tier patent system: the standard patent system which granted protection for 20 years (with the potential for some pharmaceutical patents to be extended for a further five years) and an innovation patent system which provided protection for up to 8 years. The Australian government has started phasing out the innovation patent and the last day for filing an innovation patent was 25 August 2021.

Australia is a party to the Patent Co-operation Treaty. This allows applicants who are nationals of a member state to file a single application seeking patent protection in multiple member states at the same time.

Designs

The *Designs Act 2003* (Cth) governs the registration system for designs and provides the owner with protection for the visual appearance of a product which is different to other products available on the market (both within and outside Australia).

To be registered, the design must be new and distinctive, and not have been publicly disclosed or advertised before the application is filed. It takes approximately 2 months to register and 4 months to certify a design. A design registration lasts for up to 10 years (with renewal required at 5 years). Australia is not a party to the Hague System governing international applications for the registration of designs.

Copyright

The *Copyright Act 1968* (Cth) protects original literary, dramatic, musical and artistic works, sound and film recordings, and broadcasts. Copyright protection extends to works made by an Australian resident or citizen, works made or first published in Australia, and works that have a specified connection with a country which is a member of a relevant international copyright treaty. Copyright is generally considered one of the main forms of intellectual property protection for software (with computer programs constituting 'literary works' under the *Copyright Act 1968* (Cth)). Unlike trade marks, patents and designs, there is no requirement or ability to register copyright in Australia (as in some other jurisdictions). Copyright protection is automatic once the work is expressed in a material form (regardless of medium).



10. Product design, documentation and consumer protection

10.1 Product documentation

Certain disclosures and documentation are required for the sale of insurance to Australian customers. For retail clients and consumer insurance products this will generally include the following:

- **Financial Services Guide (FSG)** – This document describes the financial services offered by the financial product or service provider. It is required to be given to retail clients and it has specific content requirements which are set out in the *Corporations Act 2001* (Cth) (and regulations). For example, householders and motor vehicle (auto) insurance and other personal and domestic policies and some small business insurances.
- **Product Disclosure Statement (PDS)** – This document contains certain prescribed information about the financial product and the product provider that a policyholder should know before purchasing the product so they can decide whether it is right for them. It is required to be given to retail clients and it has specific content requirements which are set out in the *Corporations Act 2001* (Cth) (and regulations). For example, householders and motor vehicle (auto) insurance, other personal and domestic policies and some small business insurances.
- **Supplementary Product Disclosure Statement (SPDS)** – This document supplements, updates or amends a PDS. It is used when short form changes are required to be made to the PDS (instead of replacing the PDS with a new one) and it must be read in conjunction with the PDS. It must meet specific content requirements which are set out in the *Corporations Act 2001* (Cth) (and regulations).
- **Premium Excess and Discount Guide (PED Guide)** – This document is often prepared by insurers and intended to be read with the PDS. It contains information about the cost of the insurance, any applicable no claim discount, any other discounts that are offered and excesses that apply to a policy. It is used mainly for householders and motor vehicle (auto) insurance.
- **Target Market Determination (TMD)** – This is a mandatory public document that describes the types of customers for whom a product is and is not suitable for (the target market)

and any conditions or restrictions around its distribution. A TMD is required for each product that has a PDS and it is required to include other information as prescribed under the *Corporations Act 2001* (Cth) (and regulations).

- **Cash Settlement Fact Sheet (CSFS)** – This is a document that must be given to a retail client when an insurer offers to settle a claim by payment of cash instead of settling the claim by paying for repair or replacement of the insured property. It must meet certain content requirements under the *Corporations Act 2001* (Cth) (and regulations). Insurers and third party claims administrator who are licensed to provide claims and handling and settling services are responsible for managing the provision of a CSFS when they are required to be given to a claimant during the claims settlement process.

