

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)

AND

THE MOTOR ACCIDENT INSURANCE COMMISSION OF QUEENSLAND (MAIC)

1. Objective

- 1.1 This memorandum of understanding (MOU) sets out a framework for co-operation between APRA and MAIC (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 not intended to create binding obligations on either agency and 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 authorised deposit-taking institutions ("ADIs" - banks, building societies and credit unions), life insurance companies (including benefit fund friendly societies), general 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 Queensland 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 MAIC to participate in the Queensland CTP scheme and provides regular advice on the insurers' stability and solvency to MAIC (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 MAIC.
- 2.2 As soon as is practicable, APRA will advise MAIC of any general insurer licensed to write Queensland 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 MAIC 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 MAIC of its intention to do any of the following in relation to a general insurer licensed to write Queensland CTP insurance:
- Appoint an Inspector to investigate a general insurer; and provide MAIC with details of the main findings of the Inspector's Report
 - Apply for a Court order to place a general insurer under judicial management
 - Apply for a Court order to wind up a general insurer.

3. MAIC Responsibilities

- 3.1 MAIC is responsible for the regulation of compulsory third-party personal injury insurance (CTP) in Queensland. General insurers must be authorised to write insurance business under the *Insurance Act 1973* before MAIC may license a general insurer to issue CTP insurance. MAIC supervises general insurers' compliance with licence conditions imposed by MAIC under the *Motor Accident Insurance Act 1994*. In addition, the Insurance Commissioner is the Nominal Defendant, and in this capacity becomes the insurer under Queensland CTP policies in force in the event of a general insurer's insolvency. MAIC relies on information provided by APRA to ascertain that general insurers underwriting the Queensland CTP scheme meet APRA's solvency requirements and so MAIC has a very strong interest in APRA's monitoring activities in relation to the solvency of licensed CTP general insurers.
- 3.2 MAIC 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 MAIC will also consult with APRA prior to applying for a Supreme Court order to protect the interests of CTP policy-holders where MAIC is of the opinion that the CTP insurer is unable to meet its Queensland CTP liabilities.

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 MAIC may require information from APRA to assist MAIC in making decisions about the potential exercise of its reserve powers under the *Motor Accident Insurance Act 1994* viz: Section 64 Conditions of Licence; Section 66 Withdrawal or suspension of licence; and Section 73 Power of Supreme Court to deal with licensed insurers.
- 5.2 Full and timely exchange of information is a crucial element in co-ordination between APRA and MAIC.

- 5.3 APRA gathers a wide range of information on the entities it prudentially supervises. MAIC gathers a wide range 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 When exchanging confidential information, APRA and MAIC acknowledge the confidentiality and secrecy requirements of the Acts under which each agency operates. The agency providing information has the right to specify the level of confidentiality attached to the information it provides to the other, in order to protect that information from unauthorised use, or disclosure. The agency receiving the information will take all reasonable steps to ensure such information is only used or disclosed for the purpose for which it was obtained.
- 5.6 Each agency agrees, not to disclose any confidential information obtained pursuant to this MOU to a third party unless it has obtained the prior consent of the agency which has provided the confidential information.
- 5.7 Subject to appropriate cost arrangements, each agency may request information relevant to its responsibilities to be collected from insurance entities by the other agency and be furnished to the requesting 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.
- 5.8 Except as provided for in Schedule One Part Two to this MOU, 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.
- 5.9 The following officers are authorised to request information that is subject to secrecy provisions:
- APRA Pursuant to s56 (5) (a) of the *Australian Prudential Regulation Act 1998*, the Manager, Industry and Technical Services (ITS) and the Manager Statistics or the holders of equivalent positions, subject to the approval of the request by an APRA General Manager; and
 - MAIC: The Insurance Commissioner, the General Manager (MAI Regulation Division), Team Leader – Scheme Performance (MAI Regulation), Principal Scheme Analyst, Senior Scheme Analyst, or the holders of equivalent positions.
- 5.10 The following officers are authorised to release information that is subject to secrecy provisions:
- APRA: Pursuant to s56 (5) (a) of the *Australian Prudential Regulation Act 1998*, the Manager, Industry and Technical Services (ITS) and the Manager Statistics or the holders of equivalent positions, subject to the approval of the request by an APRA General Manager; and

- MAIC: Team Leader – Scheme Performance (MAI Regulation), Principal Scheme Analyst, Senior Scheme Analyst, or the holders of equivalent positions, subject to the approval of the request by the Insurance Commissioner or the General Manager (MAI Regulation Division).

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 MAIC in APRA/Insurer Visits and Consultations

- 7.1 APRA will advise MAIC of proposed APRA insurance risk reviews of insurers underwriting Queensland CTP business and MAIC 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 MAIC are set out in the attached Schedule One – Part One – Ad Hoc and Ongoing Information and Part Two – Regular Information Exchange.

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 In general, the agency that receives a request for information shall bear the cost incurred by it in locating and providing the information to the agency that requests the information.
- 10.2 If it appears to the agency that receives the request that it will incur substantial costs in responding to the request, it may make representations to that effect to the requesting agency and the two agencies may negotiate a costing arrangement in relation to the cost burden of the provision of that information.

11. Inter-agency Co-operation

11.1 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:

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



Mr Ian Laughlin
Member
Australian Prudential Regulation Authority

Date: 20/11/12



Mr Neil Singleton
Insurance Commissioner
Motor Accident Insurance Commission

Date: 20/11/12

SCHEDULE ONE

INFORMATION TO BE EXCHANGED AND LIAISON ARRANGEMENTS BETWEEN MAIC AND APRA ON PRUDENTIAL MATTERS

(Queensland CTP insurer: Queensland CTP insurer means an insurer that holds a Queensland CTP licence under the *Motor Accident Insurance Act 1994*, including an insurer whose Queensland 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 Queensland CTP insurer entity which could materially adversely impact on the Queensland 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 Queensland CTP insurer's ability or inability to meet claims;
- 1.3 Observations by APRA that a Queensland 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.

PART TWO – Regular Information Exchange

- 2.1 Prior to MAIC/APRA supervisory liaison meetings, or as required, the APRA Manager Industry and Technical Services will provide full PAIRS assessments of Queensland CTP insurers whenever revised, with sensitive corporate group information blacked out if necessary.
- 2.2 This documentation will include APRA's view of the risk contagion to the Queensland 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 MAIC, the provision by the APRA Manager, General Insurance Statistics of quarterly and annual insurer APRA basis solvency data for Queensland CTP insurers for the most recent two financial quarters.

PART THREE – Agency Liaison Arrangements

- 3.1 Twice-yearly liaison meetings between MAIC executive and APRA executive managers for agency level discussions on policy and matters of broad mutual interest, as described in 11.1;
- 3.2 At or around the same date as these meetings, MAIC consultations with APRA frontline supervisors co-ordinated by the Manager Industry and Technical Services to discuss Queensland CTP insurer-specific prudential supervision issues; and
- 3.3 Continuous liaison through single contact points in each agency (the Manager Industry and Technical Services in APRA and the Team Leader – Scheme Performance (MAI Regulation)), 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 MAIC any other information in APRA's possession that relates to MAIC's licensing of Queensland CTP insurers.