

MEMORANDUM OF UNDERSTANDING BETWEEN
THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)
AND
THE AUSTRALIAN CAPITAL TERRITORY COMPULSORY THIRD-PARTY
INSURANCE REGULATOR (ACT CTP Regulator)

1. Objective

- 1.1 This memorandum of understanding (MOU) sets out a framework for co-operation between APRA and the ACT CTP Regulator (the agencies) in areas of common interest where co-operation is essential for the effective and efficient performance of their respective financial regulation functions.
- 1.2 The agencies agree that consistent with their separate roles they will co-operate where it is within their administrative powers to achieve effective enforcement and compliance outcomes.
- 1.3 This MOU is a statement of intent and is not intended to create legally binding obligations on either agency. Each agency has the right to vary its terms at any time by agreement following consultation with the other agency.

2. APRA Responsibilities

- 2.1 APRA is responsible for the prudential regulation of the financial sector, including authorised deposit-taking institutions (ADIs - banks, building societies and credit unions), life insurance companies (including benefit fund friendly societies), general insurers, private health insurers and superannuation funds. In performing its functions to protect the interest of depositors, policyholders and fund members, APRA is required to balance financial safety with efficiency, competition, contestability and competitive neutrality. In its role as the prudential regulator of general insurance companies, APRA has responsibility for prudential regulation of the general insurance companies underwriting the Australian Capital Territory Compulsory Third-Party (CTP) Personal Injury Insurance Scheme. APRA also actively undertakes monitoring activities in relation to the stability and solvency of insurers licensed by the ACT CTP Regulator to participate in the ACT CTP scheme and provides regular advice on insurers' stability and solvency to the ACT CTP Regulator (Schedule One). Consequently, APRA has a keen interest in any knowledge of a general insurer's business operations, including information which may come into the possession of the ACT CTP Regulator.
- 2.2 As soon as is practicable, APRA will advise the ACT CTP Regulator of any general insurer licensed to write ACT CTP insurance that APRA has assessed as being at critical risk of failure.
- 2.3 A notifiable change in the risk assessment of an insurer outside of regular information exchange between the ACT CTP Regulator and APRA will include, while not being limited to, a critical fall in the insurer's prudential capital requirement (PCR) coverage. APRA assesses criticality in terms of its risk based analysis framework PAIRS. A notifiable change in risk assessment would typically involve the supervision stance for the insurer being

escalated to “Mandated Improvement” or “Restructure”.

- 2.4 As soon as is practicable, APRA will advise the ACT CTP Regulator of its intention to do any of the following in relation to a general insurer licensed to write ACT CTP insurance:
- Appoint an Inspector to investigate a general insurer, and provide the ACT CTP Regulator with details of the main findings of the Inspector’s Report;
 - Apply for a Court order to place a general insurer under judicial management; and
 - Apply for a Court order to wind up a general insurer.

3. ACT CTP Regulator Responsibilities

3.1 The ACT CTP Regulator is responsible for the regulation of compulsory third-party personal injury insurance (CTP) in the ACT. General insurers must be authorised to write insurance business under the *Insurance Act 1973 (Cth)* before the ACT CTP Regulator may license a general insurer to issue CTP insurance policies. The ACT CTP Regulator supervises general insurers’ compliance with licence conditions imposed by the *Road Transport (Third-Party Insurance) Act 2008 (ACT)* (the Act). In addition, the Australian Capital Territory Insurance Authority (ACTIA) is the Nominal Defendant, and in this capacity becomes the insurer under ACT CTP policies in force in the event of a general insurer’s insolvency: section 241 of the Act. The ACT CTP Regulator relies on information provided by APRA to ascertain that any general insurers underwriting the ACT CTP scheme meet APRA’s solvency requirements and so the ACT CTP Regulator has a very strong interest in APRA’s monitoring activities in relation to the solvency of any CTP general insurers licensed by the ACT Regulator.

3.2 The ACT CTP Regulator will consult with APRA prior to appointing an appropriately qualified person to audit or inspect the accounting and other records relating to the business or financial position of a licensed insurer and provide APRA with details of the main findings of the Auditor’s or Inspector’s report.

3.3 The ACT CTP Regulator will also consult with APRA prior to applying for a Supreme Court order to protect the interests of CTP policy-holders under section 231 of the Act where the ACT CTP Regulator is of the opinion that the CTP insurer is unable to meet its ACT CTP liabilities. APRA has the right to appear in any proceeding.

4. Mutual Assistance

4.1 The agencies recognise that it is important that they co-operate to promote the efficient regulation of the general insurers licensed to write CTP business and the confident and informed participation of all stakeholders in that business.

