



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 195

# Group purchasing bodies for insurance and risk products

June 2010

### About this guide

This is a guide for group purchasing bodies—that is, persons who arrange or hold risk management products to cover other persons' risks but do not:

- issue risk management products (other than interests in a risk management scheme); or
- provide any financial product advice (other than as a result of providing certain general information about the risk management product).

This guide explains the relief ASIC has given in Class Order [CO 08/1] *Group purchasing bodies* from the licensing and managed investments provisions (Chs 7 and 5C) of the *Corporations Act 2001*, and what group purchasing bodies must do in order to receive the benefit of this relief.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This version was issued on 29 June 2010 and is based on legislation and regulations as at 29 June 2010.

Previous versions:

- Superseded Regulatory Guide 195, issued 30 September 2008, re-issued 24 February 2010.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

# Contents

<b>A</b>	<b>Overview</b> .....	<b>4</b>
	Group purchasing bodies.....	4
	How the Corporations Act applies to group purchasing bodies.....	5
	Overview of relief under [CO 08/1] .....	5
	Why we give relief to group purchasing bodies .....	6
<b>B</b>	<b>Eligible group purchasing bodies</b> .....	<b>7</b>
	How the Corporations Act applies to group purchasing bodies.....	7
	When group purchasing bodies are eligible for relief .....	11
	Why we give relief to group purchasing bodies .....	14
<b>C</b>	<b>Conditions of relief</b> .....	<b>15</b>
	Overview of conditions of relief .....	15
	When conditions of relief are not met .....	22
	Individual relief .....	22
	<b>Appendix: Group purchasing arrangements</b> .....	<b>23</b>
	Typical group purchasing bodies .....	23
	How do group purchasing arrangements operate? .....	25
	<b>Key terms</b> .....	<b>27</b>
	<b>Related information</b> .....	<b>28</b>

## A Overview

### Key points

Group purchasing bodies are persons who arrange or hold cover under risk management products for others but neither issue risk management products (other than interests in a risk management scheme) nor provide any financial product advice (other than as a result of providing certain general information): see RG 195.1–RG 195.3.

The activities of group purchasing bodies may constitute providing financial services under Ch 7 of the *Corporations Act 2001* (Corporations Act), and the arrangements these bodies enter into may constitute a managed investment scheme under Ch 5C: see RG 195.4–RG 195.5.

We have given certain group purchasing bodies relief from the Australian financial services (AFS) licensing and managed investment requirements because we believe the requirements are disproportionately burdensome for them: see RG 195.6–RG 195.9.

The relief is only available to ‘eligible’ group purchasing bodies (see Section B) and is subject to certain conditions (see Section C).

### Group purchasing bodies

- RG 195.1 There are a variety of bodies that do not issue risk management products but do arrange cover under risk management products for others by acquiring a risk management product themselves or arranging for it to be issued to the persons for whom they are acting. Some of these bodies, such as insurance brokers, provide financial product advice about risk management products. Other bodies do not give financial product advice (except when providing certain general information specified by ASIC relief for group purchasing bodies).
- RG 195.2 This regulatory guide is about the bodies that arrange or hold cover under risk management products for other persons but neither issue risk management products nor provide any financial product advice other than providing certain general information about the risk management product to persons who will be covered by the product. We call these bodies ‘group purchasing bodies’. The group purchasing body might acquire the product itself or negotiate the terms of the risk management product with the product issuer. For example, a group purchasing body might arrange for liability and accident insurance for members of the group purchasing body, and require members to have cover under the insurance to remain a member, without expressing any opinion or recommendation about the insurance. Similarly, group purchasing bodies may arrange for insurance for persons connected

with the group purchasing body other than members. For example, an employer might arrange cover for its employees, or a sporting association might arrange cover for its officials and other voluntary workers.

- RG 195.3 Generally, a group purchasing body enters into an arrangement with an issuer of risk management products to provide benefits to those who are eligible for cover (e.g. members of the group purchasing body or a class of persons specified in the risk management product). The group purchasing body may be able to secure lower premiums and greater convenience and availability of cover by negotiating with the insurer on behalf of a group of consumers. The appendix lists some typical group purchasing bodies and explains how group purchasing bodies' arrangements may operate. Not all group purchasing bodies are eligible for relief: see Section B.

## How the Corporations Act applies to group purchasing bodies

### AFS licensing requirements

- RG 195.4 A group purchasing body will generally be providing financial services by applying for or acquiring a risk management product, and possibly by holding the risk management product, on behalf of those to be covered (i.e. providing a custodial or depository service). Group policy arrangements fall generally into this category: see the appendix. Alternatively, if the persons to be covered are to hold the risk management product themselves, the group purchasing body may be providing financial services by arranging for the persons to be covered to apply for and acquire a risk management product (as is generally the case in a master policy arrangement: see the appendix). If relief is not given for these activities, and the group purchasing body is carrying on a financial services business in relation to the risk management product, it will require an AFS licence under Ch 7.

Note: See RG 195.14–RG 195.16.

### Managed investment scheme registration requirement

- RG 195.5 Some group purchasing bodies may enter into arrangements that constitute a managed investment scheme. If relief is not given, such arrangements may require registration as a managed investment scheme under Ch 5C.

## Overview of relief under [CO 08/1]

- RG 195.6 Class Order [CO 08/1] *Group purchasing bodies* gives 'eligible' group purchasing bodies relief from:

- (a) the requirement in s911A(1) to hold an AFS licence for providing the following financial services in relation to risk management products:
  - (i) dealing (other than issuing);
  - (ii) providing a custodial or depository service; and
  - (iii) giving financial product advice by providing certain general information when arranging for a person to be covered by a risk management product; and
- (b) the requirement in Ch 5C to register a managed investment scheme that relates to risk management products that are not issued by the group purchasing body or its associates and provides benefit only because of access to cover through the risk management product on more favourable terms than would otherwise be available.

