

**MEMORANDUM OF UNDERSTANDING BETWEEN**

**THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)**

**AND**

**THE STATE INSURANCE REGULATORY AUTHORITY (SIRA)**

## **1      Objective**

- 1.1 This memorandum of understanding (MOU) sets out a framework for co-operation between APRA and SIRA (the agencies) in areas of common interest where cooperation is essential for the effective and efficient performance of each agency's respective financial regulation functions.
- 1.2 The agencies agree to co-operate to achieve effective enforcement and compliance outcomes consistent with each agency's separate role, to the extent allowed by the agencies' administrative powers.
- 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 (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 insurers operating within New South Wales (NSW) state-based insurance schemes. APRA also actively undertakes monitoring activities in relation to the stability and solvency of insurers that participate in NSW state-based insurance schemes and provides regular advice on insurers' stability and solvency to SIRA (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 SIRA.
- 2.2 APRA will use its best endeavours to advise SIRA, as soon as is practicable, of any general insurer that APRA has assessed as being at risk of failure. The term 'general insurer' in this paragraph refers to any general insurer that is licensed by SIRA underwriting motor accidents Compulsory Third Party (CTP) insurance, workers compensation insurance and home building compensation insurance in NSW state-based insurance schemes.
- 2.3 A notifiable change in the risk assessment of an insurer outside of regular information exchange between SIRA 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, the Supervisory Risk and Intensity (SRI) Model. A notifiable change in risk assessment would typically involve the supervision stance for the insurer being escalated to "Mandated Improvement" or "Restructure".
- 2.4 APRA will use its best endeavours to advise SIRA of its intention to do any of the following in relation to a general insurer that is licensed by SIRA:
  - appoint an inspector to investigate a general insurer, and provide SIRA 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      SIRA Responsibilities**

- 3.1 SIRA is the independent regulator of NSW insurance schemes including CTP insurance, workers compensation insurance and home building compensation insurance. SIRA supervises the performance and compliance of general insurers licensed under the *Motor*

*Accident Injuries Act 2017* and the *Motor Accidents Compensation Act 1999*, insurers (including specialised insurers) licensed under the *Workers Compensation Act 1987* and general insurers (including alternative indemnity product (AIP) providers) licensed under the *Home Building Act 1989*. General insurers must be authorised to write insurance business under the *Insurance Act 1973* before SIRA may license a general insurer to issue the respective insurance policies. SIRA relies on information provided by APRA to ascertain that each general insurer licensed by SIRA meets APRA's capital adequacy requirements and so SIRA has a very strong interest in APRA's monitoring activities in relation to the solvency of any general insurer licensed by SIRA.

- 3.2 As soon as is practicable, SIRA will advise APRA of its intention to do any of the following in relation to a general insurer that is licensed by SIRA:

appoint an appropriately qualified person to audit or inspect the accounting and other records relating to the business or financial position of a general insurer and provide APRA with the details of the main findings of the Auditor's or Inspector's report;

make a recommendation to suspend or cancel a licensed insurer's licence; and

apply for a Supreme Court order to protect the interests of policyholders where SIRA is of the opinion that the insurer is unable to meet its liabilities.

#### **4 Mutual Assistance**

- 4.1 The agencies recognise that co-operation is important in promoting the efficient regulation of the general insurers that are licensed by SIRA 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.
- 4.3 The agencies note and agree that disclosure and exchange of information under this MOU is subject to laws, restrictions and procedures under applicable laws of the Commonwealth and State, including laws administered by the agencies, and laws of general operation.

#### **5 Information Sharing**

- 5.1 SIRA may request information from APRA to assist in exercising its functions under relevant state legislation, for example in its determination to make a recommendation regarding a general insurer's application to underwrite New South Wales state-based insurance, and in making decisions about the potential exercise of its powers under the relevant Acts.
- 5.2 Full and timely exchange of information is a crucial element in co-operation between APRA and SIRA.
- 5.3 APRA gathers a wide range of information on the entities that it prudentially supervises. SIRA gathers through its Business Plan and reporting requirements information relating to its prudential role on the entities it licenses and supervises.
- 5.4 The agencies may only share with each other information that directly relates to the other agency's functions and mandate. 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 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 and confirmed in writing and must specify whether the request is urgent, routine or non-urgent.

