

FINANCIAL CLAIMS SCHEME

Questions and Answers

What is the Financial Claims Scheme?

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

When does the Financial Claims Scheme apply?

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

Who is responsible for administering the Financial Claims Scheme?

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

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

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

Financial Claims Scheme applicable to insurance

Which insurers are covered by the Financial Claims Scheme?

The FCS applies to insurance policies (other than certain types of excluded policies) provided by general insurance companies authorised by APRA. A list of these general insurers can be obtained from the APRA web site - www.apra.gov.au

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

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

The FCS applies to any insurance policy issued by a general insurer, other than insurance policies excluded from the scheme. Regulations made from time to time will specify the types of policies excluded from the scheme. The exclusions are expected to include:

- insurance policies covered by state or territory mandated insurance cover, such as compulsory third party insurance and workers' compensation;

- insurance policies issued by an unauthorised foreign insurer;
- reinsurance and retrocession; and
- insurance claims from persons, entities or third parties determined by APRA as having knowingly taken out insurance coverage to benefit from the FCS.

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

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

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

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

What protection does the Financial Claims Scheme provide?

The FCS covers eligible policyholders and other claimants for the amount payable by a general insurer in respect of a valid claim. The FCS applies to all valid claims by eligible policyholders and other claimants lodged with the insurer but not yet paid at the time the FCS is invoked and within a specified period after the commencement of FCS. Eligible policyholders and other claimants will be given a specified period within which to make a claim on an insurer after its failure. The intention is that this period will not be less than 12 months from the time that the insurer is brought under the FCS.

FCS does not apply to the unexpired insurance premium paid to the insurer before its failure. However, policyholders may receive some or all of the unexpired premiums from the liquidator of the general insurer, depending on the amount of assets in the insurer upon winding up.

How is the FCS amount payable determined?

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

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

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

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

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

Will policyholders be given time to find alternative insurance cover?

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