4.2 The agencies agree to provide each other with mutual assistance in relation to the exchange of information, appropriate referral of matters and co-operation in regulation, compliance and enforcement within the framework of this MOU and which is consistent with all relevant laws.

5. Information Sharing

5.1 The ACT CTP Regulator may require information from APRA to assist the ACT CTP Regulator in meeting its obligations under the Act and in its determination of an insurer’s application for an ACT CTP licence and in making decisions about the potential exercise of its powers under the Act: section 185 licence conditions; section 194 Grounds for licence

suspension; section 195 Grounds for licence suspension—grounds other than contraventions; and section 231 CTP regulator may apply for policy holder protection order.

- 5.2 Full and timely exchange of information is a crucial element in co-operation between APRA and the ACT CTP Regulator.
- 5.3 APRA gathers a wide range of information on the entities it prudentially supervises. The ACT CTP Regulator gathers a limited range of information relating to its prudential role of information on the entities it licenses and supervises.
- 5.4 The agencies agree that, subject to legislative provisions, information available to one agency, which will assist the other agency to perform its functions or exercise its powers, will be shared as requested. Each agency will provide specified information to the other on a best endeavours basis, with a response time in accordance with Clause 6. This will be subject to any relevant legal and operational considerations, such as claims of legal professional privilege, and any conditions which the provider of the information might place upon the use or disclosure of the information.
- 5.5 Subject to appropriate cost sharing, each agency may arrange for information relevant to its responsibilities to be collected from financial entities by the other agency. The agency receiving the request will only collect such information if it is also required or will be useful for carrying out its responsibilities and duties under the relevant legislation.
- 5.6 Requests by an agency for information subject to any secrecy provisions must be made in writing and must specify whether the request is urgent, routine or non-urgent.
- 5.7 The following officers of APRA and the ACT CTP Regulator are authorised to request and release information that is subject to secrecy provisions:

APRA: Pursuant to section 56(5)(a) of the *Australian Prudential Regulation Act 1998*, the Specialist, General Insurance, Advice and Approvals (A&A) and the Manager Statistics or the holders of equivalent positions, subject to the approval of the request by an APRA General Manager; and

ACT CTP Regulator: The Director, Financial Framework Management and Insurance Branch, ACT Chief Minister, Treasury and Economic Development Directorate (CMTEDD), Manager Insurance, Senior Policy Officer Insurance, or the holders of equivalent positions.

6. Time to Respond to Information Requests

- 6.1 If the requested information is urgent, the agency requesting the information may negotiate the time and manner of delivery. The responding agency shall endeavour to provide the information within a maximum of three working days.
- 6.2 For routine or non-urgent matters, agencies will aim to provide the information within ten working days.

7. Involvement of the ACT CTP Regulator in APRA/Insurer Visits and Consultations

- 7.1 APRA will advise the ACT CTP Regulator of proposed APRA insurance risk reviews of insurers underwriting ACT CTP business and the ACT CTP Regulator may request permission from the CTP insurer to attend such visits.

8. Standing Requests for Specified Information

8.1 Standing requests for specified information by APRA and the ACT CTP Regulator are set out in the attached Schedule One - Part One - Ad Hoc and Ongoing Information, Part Two - Regular Information Exchange and Part Three Agency Liaison arrangements.

9. Unsolicited Assistance

9.1 Each agency recognises that in the course of carrying out its functions and exercising its powers, it will come into possession of information which would, if provided to the other agency, be likely to assist that other agency in administering or enforcing the particular laws for which it is responsible.

9.2 Each agency agrees, subject to legal restrictions, to use its best endeavours to notify the other agency, with due regard to the urgency of doing so, of the existence of any information of a kind referred to above, notwithstanding that it may not have received a request from the other agency for such information.

10. Cost of Provision of Information

10.1 Each agency expects to bear its own expenses incurred in the implementation of this MOU. If it appears that an agency is likely to incur substantial costs in responding to a particular request for information, the agency may approach the other agency with a view to negotiating a cost-sharing arrangement in relation to the provision of that information.

11. Confidentiality

11.1 The agencies understand that they will use their best endeavours to preserve the confidentiality of the information received under this MOU. In this regard, staff members of the agencies will hold confidential all information obtained in the course of their duties. Any confidential information received from either of the agencies is to be used exclusively for lawful supervisory purposes.

11.2 An agency may disclose information received from the other agency under this MOU to a third party in the following circumstances:

- (a) where the agency is legally compelled to do so, for example to a Court or Royal Commission;
- (b) where the agency receives a legally enforceable demand, for example under Freedom of Information laws; and,
- (c) in other circumstances permitted by law.