## **6 Time to Respond to Information Requests**

- 6.1 The responding agency shall endeavour to provide any information requested under this MOU as soon as practicable.

## **7 Involvement of SIRA in APRA-Approved Insurer Visits and Consultations**

- 7.1 APRA will use its best endeavours to advise SIRA of proposed APRA insurance risk reviews of general insurers that are licensed by SIRA, where the reviews relate to classes of business that SIRA regulates. SIRA may request permission from the insurer being reviewed to attend.

## **8 Standing Requests for Specified Information**

- 8.1 Standing requests for specified information by APRA and SIRA 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 may come into possession of information which, if provided to the other agency, may assist the other agency in carrying out its statutory functions.
- 9.2 Each agency, subject to legal restrictions, will 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 party for such information.

## **10 Cost of Provision of Information**

- 10.1 Each agency is 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 each agency will use its 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 the purpose of exercising its statutory functions.
- 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 Commonwealth and state-based 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 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 will seek consent from the other agency prior to disclosure. 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 party;
  - (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.

Helen Rowell  
Deputy Chair  
Australian Prudential Regulation Authority

Date: 18 November 2022.....

Adam Dent  
Chief Executive  
State Insurance Regulatory Authority  
NSW Government

Date: 27 September 2022

## **SCHEDULE ONE**

### **INFORMATION TO BE EXCHANGED AND LIAISON ARRANGEMENTS BETWEEN SIRA AND APRA ON PRUDENTIAL MATTERS**

In this schedule ‘NSW state-based insurer’ means a general insurer that is licensed by SIRA, underwriting New South Wales state-based insurance approved under the relevant state legislation. This also includes an insurer that is applying for approval, or an insurer that has been previously approved but has had its approval suspended or withdrawn.

#### **1 PART ONE - Ad Hoc and Ongoing Information**

- 1.1 Any information in the possession of, or known to, APRA concerning the NSW state-based insurer entity which could materially adversely impact the NSW state-based 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 the NSW state-based insurer’s ability or inability to meet claims.
- 1.3 Observations by APRA that a NSW state-based 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 of a NSW state-based insurer engaging in conduct that APRA is aware may affect its NSW state-based insurer licence.
- 1.6 Subject to confidentiality provisions, any information in the possession of SIRA, which is relevant to the responsibilities of APRA. This may include information and data regarding claims and payments relating to the insurance business that SIRA regulates, scheme actuarial reports, and any other data requested by APRA for the exercise of its functions.

#### **2 PART TWO - Regular Information Exchange**

- 2.1 Prior to APRA / SIRA supervisory liaison meetings, or as required, APRA will provide full SRI assessments of NSW state-based insurers, with sensitive corporate group information redacted if necessary.
- 2.2 This documentation may include APRA's view of the risk contagion to the NSW state-based 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 SIRA, the provision by APRA of quarterly and annual insurer APRA basis solvency data for NSW state-based insurers for the most recent two financial quarters.

#### **3 PART THREE - Agency Liaison Arrangements**

- 3.1 Twice-yearly liaison meetings between SIRA and APRA representatives for agency-level discussions on policy and matters of broad mutual interest, in accordance with clause 12.1;
- 3.2 At or around the same date as these meetings, SIRA’s consultations with APRA frontline supervisors to discuss NSW state-based insurer-specific prudential supervision issues; and
- 3.3 Liaison through single contact points as appointed by each agency to provide early warning of deterioration in APRA risk assessments of any of the NSW state-based insurers, clarify any alerts by other regulators such as trading suspensions or notice of capital reductions,

and provide to SIRA any other information in APRA's possession that relates to SIRA's regulation of NSW state-based insurers.