RG 195.7 Section B explains which group purchasing bodies are eligible for the relief under [CO 08/1]. Our relief is subject to certain conditions that are designed to ensure that risks to covered persons are minimised. These conditions are explained in Section C.

## Why we give relief to group purchasing bodies

RG 195.8 We have granted class order relief to certain group purchasing bodies because we consider that compliance with Chs 7 and 5C is disproportionately burdensome for them. We have limited the relief to circumstances where the group purchasing body is most likely to be acting in the interests of the persons to be covered by the risk insurance product, rather than in its own interests or in the interests of anyone else. Given that the role played by certain group purchasing bodies is in many ways more like that of a buyer of risk management products rather than a seller, we consider there may be less need for strict compliance with the requirements of Chs 7 and 5C: see RG 195.37–RG 195.39.

RG 195.9 In other situations, there is a risk that a conflict of interest might arise where the group purchasing body is more likely to be acting in its own interests or in the interests of the issuers of risk management products. We have limited the availability of relief to situations in which we think that this risk is mitigated: see paragraphs 11–13 in Report 140 *Report on submissions for CP 80 Group insurance arrangements* (REP 140).

## B Eligible group purchasing bodies

### Key points

The activities of group purchasing bodies may constitute providing financial services under Ch 7 because they include dealing in a financial product, providing a custodial or depository service and providing financial product advice: see RG 195.10–RG 195.13.

The arrangements group purchasing bodies enter into may constitute a managed investment scheme under Ch 5C when financial contributions to the arrangements by scheme members are used to obtain cover under risk management products on more favourable terms: see RG 195.24–RG 195.25.

A group purchasing body will be eligible for relief if:

- it is independent (see RG 195.29–RG 195.30); or
- its activities in arranging cover under a risk management product are incidental to its not-for-profit activities (see RG 195.31–RG 195.33).

We have given relief because we consider regulation under Chs 7 and 5C is disproportionately burdensome and not necessarily appropriate, given the activities of group purchasing bodies: see RG 195.37–RG 195.39.

## How the Corporations Act applies to group purchasing bodies

### AFS licensing requirements

- RG 195.10 Section 911A(1) of the Corporations Act requires a person who carries on a financial services business in Australia to hold an AFS licence covering the provision of the financial services unless they are an authorised representative of an AFS licensee or otherwise exempted.
- RG 195.11 Holders of an AFS licence are required to comply with a number of obligations, including:
- (a) providing retail clients with a Financial Services Guide in certain circumstances;
  - (b) having a dispute resolution system and arrangements for compensating retail clients who suffer loss as a result of breaches of obligations by the licensee or its representatives; and
  - (c) meeting obligations relating to compliance arrangements and risk management.
- RG 195.12 Chapter 7 promotes confident and informed decision-making by consumers of financial products and fairness, honesty and professionalism by the

providers of financial services. Chapter 7 also requires that certain protections must be given to clients who are provided with financial services or who are acquiring financial products (e.g. for handling clients' money).

- RG 195.13 A group purchasing body may be providing financial services by applying for or acquiring a risk management product, and by holding the risk management product on behalf of those to be covered (i.e. providing a custodial or depository service: see RG 195.17–RG 195.23). Alternatively, if the persons to be covered are to hold the risk management product themselves, the group purchasing body may be providing financial services by arranging for the persons to be covered to apply for and acquire a risk management product. In providing general information to covered persons, as set out in the condition of relief discussed at RG 195.43, the group purchasing body might be providing financial product advice. If relief is not given for these activities, the group purchasing body may be required to hold an AFS licence under Ch 7.

### **Carrying on a financial services business**

- RG 195.14 Whether the group purchasing body is required to hold an AFS licence will depend on whether, in the particular situation, the group purchasing body is carrying on a financial services business in relation to the relevant risk management product. If the financial services provided are more than very minor (and, in particular, have elements of system, repetition and continuity), then it is likely that the group purchasing body will need a licence. However, system, repetition and continuity are not essential; a one-off transaction, if substantial, could also be seen by the courts as carrying on a business in Australia.

Note: For further guidance about carrying on a financial services business, see Regulatory Guide 121 *Doing financial services business in Australia* (RG 121) at RG 121.41–RG 121.50.

- RG 195.15 There are a number of statutory provisions that qualify the general concept of carrying on a business. A person may carry on a business even if:
- (a) they are not carrying on that business for profit;
  - (b) the business is part of, or is carried on in conjunction with, another business; and
  - (c) they do so alone or together with any other person or persons.

Note: See s18, 19 and 20.

- RG 195.16 Subject to these statutory provisions, the common law test of 'carrying on a business' will need to be applied to the activity. The statutory provisions dealing with 'carrying on a business' are not exhaustive. Whether a group purchasing body is carrying on a financial services business will depend on the particular circumstances. Table 1 aims to give some guidance about



carrying on a financial services business; it is not exhaustive and is not intended to be used as a checklist.