For both retail clients and wholesale clients, there is an expectation that anyone offering insurance to Australian insured will also use the following:

- **Insurance Application/Proposal Process** – Invariably the insured will be required to apply for insurance and in some cases make certain disclosures (e.g., the information required to be given under the duty of disclosure) within these documents. For insurtechs, a digitised application process may be used which also assists the insurer to comply with certain requirements to give legal notices at the time of application and before the product is issued.
- **Policy Wording** – This document contains the terms and conditions of the insurance coverage. It, together with the policy schedule, forms the contract between the insurer and the insured. A policy wording is prepared for all types of insurance products including retail, wholesale or parametric. Sometimes the policy wording forms part of the PDS, or it is included with the PDS.
- **Policy Schedule** – This document contains specific information relating to the policyholder's policy including things like sums insured, policy period, policy number, additional coverage and benefits, declared values etc. It forms part of the insurance contract, and for retail clients, it also operates as confirmation of the coverage provided by the insurance policy.

The duration of copyright protection depends on various factors, including the nature of the material, the time it was made and whether it has been published. Generally, copyright in works lasts for the life of the author plus 70 years, or where the author is unknown, 70 years after the work is made or published.

In Australia, authors of copyright material have certain non-economic rights known as moral rights. These are the right of attribution of authorship, the right against false attribution of authorship and the right of integrity of authorship. Moral rights are personal to the author and cannot be assigned or transferred, however an author can consent to acts or omissions that would otherwise infringe their moral rights.

Both the copyright and design regimes have the potential to protect the visual features of a product. In general, copyright protection is lost on registration of a design under the *Designs Act 2003* (Cth) (with some exceptions). Australia is a party to the Berne Convention for the Protection of Literary and Artistic Works (1886), meaning that copyright-protected works from authors in other member states will be given 'national treatment' in Australia as though they were Australian copyright-protected works.

Domain names

The country code Top Level Domain (ccTLD) assigned to Australia is '.au' and is administered by .au Domain Administration (auDA). These include domain names ending in '.com.au', '.org.au', '.net.au' and '.au'. The domain names are granted on a first come, first served basis.

In order to register a domain name ending in '.com.au', applicants must have an Australian presence and be a commercial entity. Foreign persons who hold or have applied for an Australian trade mark registration will satisfy the 'Australian presence' requirement, provided that the requested domain name matches the trade mark.

In March 2022, auDA launched the '.au' direct domain name for general use. This means that any person, business or organisation can register a .au domain name, provided that it :

- is available for registration;
- meets the auDA syntax requirements; and
- is not reserved.

Legal advice should be sought to ensure these documents are compliant before being given or made available to consumers. Special rules also apply about when such documents must be given. In some cases, it is possible to combine an FSG, PDS and Policy Wording. There are record-keeping requirements which apply to these documents.

Most insurance documents and notices can be given electronically, and Australia adopts a technology neutral environment where parties can execute documents and enter into contracts using digital facilities.

10.2 Product design and distribution obligations

There are additional product governance obligations referred to as the product design and distribution (PDDO) obligations that apply to product issuers and distributors/product sellers who deal with retail clients. These obligations are designed to improve consumer outcomes by preventing mis-selling of insurance and other financial products and requiring issuers and distributors to implement measures to ensure financial products are targeted at the right people.

This involves the identification of affected retail client products, the development of a TMD for each retail client product and establishing systems for the management of distribution of those products including reporting, review and monitoring.

The PDDO also requires distributors to:

- Refrain from selling the insurance products to retail clients unless they have checked there is an appropriate TMD in place for that product;
- Take reasonable steps to ensure distribution to retail clients is done in a manner which is consistent with the TMD;
- Notify the insurer of any complaints they receive in relation to the product and the steps take in relation to any complaints;

- Notify the insurer of any information they acquired during the reporting period;
- Notify the insurer of any significant dealings inconsistent with the TMD;
- Notify the insurer of any other matter the insurer wants reported; and
- Notify the insurer of any significant dealings in the product that are not consistent with its TMD.