11.3 When an agency is legally compelled to disclose information provided under this MOU to a third party, the agency which is under compulsion is expected to promptly notify the other agency, indicating what information it is compelled to disclose and the circumstances surrounding its release. The agencies expect each other to use their best endeavours to preserve the confidentiality of the information to the extent permitted by law, if requested to do so.

11.4 Where an agency wishes to disclose information received under this MOU to a third party, but is not compelled to do so, the agency is expected to notify the other agency to obtain its consent. It will not disclose the information if consent is refused. Where consent is obtained, the agency disclosing the information will impose on the third party any conditions which have been made by the other agency concerning the use of that information. In any event, as far as possible, the party disclosing the information will

impose a condition on the third party that it keep the information confidential, and that it will not further disclose the information without first obtaining consent.

12. **Inter-agency Co-operation**

12.1 In addition to the exchange of information both agencies agree to regular liaison to discuss and co-operate on matters of mutual interest. Such matters may include, but are not limited to:

- (a) emerging issues in the insurance industry;
- (b) the commercial and regulatory implications of new policy and administrative proposals;
- (c) problems, issues or insights which affect, or are likely to affect or be of relevance to the other agency;
- (d) consultative processes with industry;
- (e) public education strategies;
- (f) the exchange of expertise;
- (g) the sharing of relevant statistical information and other corporate materials including guidelines and manuals; and
- (h) monitoring the effectiveness of this MOU and agreeing on any changes.

Geoff Summerhayes
Member
Australian Prudential Regulation Authority
Date: 11 August 2017

Karen Doran
ACT CTP Insurance Regulator
Date: 24 July 2017

SCHEDULE ONE

INFORMATION TO BE EXCHANGED AND LIAISON ARRANGEMENTS BETWEEN THE ACT CTP REGULATOR AND APRA ON PRUDENTIAL MATTERS

In this schedule 'ACT CTP insurer' means an insurer that holds an ACT CTP licence under the *Road Transport (Third-Party Insurance) Act 2008*, including an insurer whose ACT CTP licence is under suspension or has been withdrawn.

PART ONE—Ad Hoc and Ongoing Information

- 1.1 Any information in the possession of, or known to, APRA concerning the ACT CTP insurer entity which could materially adversely impact on the ACT CTP insurer's ability or inability to meet claims.
- 1.2 Any information in the possession of, or known to, APRA concerning a Non-Operating Holding Company (NOHC) which could materially adversely impact on the ACT CTP insurer's ability or inability to meet claims.
- 1.3 Observations by APRA that an ACT CTP insurer is having difficulty providing quarterly and annual returns in a timely manner.
- 1.4 Any significant regulatory action taken by APRA.
- 1.5 Any information coming to the attention of APRA in respect to a CTP insurer engaging in conduct that APRA is aware may affect its CTP licence.
- 1.6 Any information in the possession of the ACT CTP Regulator, including information and data regarding claims and payments relating to motor vehicle accidents involving personal injury in the ACT as and when received, any scheme actuarial reports APRA deems relevant, and any other data that APRA specifies it needs and that are available.

PART TWO—Regular Information Exchange

- 2.1 Prior to ACT CTP Regulator/APRA supervisory liaison meetings, or as required, the APRA Specialist, General Insurance, Advice and Approvals will provide full PAIRS assessments of ACT CTP insurers whenever revised, with sensitive corporate group information blacked out if necessary.
- 2.2 This documentation may include APRA's view of the risk contagion to the ACT CTP insurer from other operations of the broader corporate group through the strategy and planning and capital support elements of the assessment.
- 2.3 At the written request of the ACT CTP Regulator, the provision by the APRA Manager, General Insurance Statistics of quarterly and annual insurer APRA basis solvency data for ACT CTP insurers for the most recent two financial quarters.

PART THREE—Agency Liaison Arrangements

3.1 Twice-yearly liaison meetings between the ACT CTP Regulator representatives and APRA executive managers for agency level discussions on policy and matters of broad mutual interest, as described in clause 12.1.

3.2 At or around the same date as these meetings, the ACT CTP Regulator's consultations with APRA frontline supervisors co-ordinated by the Specialist, General Insurance, Advice and Approvals to discuss ACT CTP insurer-specific prudential supervision issues.

3.3 Continuous liaison through single contact points in each agency (the Specialist, General Insurance, Advice and Approvals in APRA, and the Manager Insurance, or the holder of an equivalent position supporting the ACT CTP Regulator), to provide early warning of deterioration in APRA risk assessments of any of the insurers, clarify any alerts by other regulators such as trading suspensions or notice of capital reductions, and provide to the ACT CTP Regulator any other information in APRA's possession that relates to the ACT CTP Regulator's licensing of ACT CTP insurers.