**Table 1: Group purchasing body: ‘Carrying on a financial services business’**

Need for an AFS licence	Activity
A group purchasing body is <i>likely</i> to need a licence if:	<ul style="list-style-type: none"> <li>The activity is either <i>systematic</i> or <i>continuous</i> or <i>repetitious</i>.</li> </ul> <p>For example, arranging insurance is a core part of the group purchasing body’s business and the body makes a profit from this activity.</p>
A group purchasing body <i>may</i> need a licence if:	<ul style="list-style-type: none"> <li>The activity involves <i>only one significant</i> financial services transaction.</li> </ul> <p>For example, the group purchasing body is arranging insurance only for a particular event such as a specific construction project or sporting championship</p>
A group purchasing body is <i>unlikely</i> to need a licence if:	<ul style="list-style-type: none"> <li>The activity involves <i>occasional, less significant</i> transactions.</li> </ul> <p>For example, arranging insurance is not a core part of the group purchasing body’s business. Insurance might be arranged as part of a non-commercial relationship between the group purchasing body and the covered persons.</p>

### Providing a custodial or depository service

RG 195.17 In a group policy arrangement, whether or not the arrangement involves providing a custodial or depository service will depend on the particular circumstances, and only the group purchasing body will be in a position to judge whether to seek professional advice about its group purchasing arrangements. We have provided some general guidance below; it is not intended to be exhaustive.

Note: Where cover is provided under a policy issued by the insurer to an individual covered person, the group purchasing body is not providing a custodial or depository service as no policy is held in trust for, or on behalf of, the covered person.

RG 195.18 Section 766E defines when a person provides a custodial or depository service to another person (subject to relevant exemptions). It has three main elements:

- (a) an arrangement between a provider and a client, or between a provider and another person with whom the client has an arrangement;
- (b) a financial product; and
- (c) that product being held in trust for, or on behalf of, the client.

RG 195.19 In a group policy arrangement, the ‘provider’ is the group purchasing body that enters into the insurance contract with the insurer; the insurance policy acquired by the group purchasing body is the relevant ‘financial product’; and the covered person is the ‘client’.

RG 195.20 In general terms, a group purchasing arrangement involves the provision of a custodial or depository service if a risk management product is acquired by a

person (the group purchasing body) under an arrangement with another person (the group member—a prospective ‘covered person’) where:

- (a) under the terms of the risk management product, amounts are payable on the happening of an insured event relating to the group member; and
- (b) it is contemplated under the arrangement that the group member will benefit from the payment.

RG 195.21 The arrangement must be separate from the acquisition of the insurance policy itself, without it being a unilateral act on the part of the group purchasing body.

RG 195.22 In order for there to be a relevant ‘arrangement’, generally, both persons must have knowledge of the substance of the matters that constitute the arrangement. Table 2 aims to give some guidance about the features of an insurance arrangement that make it less likely or more likely to involve the provision of a custodial or depository service. Whether a group purchasing body is providing a custodial or depository service will depend on the particular circumstances. Table 2 is not exhaustive and is not intended to be used as a checklist.

**Table 2: Group purchasing arrangements: ‘Providing a custodial or depository service’**

‘Knowledge’	Situation
A covered person is <i>more</i> likely to have knowledge of the insurance arrangement if:	<ul style="list-style-type: none"> <li>• There is a contractual relationship between the group purchasing body and the covered person that provides for insurance—e.g. under a construction contract where the head contractor is required to arrange insurance cover for subcontractors.</li> <li>• The constitution or rules of membership of the group purchasing body refer to insurance—e.g. sporting associations.</li> <li>• Insurance is the usual market practice.</li> <li>• The covered person must elect to be covered by the insurance and/or choose some features—e.g. upgrade from basic cover, excess amount.</li> <li>• An identified payment in relation to the insurance cover is made to the group purchasing body.</li> </ul>
A covered person is <i>less</i> likely to have knowledge of the insurance arrangement if:	<ul style="list-style-type: none"> <li>• Cover is provided automatically—e.g. an employer arranging cover for employees.</li> <li>• No identified payment is made to the group purchasing body.</li> </ul>

RG 195.23 Whether a group purchasing body is required to hold an AFS licence covering the provision of a custodial or depository service will depend on whether, in the particular situation, the group purchasing body is carrying on a financial services business in relation to the relevant risk management product: see RG 195.14–RG 195.16.

## Managed investment scheme registration requirement

- RG 195.24 Some group purchasing bodies may enter into arrangements that constitute a managed investment scheme because some of the contributions they receive from persons to obtain cover are pooled or used in a common enterprise to produce financial benefits for the contributors—for example, mutual risk product schemes where money contributed by members is pooled and held by the person operating the scheme and used to acquire general insurance and pay claims by members up to a certain limit (such as the excess on the insurance). There are two types of mutual risk product schemes:
- (a) mutual discretionary funds that only provide members with a right to have their claim properly *considered* (i.e. the payment of claims or provision of financial assistance is at the discretion of the scheme operator); and
  - (b) mutual non-discretionary funds that provide members with a right to have their claim *paid*.

Member benefits may arise through better cover, lower cost of cover or more favourable terms of payment for cover. If relief is not given, such arrangements may require registration as a managed investment scheme under Ch 5C.

- RG 195.25 Chapter 5C imposes obligations on the operators of registered schemes to protect members. These include requiring the registered managed investment scheme to have a constitution and a compliance plan. The responsible entity of the scheme must also be a public company that holds an AFS licence authorising it to manage a registered managed investment scheme.

## When group purchasing bodies are eligible for relief

- RG 195.26 We will provide relief to a group purchasing body when it can be expected to be acting predominantly in the interests of those persons to be covered by the relevant risk management products. The relief does not apply to bodies that give financial product advice to covered persons other than as a result of providing the general information we require to be given under our conditions: see RG 195.43. The relief also does not apply to a body in the business of issuing financial products other than interests in a managed investment scheme under our relief.
- RG 195.27 An entity that holds an AFS licence, or is the authorised representative of an AFS licensee, will be eligible for relief to the extent that it is providing insurance to its officers, employees and relatives. For example, an AFS licensee might enter into a group purchasing arrangement to provide personal accident insurance for its employees. This limitation is meant to reduce the risk of the relief being used to establish an unlicensed financial services business other than as contemplated by the relief.