Distributors must keep complete and accurate records of distribution information for seven years, including in relation to the number of complaints received about a product and other information specified by the product issuer in the TMD. Systems and processes for regulatory compliance with the PDDO will be expected if you are working an insurer to offer insurance products to retail clients.

10.3 Consumer protection

Unfair contract terms

Unfair contract terms protections apply to consumer and small business insurance contracts. Unfair terms contained in insurance policy wordings are void and unenforceable unless the insurer has a legitimate business interest in relying on the term or it relates to the premium charged, the main subject matter of the insurance or it is expressly permitted by law. Insurance policy wordings should be legally reviewed before a product is launched to ensure they are fair, particular policy exclusions and conditions.

Changes to law in the second half of 2023 will mean harsher fines and penalties will apply to businesses that have unfair contract terms in their product/policy wordings and a larger group of small businesses will be able to access the legal protections as they will be available to businesses with up to 100 employees.

Refer to the Resources section for links to more information.

Add-on insurance and anti-hawking

The offer of certain insurance products by insurtechs, including 'embedded insurance', can trigger the operation of the add-on insurance laws. An add-on insurance product is one that is 'added on' to the sale of another product or service which is the main focus for the consumer. For example, product warranty insurance being sold by a manufacturer of an electronic device, pet insurance being sold by a veterinarian during an animal's health check-up or jewellery insurance being sold by a jeweller when selling an engagement ring to a customer.

A four-day 'pause' or deferral period between the sale of a principal product or service and the sale of an add-on insurance product applies to add-on insurance products. This is known as the 'deferred sales period'. Free or complimentary insurance is not usually add-on insurance and there is other permitted contact with customers, but legal advice should be taken to identify when the deferred sales period applies.

There are some products that are exempt from the add-on insurance restrictions including:

- Comprehensive motor vehicle or vessel insurance products;
- Compulsory third party motor vehicle insurance products;
- Home and contents insurance products;
- Home building insurance products;
- Landlord insurance products;
- Limited motor vehicle insurance products;
- Transport and delivery insurance products;
- Travel insurance products;
- Business-related insurance products; and
- Superannuation-related insurance products.

Hawking of general insurance products to a retail client, where the offer of the services takes place in the course of, or because of, an unsolicited contact with the consumer is illegal. Unsolicited contact is contact in the form of a meeting with or a telephone call to a retail client which was not initiated by them, or some other real-time interaction like instant messages and chatbots. It does not include text messages or emails where there is no reasonable expectation of immediate action. Advertising an insurance offer or providing information to consumers about the offer is not usually unsolicited contact. If contact is solicited it is not captured by these restrictions, but it must be a positive, specific and informed request. Advice should be taken on sales processes with retail clients that include digitised or 'live' interactions.

Further information about hawking is included below in the Marketing and Advertising section.

Privacy and data protection

All insurance businesses that are not small businesses (with a turnover of AU\$3 million or less) and carry on business in Australia are required to comply with the *Privacy Act 1988* (Cth). This includes the Australian Privacy Principles (APPs). There are guidelines issued by the OAIC, which are not legally binding, but it is advisable to follow.

The APPs are principles-based law and govern the collection, use, disclosure, storage and retention of personal information. "Personal information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

There are higher standards required with respect to the handling of "sensitive information" which is personal information about an individual's racial or ethnic origin, political opinion, membership of a political association, religious beliefs or affiliations,





philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal records as well as health information, genetic information that is not otherwise health information and biometric information. There are a number of exemptions to the application of the APPs, including with respect to employee records.

There are potentially significant fines for serious or repeated breaches of the APPs of up to AU\$50 million, 3 times the value of any benefit gained from misuse of personal information or 30% of the organisation's adjusted turnover.

