MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

AND

THE WORKCOVER AUTHORITY OF NEW SOUTH WALES
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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)
AND
THE WORKCOVER AUTHORITY OF NEW SOUTH WALES (WORKCOVER NSW)

1. Objective
1.1. This memorandum of understanding (MOU) establishes a framework for cooperation between APRA and WorkCover NSW (the Agencies) in areas of common regulatory interest where cooperation is desirable for the effective and efficient performance of their respective regulatory activities.

1.2. The Agencies agree that, consistent with their separate roles, they will cooperate 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 ability to vary its terms at any time by agreement following consultation with the other Agency.

2. APRA Responsibilities
APRA is responsible for the prudential supervision of authorised deposit-taking institutions (such as banks, building societies and credit unions), life insurance companies (including benefit fund friendly societies), general insurance companies and superannuation funds. In performing its functions to protect the interests of depositors, policy holders and fund members, APRA is required to balance financial safety with efficiency, competition, contestability and competitive neutrality.

3. WorkCover NSW Responsibilities
3.1. WorkCover NSW is responsible for the regulation of workers compensation in New South Wales including specialised insurers, self-insurers (including the NSW Self Insurance Corporation), and the Nominal Insurer (including its scheme agents). WorkCover NSW regulates compliance with licensing policy and conditions applying to the insurers under the Workers Compensation Act 1987.
3.2. Specialised insurers\(^1\) are insurers with a licence endorsed by WorkCover NSW to write workers compensation insurance policies for a defined industry in New South Wales.

3.3. In addition to its regulatory responsibilities, WorkCover NSW also exercises the powers of the Nominal Insurer through the Workers Compensation Insurance Fund for the NSW Workers Compensation Scheme, and performs the Nominal Insurer’s operational functions.

4. Mutual Assistance

4.1. The Agencies recognise that it is important that they co-operate to promote the efficient regulation of the specialised insurers.

4.2. The Agencies expect to provide each other with mutual assistance in relation to the exchange of information, referral of matters and cooperation in regulation, compliance and enforcement within the framework of this Memorandum of Understanding and which is consistent with all relevant laws.

5. Information Sharing

5.1. Requests for information under this MOU will be made in writing by an officer authorised to request information, and release of the information from the Agency providing the information will be approved by an officer authorised to release such information. Requests for information will be addressed to the Agencies’ contact persons named in Annexure A.

5.2. Each Agency will provide relevant information requested under this MOU to the other on a best endeavours basis, with due regard to the urgency of doing so. This will be subject to any relevant legal and operational considerations and any conditions which the provider of the information might place upon the use or disclosure of the information.

5.3. The Agencies expect each other to mark all documents received under this MOU: CONFIDENTIAL – RECEIVED UNDER MEMORANDUM OF UNDERSTANDING BETWEEN APRA AND WORKCOVER NSW.

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\(^1\) 'Specialised insurer' means an insurer licensed by WorkCover NSW under Section 177A of the Workers Compensation Act 1987 whose licence is endorsed with a specialised insurer endorsement.
5.4. Additionally, WorkCover NSW will mark all documents received under this MOU:

THE INFORMATION IN THIS DOCUMENT MAY ONLY BE USED FOR THE PURPOSE OF
SUPERVISION OR LICENSING OF SPECIALISED INSURERS AND NO OTHER PURPOSE.

5.5. The Agency receiving the information is expected to take all reasonable steps to ensure such information is only used or disclosed for lawful supervisory purposes.

5.6. For the avoidance of doubt, information provided by APRA to WorkCover NSW may only be used for the purpose of the direct supervision and/or licensing of specialised insurers by WorkCover NSW in its capacity as the regulator of specialised insurers specified in 3.2 above, and not for any other purpose, role, responsibility or obligation required under the *Workers Compensation Act 1987*.

6. Confidentiality

6.1. The Agencies understand that they will use their best endeavours to preserve the confidentiality of 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.

6.2. 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, or where the Agency receives a legally enforceable demand, for example under Freedom of Information laws; and

b) in other circumstances permitted by law.

6.3. When an Agency is legally compelled to disclose information provided under this MOU to a third party, that Agency will 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.

6.4. Where an Agency wishes to disclose the information received under this MOU to a third party, but is not compelled to do so, that 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 confidentiality and use of that information. In any event, 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.
7. Unsolicited Assistance

7.1. 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.

7.2. 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 Agency for such information.

7.3. In particular, each Agency will notify the other of:
   a) any specialised insurer that the Agency has assessed as facing serious financial distress; and
   b) any material administrative penalties or other formal enforcement action taken by the Agency in relation to a specialised insurer, its board members or management or, in cases of systemic impact, its shareholders.

8. Cost of Provision of Information

8.1. 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.

8.2. 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 parties may negotiate a cost-sharing arrangement in relation to the cost burden of the provision of that information.

9. Agency Liaison Arrangements

9.1. In addition to the exchange of information, liaison meetings will be held on an annual basis to discuss:

   a) Key or critical specialised insurer supervision issues and/or licensing issues
   b) Relevant policy and matters of broad mutual interest
   c) Emerging issues in the insurance industry
   d) Monitoring the effectiveness of this MOU and agreeing on any changes
Ian Laughlin  
Deputy Chairman  
Australian Prudential Regulation Authority  

Date: 9/12/14

Vivek Bhatia  
Chief Executive Officer  
Safety, Return to Work and Support Division  
WorkCover Authority of New South Wales  

Date: 16/12/14
Annexure A – Principal Contact Persons

The Australian Prudential Regulation Authority:

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Specialist – Industry Technical Services
Supervisory Support Division
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The WorkCover Authority of New South Wales:

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