- RG 195.28 A group purchasing body is eligible for relief in two situations:
- (a) the group purchasing body is independent and receives no financial benefit for arranging insurance (subject to limited exceptions)—this applies to all group purchasing bodies including not-for-profit entities (NFPs); or
  - (b) its activities in arranging for cover under a risk management product are incidental to its not-for-profit activities—this applies only to group purchasing bodies that are NFPs.

Group purchasing bodies that provide financial services under a multinational pooling arrangement (MPA) are also eligible for our relief: see RG 195.34–RG 195.36.

### **Independent**

- RG 195.29 A group purchasing body is eligible for relief if it is independent—that is, if the group purchasing body:
- (a) is not acting on behalf of any product issuer, AFS licensee or representative (subject to a limited exception) in relation to the relevant risk management product (i.e. the group purchasing body is negotiating at arm's length); and
  - (b) does not receive any form of remuneration (including commission) or other benefits that are reasonably attributable to the group purchasing activity, except for:
    - (i) payments that are paid over in full to those who pay for cover (e.g. commissions rebated to those covered) within a reasonable period;
    - (ii) payments from persons to be covered who are members of the group purchasing body or have another connection with the group purchasing body (e.g. employees); and
    - (iii) payments to cover the costs reasonably incurred in providing the group purchasing arrangement.

Note: An example of the type of costs that may be recovered by the group purchasing body are printing and postage costs if a separate brochure about the risk management product is distributed to covered persons.

- RG 195.30 This relief is available to group purchasing bodies that meet the necessary requirements (including NFPs).

### **Incidental to not-for-profit activities**

- RG 195.31 A group purchasing body is eligible for relief if:
- (a) it is not operated to enable payments to its members; and
  - (b) its activities in arranging for cover under the risk management product are incidental to another relationship between the group purchasing

body and the persons to be covered (e.g. employees of the group purchasing body).

RG 195.32 Group purchasing bodies that satisfy this limb of the exemption do not have the same limitations about payments as apply to those that satisfy the ‘independent’ limb: see RG 195.29. For example, an NFP group purchasing body may add an amount in relation to arranging the insurance on to the fees that it charges its members where the additional amount is to subsidise other activities of the group purchasing body that are ultimately aimed at benefiting members.

RG 195.33 Although this eligibility test specifically applies to group purchasing bodies that are NFPs, this does not mean that an NFP *must* satisfy this limb to be eligible for relief; an NFP may be eligible for relief if it satisfies either this test or the ‘independent’ test: see RG 195.29.

### **Multinational pooling arrangements**

RG 195.34 An MPA is an arrangement under which life, total and permanent disability or income protection insurance is provided that:

- (a) is substantially arranged outside Australia and most of the persons covered are outside Australia;
- (b) covers employees of, or persons contracted to provide services to, the group purchasing body or another entity in the economic entity of which the group purchasing body forms a part; and
- (c) provides for payments to be received by the group purchasing body based on claims experience for all those covered under the arrangement.

RG 195.35 MPAs have been established for many years in Australia and they provide low-cost group insurance for a significant number of Australian employees. Under MPAs, a multinational company is able to provide insurance cover to employees of each nationally based company employer by engaging a local life insurer to provide insurance to the national company via a reinsurer. The liabilities under the insurance contract are reinsured, and ultimately the premiums collected under these arrangements are pooled and fund the liabilities of the multinational pool. Reserves are established to fund future liabilities, and where the pool claims experience is favourable, some portion of the premiums may be passed back to the national company participants.

RG 195.36 Group purchasing bodies that provide financial services under an MPA are eligible for our relief even if they retain remuneration received under the MPA. We recognise that it is unlikely that MPAs will be renegotiated to ensure that the relevant Australian group purchasing body is independent. We allow relief because the potential for an MPA to result in any insurance not having been negotiated with regard to the interests of those to be covered

is low and exclusion may deprive Australians of the benefit of insurance under the arrangement.

Note: While group purchasing bodies that receive a benefit under an MPA are eligible for relief, they must disclose the benefit as part of other general information about the insurance they are required to disclose: see RG 195.43.

## Why we give relief to group purchasing bodies

- RG 195.37 We have granted class order relief to certain group purchasing bodies because we consider that compliance with Chs 7 and 5C is disproportionately burdensome for them. We take this view because:
- (a) the costs associated with holding an AFS licence and with registering a managed investment scheme are significant. It is unlikely to be economical for group purchasing bodies to obtain an AFS licence or to register a managed investment scheme; and
  - (b) acting as the representative of an AFS licensee (such as the issuer or insurance broker) may put the group purchasing body in a position of conflict between its duties to those on whose behalf it arranges cover and to the AFS licensee on whose behalf it acts.
- RG 195.38 Increased compliance costs may result in group purchasing bodies being unable to continue to enter into group purchasing arrangements for members or other covered persons, or issuers ceasing to offer products designed to cover the interests of groups. This may increase insurance costs for consumers and/or reduce the availability of insurance cover. Where liability insurance is concerned, increased costs or reduced availability would be likely to have a flow-on effect to the wider community.
- RG 195.39 Given that the role played by group purchasing bodies is in many ways more like that of a buyer of insurance products rather than a seller, we consider there may be less need for strict compliance with the requirements of Chs 7 and 5C. We also take the view that class order relief provides more certainty as to whether or not the activities of group purchasing bodies are regulated by Chs 7 or 5C.

## C Conditions of relief

### Key points

Group purchasing bodies that are eligible for relief must meet key conditions relating to:

- disclosure of basic information to persons who are to be covered (see RG 195.42–RG 195.45);
- receipt of payments (see RG 195.46–RG 195.50); and
- notification of currency of risk management products (see RG 195.52–RG 195.56).