It is important to:

- Understand data flows within your business – including what and how you collect, use, disclose, and otherwise handle personal information. This includes any overseas transfers, how you store and protect personal information and processes you have to delete personal information once it is no longer required, especially where you may be using cloud-based data storage.
- Implement practices, procedures and systems to ensure you comply with the APPs, enable you to deal with any privacy complaints or inquiries about your compliance, and to respond to and manage a data breach.
- Understand the disclosure and document retention requirements under other applicable laws of:
 - the insurance licence holder;
 - the Australian Financial Services Licence holder, and
- Deal with personal information openly and transparently. This includes publishing a privacy policy and providing notices to individuals when you collect their personal information.

You must take reasonable steps to protect any personal information you hold, including from data breaches. The *Privacy Act 1988* (Cth) contains mandatory data breach reporting requirements where a data breach is likely to result in serious harm to affected individuals. When determining what security measures are “reasonable”, you should consider the types of personal information and the level of risk of privacy harm to individuals. As the amount of information and/or sensitivity increases, so should the steps you take to protect it. You will need to ensure you are aware of the personal information you handle, where it is kept, and the risks associated with it.

Customers must be able to access and correct the information held about them (exceptions apply). As at the date of this Guide, there is no right of deletion (or “right to be forgotten”) in Australia and individuals do not have a direct right of action with respect to a privacy breach. All complaints are managed through the entity and, if not resolved, can be escalated to the OAIC.

Where request for access or correction is refused, it must be explained to the customer in writing and include information about privacy complaint mechanisms. There are prescribed timeframes for responding to these requests.

A compliant privacy policy and privacy collection statement should be developed and given at the appropriate times. You do not need to appoint a privacy officer, but it is a good idea to have one or more people who act as a central point for privacy compliance and are appropriately trained.

Current legislative protections are not as comprehensive as the EU General Data Protection Regulation (GDPR), but recent changes mean the fines and penalties for data breaches are now significant and the federal government is conducting a wholesale review of the privacy law in Australia. It is anticipated there will be major reforms in 2023 and 2024, so be aware of changes in this area of regulation.

10.4 Marketing and advertising

Direct marketing, including social media, viral campaigns, mail/email or outbound telephone campaigns must comply with a range of laws including:

- Anti-hawking provisions in the *Corporations Act 2001* (Cth);
- Spam legislation; and
- Privacy legislation.

Generally, an individual's personal information cannot be used or disclosed for direct marketing purposes, unless the individual has consented (e.g., express opt-in, such as thorough a check box) or the individual would reasonably expect you to do so (and you provide a simple means to opt-out, and they have not).

If you are covered by the *Privacy Act 1988* (Cth), you must let recipients opt-out of receiving your direct marketing the first time they are contacted. This can be done by adding an ‘unsubscribe’ link in the email, giving the recipient the ability to reply to an email or text message with ‘unsubscribe’ or ‘STOP’ or to add their number to the Do Not Call Register.

Any person who requests removal from your distribution list must be appropriately entered into the Do Not Call Register you are required to maintain (see below for more information).

Spam

Unsolicited promotional emails to individuals and other forms of unsolicited digital direct marketing such as instant messaging, SMS, etc are called spam. Spam should only be sent to a person if they have consented to receive it (unless it was sent by mistake).

Consent to receive promotional message can be express or inferred. A person must not be sent spam if they have withdrawn their consent.

Do Not Call Register

A business must maintain a Do Not Call Register for customers. This is a list of people who have either:

- Requested that they not be mailed, contacted or called;
- Agreed that they may be called for marketing purposes but have specified the time and frequency for such calls; or
- Agreed that they may be sent specified promotional material and/or information e.g., about insurance matters.

The Australian Communications and Media Authority (ACMA) maintains a public ‘Do Not Call Register’ in which individuals may register their private or domestic home or mobile number. Telemarketers are not permitted to call these numbers at any time without the consent of the individual (unless the telemarketer is a public interest organisation, such as a charity, political party or educational institution).

Marketing lists should be cross-referenced against any opt-outs and the Do Not Call Register prior to initiating any direct marketing campaign.

