

Is a Carrier carrying on a financial services business and do they require an Australian Financial Services Licence (AFSL)?

The \$64 million dollar question!

It may help to use the following checklist when considering whether your Carrier insureds are arranging insurance.

Has a financial product been issued to the client (the owner of the goods)?

1. Is the policy one where the Carrier is the named insured but where the client elects to be covered by the insurance and cover will only be granted once the election has been received by the insurer?
2. Is there a Certificate of Insurance issued to the client by or on behalf of the insurer confirming cover, whether as a named insured or as a nominated client?
3. In the event of a claim, are claim payments made directly to the client (rather than to the client via the Carrier)?

Is the Carrier dealing in a financial product by arranging for the issue of the financial product?

4. Does the Carrier tell the client that the Carrier can arrange insurance on behalf of the client?
5. Does the Carrier negotiate the terms of the policy between the insurer and the client?

(the more active the Carrier is in facilitating the transaction, the more likely the activity will be arranging.)

6. Is the Carrier the main or only person with whom the client communicates and deals in relation to the policy?
7. Does the Carrier receive a benefit if a client purchases insurance?
8. Does the Carrier collect the premium from the client and pass it on to the insurer?

Is the Carrier providing financial product advice?

9. Does the Carrier answer specific questions from the client relating to the suitability of the policy for the client's needs?
10. Does the Carrier make recommendations or statements of opinions about the policy or the client's situation that are expressly or impliedly intended to influence the client's decision?
11. Does the Carrier provide advice on the suitability of the insurance coverage for the client?
12. Does the Carrier take into account the client's objectives, financial situation or needs in providing advice to the client?
13. Will the Carrier be remunerated depending on the decision of the client?

If you answer 'yes' to any of the questions in this checklist, the Carrier **may** be carrying on a financial services business.



A person may only carry on a financial services business if:

- (a) they hold an AFSL with appropriate authorisations (eg: to arrange for the issue of insurance or provide financial product advice); or
- (b) they have been appointed as an authorised representative of an AFS Licensee, unless an exemption applies.

Exemptions include acting solely as a clerk, cashier or mere referrer.

This checklist is intended as a guide only and should not be treated as legal advice.

We recommend that Carriers obtain independent legal advice for each specific commercial situation to determine whether they require an AFSL or need to be appointed as an authorised representative of an AFS Licensee.

There may be significant penalties if a person breaches the provisions of Chapter 7 of the Corporations Act.

**The Team at
Vero National Marine**