These conditions are summarised in Table 3.

If the relief conditions are not met, the group purchasing body must notify ASIC promptly after it has reason to believe that it has materially failed to comply with the conditions, or the relief will no longer apply: see RG 195.57–RG 195.58.

## Overview of conditions of relief

### Rationale for the conditions of relief

RG 195.40 We have made the relief in [CO 08/1] subject to conditions to address key risks that the AFS licensing regime would otherwise address and to reduce the potential loss of consumer protections for retail clients: see Table 3.

RG 195.41 A group purchasing body relying on the relief will not have to report breaches of the conditions to ASIC until the first time that the body acquires, renews or renegotiates the terms of the risk management product on or after 31 December 2010. The class order gives a number of types of relief, including scheme registration relief and licensing relief. The different types of relief are subject to different conditions. The class order broadly imposes two kinds of conditions:

- (a) conduct/disclosure conditions; and
- (b) a breach reporting condition, which is affected by the extension of the transitional period.

Note: The scheme registration relief is subject to all the conditions: see paragraphs 7 and 8 of [CO 08/1].

**Table 3: Conditions of relief for eligible group purchasing bodies under [CO 08/1]**

Key conditions		Explanation
<b>A. Disclosure of general information</b> See RG 195.42–RG 195.45.	The group purchasing body must take reasonable steps to give persons to be covered by the risk management product certain basic information about the risk management product and arrangements for persons to be covered.	The intention of this condition is that covered persons receive basic information about their rights and how they are covered. It also ensures that persons to be covered are directed to obtain advice about the product from an AFS licensee (e.g. the issuer or the broker).
<b>B. Receipt of payments by group purchasing bodies</b> See RG 195.46–RG 195.50.	<p>The group purchasing body must ensure that the making of certain payments by a covered person to the body has the effect of:</p> <ul style="list-style-type: none"> <li>• where the product is to be issued to the covered person—as between the person and the issuer, discharging any liability of the person under or in respect of the product to the extent of the payment; or</li> <li>• where the product has been or is to be issued to the group purchasing body—as between the covered person and the issuer, discharging the liability of the body under or in respect of the product in relation to the person to the extent of the payment.</li> </ul> <p>This condition only applies if the payment is made by a covered person to the group purchasing body and the body will make a payment to the issuer of the risk management product that will enable the person to be covered by the product and either:</p> <ul style="list-style-type: none"> <li>• the cover is to be issued to that person; or</li> <li>• where the product is issued to or is held by the group purchasing body, the cover is to apply by extension to that person as a named individual under the terms of the product (including any schedule to the product) if an additional payment is made to the issuer of the risk management product.</li> </ul>	This condition is intended to protect covered persons who make payments to the group purchasing body in relation to the risk management product. The condition seeks to ensure that the person paying the group purchasing body in that situation is not denied cover merely because of failure by the group purchasing body to pay the issuer.



Key conditions	Explanation
<p><b>C. Currency of policy and information about cancellation or non-renewal</b></p> <p>See RG 195.52–RG 195.56.</p>	<p>The group purchasing body must:</p> <ul style="list-style-type: none"> <li>• establish a facility through which persons who may be relying on the cover may, by reasonable steps, check with the issuer or an AFS licensee, or an authorised representative acting on behalf of the issuer or licensee, without charge, that the product has been issued to the person or the body and remains current;</li> <li>• take reasonable steps to promptly bring to the attention of each person to whom it is providing financial services, and who may reasonably expect that they are covered, if: <ul style="list-style-type: none"> <li>– the cover will not take effect for the period that has been represented to the person; or</li> <li>– the cover is, or is likely to be, cancelled or not renewed,</li> </ul>           unless the issuer of the risk management product has an obligation to do so under the terms of the product—for example, where there is an individual contract under a master policy arrangement. The group purchasing body does not have to give the notification if it reasonably believes that substantially similar cover applies, or will apply, for the relevant period under another risk management product; and</li> <li>• give an undertaking that, should it fail to take reasonable steps to provide information about the status of the cover, it will be liable for any loss or damages suffered by covered persons (i.e. if an insurer refuses to pay a claim because the policy was not in effect at the relevant time). This undertaking must be enforceable.</li> </ul>

## Disclosure of general information

- RG 195.42 Group purchasing bodies must take reasonable steps to give information about the risk management product to persons who are to be covered, or potentially covered, by the product. A ‘reasonable steps’ requirement provides flexibility and balances consumer protection against the compliance burden on the group purchasing body.
- RG 195.43 The following general information should be given to persons to be covered by the risk management product:
- (a) general factual information about the nature of the cover provided by the product (including the period for which the cover will apply) and

the role of the group purchasing body in providing the financial services to which the product relates;

- (b) a statement that the body will ensure that a person who requests a copy of the terms and conditions of the product will be given, without charge, a copy within a reasonable time after the request;
- (c) information about any amounts payable by the person to obtain the cover under the product where a separate payment is required;
- (d) if the body will receive payments (e.g. as sponsorship or in the form of rebates) from the issuer of the product or any AFS licensee or their associates to arrange for the issue of a risk management product or for a person to be covered by an existing risk management product, the amounts (if any) that will be paid to the person to be covered by the product from those rebates or, if the amounts cannot be ascertained, general information about how the amounts will be determined;
- (e) (unless the body is an AFS licensee), a statement that the body does not hold an AFS licence and that the person should consider obtaining their own financial product advice about the product from a person who is able to give such advice under an AFS licence;
- (f) sufficient information about the facility through which persons to be covered may check the currency of the product with the issuer, an AFS licensee or an authorised representative (e.g. sufficient information to identify the product and access the facility); and
- (g) information about the obligation of the group purchasing body to compensate the covered person for any loss or damage if the body fails to notify covered persons when required.