Advertising insurance products

Advertising and marketing financial products such as insurance products have strict marketing and advertising requirements. This includes prohibitions on using certain words, and mandatory requirements to provide appropriate warning and disclosures. Also, offering insurance products or services as a result of an unsolicited meeting or telephone call with retail clients is known as hawking. There is a prohibition on hawking for insurance products and services.

Legal advice to confirm your marketing and promotional activities comply with all applicable requirements is advisable.

11. Capital raising including venture capital and debt

11.1 Capital Raising

Form of capital raise	What is it	Key legal considerations	When is it typically used?
Issue of shares to investors	A company may raise funds by issuing new shares to investors directly.	<p>Proprietary companies cannot raise money from prospective investors without issuing a prospectus unless it falls within an exemption under the <i>Corporations Act 2001</i> (Cth). Common exceptions include offers to sophisticated investors and small scale offerings (offers that result in less than 20 investors in a 12-month period, raising less than AU\$2 million).</p> <p>A proprietary company must convert to a public company if it has more than 50 shareholders (not including employee shareholders).</p>	At all stages
Crowd source funding (CSF)	<p>Unlisted public companies and proprietary companies may raise funds by issuing new shares to investors through an intermediary that is a financial services licensee.</p> <p>The licensed intermediary will list the investment opportunity on their online platform and facilitate the investment. Up to AU\$5 million can be raised in any 12-month period.</p>	<p>Must:</p> <ul style="list-style-type: none"> • Have a compliant crowd-sourced funding offer document; • Have less than AU\$25 million in consolidated assets and annual revenue; • Be unlisted and primarily conduct business within Australia; and • Not reinvest raised funds in other entities or schemes. <p>There will be additional financial reporting and corporate governance requirements. Audit obligations apply when more than AU\$3 million is raised through CSF offers.</p> <p>Retail investors have an investment cap of AU\$10,000 in any 12-month period.</p> <p>There can be more than 50 shareholders without having to convert to a public company as shareholders who are "CSF shareholders" do not count to that limit. This exception will no longer be available when the company's shares start to trade on a financial market that provides for secondary trading of shares.</p>	When a company wants to access a bigger pool of potential investors beyond the tradition circle of owners, relatives, friends and venture capitalists.

	What is it	Key legal considerations	When is it typically used?
Convertible note	<p>The investor makes a loan to the company which converts to equity on a predetermined trigger event (generally the raising of a priced round or an exit event). Typically, the convertible note includes the following features:</p> <ul style="list-style-type: none"> • A maturity date; • Interest; and • Conversion at a discount. 	<p>If the company has an existing shareholders agreement, shareholder consent may need to be obtained to the issue of shares to the noteholder.</p> <p>The issue of shares to the noteholder will need to fall within an exemption under the <i>Corporations Act</i>, otherwise a prospectus will be required.</p>	Usually used at the seed round. Can be useful when raising bridging finance between rounds.
Simple agreement for future equity raise (SAFE)	<p>Funds are raised from investors upfront and shares are issued to the investors later when a predetermined trigger event occurs, such as priced rounds or exits.</p> <p>There is typically no term - if a trigger event never occurs, the investor will never receive shares.</p> <p>The number of shares the investor receives on conversion is linked to the upfront cash injection they make and the share price of the priced round or exit event and is usually issued at a discount.</p> <p>A SAFE is not a loan.</p>	<p>If the company has an existing shareholders agreement, shareholder consent may need to be obtained to the issue of shares to the investor.</p> <p>The issue of shares to the investor will need to fall within an exemption under the <i>Corporations Act 2001</i> (Cth), otherwise a prospectus will be required.</p>	Typically used at the seed round.

11.2 Venture Debt

Venture debt is a financing option that has become popular in the Australian market in recent years and is tailored for start-ups or growth companies. As start-ups and growth companies usually do not have strong balance sheets or significant assets, venture debt has found its place in the Australian market by giving these types of companies access to debt which previously would have been unattainable with traditional financiers. The debt is usually used by these companies to meet the funding requirements for that company's growth and can range between AU\$1 million to AU\$20 million (and sometimes higher for fintech businesses or businesses with an existing asset base). The quantum of debt available is determined based on a variety of factors, including the valuation of the company, the company's ability to generate cash to service the debt and the potential growth of revenue during the tenure of the debt.

Venture debt is sometimes preferred by companies as it allows a company to meet its funding requirements without requiring the company to sell its equity or to materially dilute the founders' ownership in the company to access capital. This is not to say that in venture debt, the company's equity is never diluted, as venture debt lenders will typically receive warrants as part of the transaction. Warrants entitle venture debt lenders to acquire a minority stake in a company's equity and are used as an incentive or an "equity kicker" for the venture debt lender to provide the debt. The warrants also benefit the company, as the venture debt lenders are seen to have a vested interest in promoting or facilitating the company's growth. This will often reflect on the terms of the facility being tailored for the company's business, or the venture debt lender assisting the company to have a greater exposure to the capital market.

When can venture debt be suitable?

Venture debt may be suitable in the following circumstances:

- **Access to funds**
The company has a good track record but does not have sufficient cash flow to enable it to obtain traditional bank financing. Venture debt lenders typically favour companies with fast-growing and recurring revenue and low operating expenses. These favourable characteristics are often seen in technology, e-commerce, biotech and fintech businesses.
- **Increasing valuation**
The company has an increasing valuation and, with the additional working capital provided by the venture debt facility, is able to achieve a higher valuation in the next



valuation event, such as an initial public offering, a trade sale or future equity raising round.

- **Acquisition of capital asset**
The company is planning for an acquisition of substantial capital assets, which on the one hand, will contribute to the increase in valuation of the company and, on the other, can be utilised as security for the venture debt facility. This could be a fleet of vehicles, equipment or an acquisition of another business.
- **Extend capital runway or overcome funding hurdles**
The company requires additional capital to extend the runway from the previous equity round to the next, needs to overcome certain funding hurdles between two equity rounds without losing or diluting the founders' or investors' ownership or requires additional funds on top of a current equity round (noting that venture debt and equity rounds are often concurrent).
- **Working capital reserve**
Additional capital reserves are required to act as insurance or contingent fund for its business operations.

When is venture debt not suitable?

Venture debt is not a suitable financing option in the following circumstances:

- **Variable revenue**
The company does not have a stable revenue stream. Without predictable and regular cash flow, the company may face difficulties in adequately servicing any interest and principal payment obligations on the venture debt.
- **As a last resort**
As a last resort for companies with low cash balance and high operating expenses. The general rule is that if the debt payments are more than 20% of the company's operating expenses, the debt is too costly for the company to service.
- **Undefined purpose**
Where there is no clear use for the funds as it unnecessarily creates repayment obligations comprising of both the principal amount and accruing interest.

	Venture debt	Venture capital
Purpose	Crucial to help start-ups reach profitability and certain milestones, such as asset acquisitions and valuations.	Primary focus is on growth of the enterprise.
Ownership	Minimal dilution of ownership in the company and minimal shift in control of the company.	Equity dilutes founders' and investors' ownership in the company. Reduced ownership means splitting the profits, and in some cases, founder shareholders receiving returns after other investors.
Timing	As venture debt is a loan, the timing of taking out the loan is of paramount importance. It is often timed to coincide with an equity round or shortly after an equity round.	Venture capital can fund a pre-seed raise, seed raise and Series A raise. Some venture capital firms specialise in later stage investments (i.e., Series B raises). Venture capital also funds exit events, such as sales and initial public offerings.
Growth	Useful where there is an anticipated period of growth as venture debt extends the cash runway to the next equity round. This extends the growth period which often results in a higher valuation at the next equity round.	Useful for raising money in order to grow the company generally. The types of growth the company experiences vary depending on the stage of the start-up. For example, at the seed stage, venture capital will finance early product development and market research.
Risk mitigation	The lenders take less risk as their returns are linked directly to fees, interest, warrants and security over assets, which is all structured in the finance agreements. Venture debt is also less risky for lenders as it can monitor the company's performance as the company provides ongoing reporting on its business.	Venture capital firms often take a board seat if the shareholding acquired is large enough to trigger director appointment rights pursuant to a shareholder's agreement. From there, they can influence shareholder decisions and board decisions.
Repayment	Repayments are in instalments over a fixed period at a predetermined rate. This requires consideration of repayment strategies (cashflow, equity or restructure).	No fixed repayments. Instead, the equity investors receive a percentage of profits. If there is no profit, no debt needs to be paid.
Governance	Most venture debt funds do not require board seats or other direct involvement in a company's governance.	Bringing on equity partners means that others who are brought on have a vested interest in the company's success. While it also opens up networks for the company to leverage, it can shift the balance of control away from the founders. Corporate governance requirements will also need to be satisfied such as board resolutions and notifying ASIC of changes.