RG 195.44 This information must be given:

- (a) as soon as practicable after the group purchasing body has reason to believe that the financial services to which the product relates will be provided to the person; and
- (b) if the person to be covered by the product may elect whether or not to be covered, before the election is made.

The group purchasing body may provide this information using the ordinary ways that it communicates with members and others. For example, where the group purchasing body is a voluntary or sports association, this information might be included in a brochure that is given to new members or in a regular newsletter sent to members (including by providing a website address or hyperlink to the relevant information).

**Example 1**

A sports association might include this information, or give a website address or hyperlink to this information, in the first newsletter it distributes each season or as part of its membership application form.

**Product Disclosure Statements and s1012H**

- RG 195.45 The disclosure condition outlined in RG 195.43 is limited to basic information rather than information required to enable a person to make a decision whether or not to obtain cover. This is because, in the case where the cover is to be extended on the election of a person who would acquire it as a retail client, s1012H imposes an obligation on an issuer to take reasonable steps to ensure that a person who elects to be covered is given a Product Disclosure Statement.

**Receipt of payments by group purchasing bodies**

- RG 195.46 Group purchasing bodies to which our relief applies will not need to comply with s985B, which has special rules on the status of money paid to licensees for insurance products that transfer risk to the insurer in some circumstances. The condition at item B in Table 3 is intended to have an effect that is similar to s985B.
- RG 195.47 This condition of our relief addresses the risk that money paid to a group purchasing body by a person in relation to a risk management product is not paid to the issuer, and, as a result, the cover does not apply. When the condition applies, the group purchasing body must ensure that the insurer agrees that the money is to be taken at the issuer's risk when received by the group purchasing body. The condition does not affect any right that the issuer may have against the group purchasing body to claim any money not paid. It only means that the cover cannot be denied for the failure to make the payment.
- RG 195.48 The condition at item B in Table 3 applies only in relation to risk management products where the persons covered are specified as covered either because they are the holder of the risk management product or their name has been inserted into the specification of who is covered under a risk management product held by the group purchasing body. In those cases there will be a clear relationship between money paid to a group purchasing body in relation to the risk management product and money that the group purchasing body is to pay the issuer for cover to extend to the person. If the issuer does not wish to assume the risk of non-payment by the group purchasing body, it can require that payments should be made directly to the issuer. If the issuer elects to allow payments to be collected by the group purchasing body and then for a corresponding payment to be made to it, it is

appropriate to treat the group purchasing body as the issuer's agent to receive the payments.

- RG 195.49 The effect of the condition at item B is that the issuer will be required to treat the payment as having been received. It does not have the effect that cover is provided if this depends on anything other than the mere receipt of payment—for example, an underwriting decision by the issuer.
- RG 195.50 The condition at item B does not apply when there is no separate payment by the person to be covered but rather an offset—for example, under a salary sacrificing arrangement, or where an amount in relation to the risk management product is included in a 'bundled' membership fee.

### **Cost recovery**

- RG 195.51 A group purchasing body that is eligible for relief under the 'independent' test may recover the costs reasonably incurred in relation to providing the group purchasing arrangement. This is not intended to allow the group purchasing body to make a profit: see RG 195.29.

### **Currency of policy**

#### **Establish a facility**

- RG 195.52 The condition at item C in Table 3 to establish a facility for checking the currency of cover provides some degree of comfort to the covered person that they remain covered—that is, that the insurance is in effect.
- RG 195.53 A group purchasing body may establish such a facility by ensuring that an AFS licensee with the relevant information responds to enquiries—for example, through the internet. Another option could be providing a 'phone-in' service by which covered persons are able to phone the issuer to check the status of their policy. To support this condition, group purchasing bodies need to provide information to their members and other covered persons about the relevant risk management product and the availability of the facility: see RG 195.42–RG 195.44.

#### **Notifications about cancellation or non-renewal**

- RG 195.54 The condition at item C requires that if the insurance cover will not apply for the period represented to the covered person, or is, or is likely to be, cancelled or not renewed (insurance availability), the group purchasing body must take reasonable steps to promptly bring this to the attention of the covered person. This insurance availability notification is only required if the group purchasing body has not made substantially similar cover available. In practice, we expect this to be a very rare event.

RG 195.55 The ‘reasonable steps’ qualification is intended to apply in situations where the identity or current contact details (e.g. postal or email address) of all covered persons are not known to the group purchasing body—for example, where persons covered are defined by membership of a specified class. Where it is not possible, or it is disproportionately burdensome, for the group purchasing body to individually identify each person included within a specified class, an alternative form of notification may be given. Because of the risk to covered persons if the expected insurance cover is not available, group purchasing bodies will need to consider making additional efforts to notify covered persons (when compared with the general disclosure obligation: see RG 195.42–RG 195.43)—for example, including information in a special newsletter or other form of communication.

### Example 2

A state-level sporting association (the relevant group purchasing body) might not know the names of each player eligible for cover, especially where the members of the association are not individual players but regional associations or clubs. In this situation it would be reasonable for the association to include the required information in a special newsletter that is circulated to member regional associations or clubs. Alternatively, the state-level association might make an agreement with the regional associations or clubs that they will make the required notification on behalf of the state-level sporting association.

### Compensation obligation

RG 195.56 A group purchasing body must enter into an obligation that it is liable to compensate a person where it fails to make an insurance availability notification. The obligation must be legally enforceable, but does not need to be in the form of a separate contract between the group purchasing body and each covered person. A group purchasing body could satisfy this requirement by:

- (a) undertaking, in the document providing the general information required under our conditions, that in consideration of the covered person making payments in relation to the risk management product or performing some other act at the request of the body, the body will provide the relevant notifications; or
- (b) including a binding obligation in its constitution where the constitution has legal effect as a contract; or
- (c) entering a deed poll and making this known to covered persons (e.g. by including a copy on the group purchasing body’s website).