As demonstrated in the above table, venture debt has a number of benefits, including preventing dilution of ownership of the founders and the investors in the company, offering more operational flexibility to the founders of the company, and the provision of funding is traditionally faster and cheaper when compared to an equity raising.

12. Government initiatives

12.1 Grants and support

Commonwealth Initiatives

The Australian government has a number of initiatives to support start-ups and innovation in the insurance sector.

The Australian Government's Entrepreneurs' Programme is particularly noteworthy, offering a number of different grants which consist of varying combinations of support and facilitation, such as:

- Accelerating Commercialisation;
- Growth Grants;
- Innovation Connections; and
- Smart Projects and Supply Chains.

To be eligible for the Entrepreneurs' Programme, you must have between AU\$1.5 million and AU\$100 million in annual turnover (or between AU\$750,000 and AU\$100 million annual turnover for remote Australian entities).

Alternative initiatives include:

- Women in STEM and Entrepreneurship program for female insurtech founders;
- Aus Trade Export Market Development Grants for insurtechs exporting their technology and developing markets overseas; and
- Global Connection Funds for insurtechs to connect with international researchers and explore collaborative projects.

State-based Initiatives

At a state level, there are a few start-up development, regional growth and innovation programs across each state for insurtechs. New South Wales currently offers the following initiatives:

- Minimum Viable Product for pre-revenue technology start-ups that assist engagement with a business customer and achieve market validation; and
- Building Partnerships for start-ups looking to acquire customers and scale up.

12.2 Consumer Data Right (CDR)

The CDR is an economy-wide reform that is being rolled out sector-by-sector in Australia. It has already been rolled out to banking and energy, with telecommunications coming next as the third sector and general and health insurance expected to follow bundled with superannuation, merchant acquiring and non-bank lending service providers.

CDR aims to:

- Enable consumers to access and share their data with accredited third parties to obtain better deals on everyday products and services (such as banking, telecommunication, energy, insurance products, superannuation, etc.);
- Unlock new business models; and
- Drive innovation and increase competition by making it easier for consumers to compare offerings and switch between providers.

It operates on an opt-in basis, so consumers can choose whether to share their data, have visibility over who it is being shared with and the purpose for sharing it. The transfer of data is done automatically and electronically through the use of application programming interfaces (APIs). The format and process for transferring CDR data must comply with the "data standards" set by the DSB.

They are two types of participants in the CDR system:

- Accredited data recipients – They receive a consumer's data and use it for the purpose the consumer has requested (e.g., conduct a comparison or offer services).
- Data holders – They hold the consumer data (e.g., bank, insurer, telecommunication company) and make it available to accredited data recipients when directed by the consumer.

Companies that wish to become data recipients must go through a rigorous accreditation process with the ACCC while data holders are subject to a number of compliance and IT requirements. Accreditation can be suspended or cancelled if the data recipient fails to comply with the requirements stipulated in the Competition and Consumer (Consumer Data Right) Rules 2020.