Note: A deed poll is a unilateral contract where a person promises to take some action and, by making the deed poll, may be held legally accountable if they fail to act as promised. A deed poll is generally made in favour of a person or a specified class of persons who have the right to take action to enforce it.

## When conditions of relief are not met

### Breach reporting obligation

- RG 195.57 Subparagraph 10(f) in [CO 08/1] provides that a group purchasing body must advise us of any material failure to comply with the conditions of relief. This breach reporting obligation comes into effect for the first time after 31 December 2010 and applies to any group purchasing body that acquires, renews or renegotiates the terms of a risk management product on or after this date. This obligation will extend to all existing as well as new group purchasing arrangements from 1 January 2012, following the expiry of the transitional period on 31 December 2011.
- RG 195.58 The group purchasing body must give us full written particulars of matters that give it reason to believe that it has materially failed to comply with the conditions of [CO 08/1]. These written particulars must be given within 10 business days of the group purchasing body having reason to believe it has materially failed to comply, or the relief will no longer apply. We have provided a lengthy transitional period to give group purchasing bodies time to determine how best to comply with the conditions of relief to avoid any unnecessary costs in complying with the conditions.
- RG 195.59 When notified of non-compliance, we will consider whether the group purchasing body should be excluded from ongoing relief or, where appropriate, what orders should be sought to compel compliance with the conditions of exemption under s601QA.

### Withdrawal of relief

- RG 195.60 We may at any time give a group purchasing body written notice that it cannot rely on the exemptions in [CO 08/1]. Also, a failure to comply with the class order conditions may mean that the group purchasing body will lose the benefit of the relevant relief. For example, if a group purchasing body fails to notify us about material non-compliance with the conditions of the relief, as required by subparagraph 10(f) in [CO 08/1], it cannot rely on the exemptions from Ch 5C and the AFS licensing regime.

## Individual relief

- RG 195.61 Our relief is not intended to benefit *all* group purchasing bodies. If a group purchasing body believes that its circumstances meet the underlying objectives of the described policy and are consistent with the intention of the relief, it may make an application for individual relief. Guidance on how to apply for individual relief is given in Regulatory Guide 51 *Applications for relief* (RG 51).

## Appendix: Group purchasing arrangements

### Typical group purchasing bodies

RG 195.62 Group purchasing bodies may include:

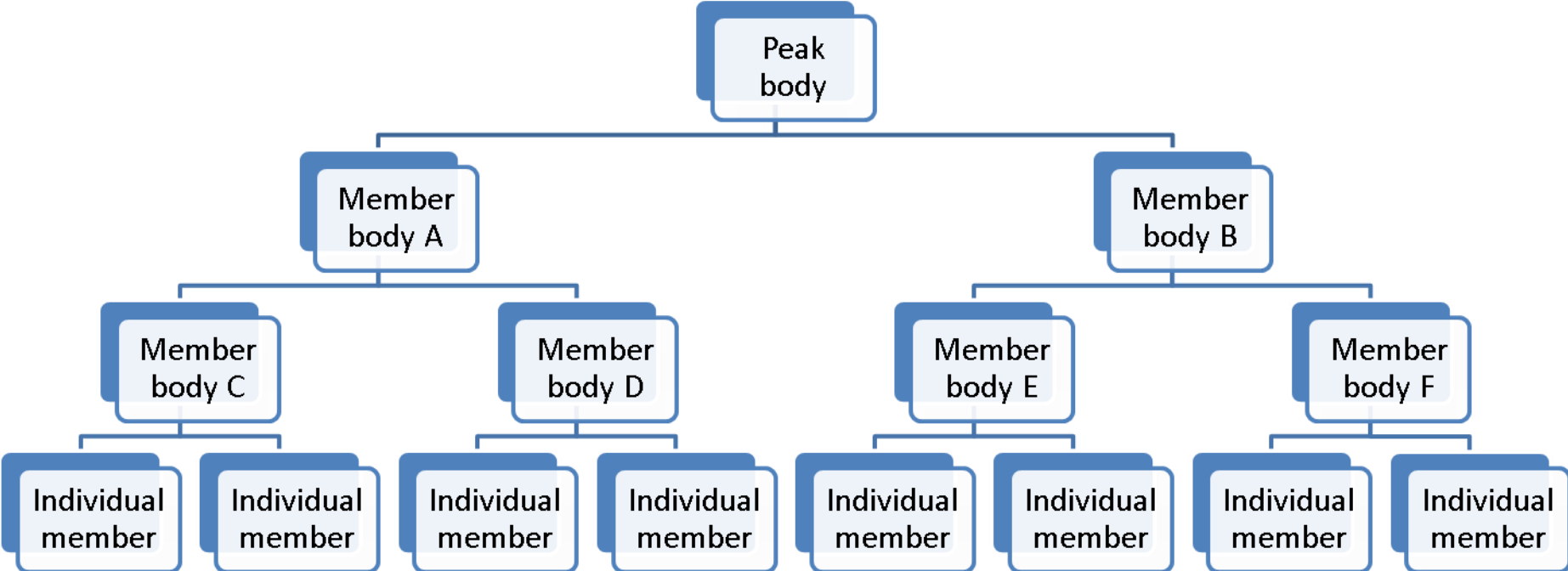
- (a) professional associations, industry bodies, community groups, and sporting clubs and associations;
- (b) bodies that are established to pool the buying power of their members to negotiate better terms from issuers of risk management products (e.g. shopping clubs);
- (c) employers who arrange insurance for employees;
- (d) educational institutions that may offer insurance cover to students, staff or voluntary workers; or
- (e) commercial organisations that provide services to clients and arrange risk management products for clients to cover the costs of additional services, if required, or to cover losses associated with the use of the service (e.g. accountants who may make audit insurance available to tax clients).

Note: This is an illustration of the range of entities that might be classified as 'group purchasing bodies'. It is not intended to be a representation about eligibility for relief. To be eligible for relief a group purchasing body must satisfy either the 'independent' or 'not-for-profit' tests: see RG 195.29–RG 195.33.

### Who is the group purchasing body?

RG 195.63 In some situations there may be more than one body corporate or other entity involved in the group purchasing arrangement. A group purchasing body might sit at the top of a hierarchical structure with several other entities interposed between the body and the covered persons. This is likely to arise where the group purchasing body is a peak body: see Figure 1. In this situation the entity that will be the relevant group purchasing body to consider compliance with [CO 08/1] is the one that has either entered into a group policy with the insurer or that has arranged the terms of the master policy with the insurer (i.e. the body that has made the effective purchasing decision in relation to the risk management product).

Figure 1: Hierarchical structure





## How do group purchasing arrangements operate?

RG 195.64 Group purchasing arrangements may involve:

- (a) **Group policies:** These involve a single contract of insurance between the insurer and the group purchasing body. The insurance product covers persons if they are named or are within a class specified in the contract (e.g. a member or prospective member of the group purchasing body). Typically, each covered person receives the same type and level of cover;
- (b) **Master policies:** These involve a contract between the group purchasing body and the insurer that sets out the agreed terms of insurance cover available to a class of persons who can be covered (e.g. members or prospective members of the group purchasing body). Typically, persons must make a separate application for coverage; in some cases, a person may obtain a different level of cover depending on their particular circumstances. The group purchasing body may or may not also be insured under the master policy; and
- (c) **Individual policies:** The group purchasing body arranges for members or persons within a defined class of people to directly enter into contracts of insurance with the insurer without any contract between the group purchasing body and the insurer.

RG 195.65 In some cases, the group purchasing body may receive a commission or other forms of remuneration or benefit for arranging the insurance.

RG 195.66 Generally, a group purchasing body does some or all of the following:

- (a) engages an insurance broker (i.e. an AFS licensee) to advise on an appropriate insurance policy;
- (b) negotiates via the insurance broker the terms of the insurance policy and the premium to be paid by any person accepted for coverage under the policy;
- (c) enters into an arrangement (either a group policy or a master policy) with the interests of those to be covered in mind;
- (d) notifies those that are covered, or are entitled to obtain coverage, under the policy; and
- (e) acts as a conduit between the persons covered and the insurer, which may involve:
  - (i) forwarding application forms (for master policies) and premiums to the insurance broker or issuer; and
  - (ii) forwarding certificates of insurance, policy wording and renewal notices.

RG 195.67 Generally, the group purchasing body is not involved in the claims process. Even if the person who is covered is not a party to the insurance contract (for group policies), typically the covered persons still make claims directly to the insurer or broker. The insurer or broker typically pays claims money directly to the covered person.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7)
[CO 08/1]	An ASIC class order (in this example numbered 08/1)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of the Act
covered person	A person who is either named in the risk management product, or who belongs to a class of persons specified in the risk management product, and includes a prospective covered person
eligible group purchasing body	A group purchasing body that is eligible for relief under Section B of this guide
group purchasing body	A body that arranges for the issue of a risk management product or for a person to be covered by an existing risk management product
multinational pooling arrangement (MPA)	An arrangement under which life, total and permanent disability or income protection insurance is provided that: <ul style="list-style-type: none"> <li>• is substantially arranged outside Australia and most of the persons covered are outside Australia;</li> <li>• covers employees of, or persons contracted to provide services to, the group purchasing body or another entity in the economic entity of which the group purchasing body forms a part; and</li> <li>• provides for payments to be received by the group purchasing body based on claims experience for all those covered under the arrangement</li> </ul>
NFPs	Not-for-profit entities
RG 169 (for example)	An ASIC regulatory guide (in this example numbered 169)
risk management product	A contract of insurance or a facility for managing financial risk that is a financial product other than a general insurance product that an AFS licensee must not deal in because of s985D of the Corporations Act
s911A (for example)	A provision of the Corporations Act (in this example numbered 911A)

## Related information

### Headnotes

AFS licensee, Australian financial services licence, custodial or depository service, facility for managing financial risk, financial products, financial services, group insurance, group purchasing body, insurance, managed investment schemes, master insurance policy, risk management product

### Regulatory guides

RG 51 *Applications for relief*

RG 121 *Doing financial services business in Australia*

### Class orders

[CO 08/1] *Group purchasing bodies*

[CO 09/728] *Variation of Class Order [CO 08/1]*

[CO 10/45] *Variation of Class Order [CO 08/1]*

[CO 10/116] *Group purchasing bodies – variation of Class Order [CO 08/1]*

[CO 10/177] *Group purchasing bodies – variation of Class Order [CO 08/1]*

### Legislation

Corporations Act, Ch 5C, 7, s911A(1), 981B, 985B, 1012H

### Consultation papers and reports

CP 80 *Group insurance arrangements*

REP 140 *Report on submissions for CP 80 Group insurance arrangements*

### Advisories

AD 08-29 *ASIC provides relief for group insurance* (30 September 2008)

AD 09-187 *ASIC extends transitional period for compliance with group purchasing bodies class order* (30 September 2009)

AD 10-138 *ASIC amends Class Order 08/1 and its policy regarding group purchasing bodies* (29 June 2010)