The *Competition and Consumer Act 2010* (Cth) prescribes a set of 13 legally binding privacy and confidentiality rights and obligations in relation to collecting and handling data obtained under the CDR regime. There are known as the "Privacy Safeguards" and are designed to keep data secure and protect the privacy of consumers.

In the insurance industry, CDR is referred to as "Open Insurance". Once rolled out, Open Insurance is expected to facilitate the sharing of data between competitors, with aggregator services and price comparison websites so consumers can more easily secure a better deal on their insurance. It will also allow insurers to access more information about the insureds and their claims experience, hereby allowing insurers to offer a more customised quote to customers and reducing the risk of misrepresentations from insureds.

Resources

ASIC:

Applying for an Australian Financial Services Licence:

<https://asic.gov.au/for-finance-professionals/afs-licensees/applying-for-and-managing-an-afs-licence/>

Enhanced Regulatory Sandbox:

<https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox/>

Registers:

<https://asic.gov.au/online-services/search-asic-s-registers/>

Registering a company:

<https://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/>

Unfair contract terms:

Consumers - <https://asic.gov.au/about-asic/what-we-do/our-role/laws-we-administer/unfair-contract-terms-law/unfair-contract-term-protections-for-consumers/>

Small businesses - <https://asic.gov.au/about-asic/what-we-do/our-role/laws-we-administer/unfair-contract-terms-law/unfair-contract-term-protections-for-small-businesses/>

ABR:

Applying for an ABN:

<https://www.abr.gov.au/business-super-funds-charities/applying-abn>

Entrepreneur's Program:

<https://business.gov.au/grants-and-programs/entrepreneurs-programme>

ATO:

Applying for a TFN:

<https://www.ato.gov.au/individuals/tax-file-number/apply-for-a-tfn/>

Registering for GST:

<https://www.ato.gov.au/Business/GST/Registering-for-GST/>

Superannuation for Employers:

<https://www.ato.gov.au/Business/Super-for-employers/>

Business:

Business Planning:

<https://business.gov.au/planning>

Guide: Starting a business:

<https://business.gov.au/guide/starting>

Guide: Intellectual Property:

<https://business.gov.au/planning/protect-your-brand-idea-or-creation/intellectual-property>

Popular information section and available guides:

<https://business.gov.au/>

Other:

Australian Financial Complaints Authority:

<https://www.afca.org.au/>

Australian Prudential Regulation Authority:

<https://www.apra.gov.au/>

Australian and New Zealand Institute of Insurance and Finance:

<https://anziif.com/>

Australian Competition and Consumer Commission:

<https://www.accc.gov.au/>

Consumer Data Right:

<https://www.cdr.gov.au/>

Consumer Data Right:

<https://www.oaic.gov.au/consumer-data-right>

Consumer Data Standards:

<https://consumerdatastandards.gov.au/>

E-commerce / electronic transaction:

<https://www.ag.gov.au/rights-and-protections/e-commerce>

Fair Work Ombudsman:

<https://www.fairwork.gov.au/>

Foreign Investment Review Board:

<https://firb.gov.au/>

Insurance Council of Australia:

<https://insurancecouncil.com.au/>

Insurtech Australia:

<https://insurtechaustralia.org/>

IP Australia:

<https://www.ipaustralia.gov.au/>

National Insurance Brokers Association:

<https://www.niba.com.au/>

Office of the Australian Information Commissioner:

<https://www.accc.gov.au/>

Reserve Bank of Australia:

<https://www.rba.gov.au/>

Underwriting Agencies Council:

<https://uac.org.au/>

Workers' Compensation:

<https://www.fairwork.gov.au/employment-conditions/workers-compensation>

Other guides:

Hamilton Locke Venture Debt Handbook

Hamilton Locke Venture Capital Guide

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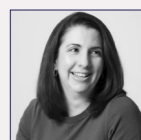
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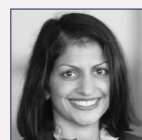
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Central Park,
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Perth, WA 6000

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Riverside Centre,
Level 19 / 123 Eagle St
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Level 3 / 21 Bolton St
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