

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**  
**AND**  
**THE DEPARTMENT OF HEALTH**

**1. Objective**

- 1.1. This Memorandum of Understanding (MOU) sets out a framework for cooperation between the Australian Prudential Regulation Authority (APRA) and the Department of Health (Health) in areas of common interest where co-operation is desirable for the effective and efficient performance of their respective functions under Commonwealth legislation
- 1.2. The objects of this MOU include, where relevant:
  - 1.2.1. Communication and information sharing in relation to the Parties' policy objectives;
  - 1.2.2. communication and information sharing in relation to prudential issues concerning the private health insurance industry; and
  - 1.2.3. communication and information sharing in relation to administrative matters.
- 1.3. APRA and Health (the Parties) agree that, consistent with their separate roles, they will cooperate where it is within their power to achieve effective outcomes.
- 1.4. This MOU is a statement of intent and does not create any legally binding obligations on the Parties.

**2. Term and Variation**

- 2.1. This MOU commences on the date it is signed by both Parties.
- 2.2. Either Party may propose a variation of this MOU. This MOU can only be varied by agreement in writing of the Parties.

**3. Responsibilities**

- 3.1. APRA is an independent statutory agency responsible for the prudential supervision of private health insurers. It is also responsible for the prudential supervision of banks, building societies and credit unions, life and general insurance companies, friendly societies, and superannuation funds and their trustees. APRA is also responsible for administering the Financial Claims Scheme. 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.

- 3.2. Health is the policy department responsible for private health insurance outcomes, design, and legislation (excepting the *Private Health Insurance (Prudential Regulation) Act*). Health is responsible for advising the Government, health portfolio ministers, and the community on the objectives and impact of private health insurance policies and programs.

#### 4. Regulatory and Policy Development

- 4.1. The Parties will notify the other within a reasonable time of any proposed changes in regulatory policy, guidance or regulatory decisions which are likely to impact on the responsibilities of the other in relation to private health insurance and provide the opportunity to consult.
- 4.2. Where appropriate, the Parties will discuss proposed policy development matters which may be relevant to the other Party. This may include proposed public or industry communications or media releases.
- 4.3. Without limiting the above, it is noted that the Minister for Health is required, under legislation, to consult APRA:
  - 4.3.1. before making, amending or revoking the *Private Health Insurance (Health Insurance Business) Rules*, or the *Private Health Insurance (Health Benefits Fund Policy) Rules*, (including where this affects the meaning of “health insurance business” or “health-related business”); and
  - 4.3.2. before making, amending or revoking the *Private Health Insurance (Risk Equalisation Policy) Rules*.
- 4.4. Health agrees to consult with APRA before making, amending, or revoking the *Private Health Insurance (Health Benefits Fund Administration) Rules* in respect of risk equalisation jurisdictions.
- 4.5. Without limiting the above, it is noted that APRA is required to consult Health in relation to changes in restricted access insurers’ registration groups.
- 4.6. Due to the potential implications for community rating over which Health retains policy responsibility, APRA will consult with Health in relation to any proposed changes to a restricted access group under the *Private Health Insurance (Registration) Rules*.
- 4.7. Under the *Private Health Insurance Act*, APRA administers the supervisory levy and the risk equalisation levy. Where appropriate APRA will consult with Health if APRA is of the view that an amendment to the supervisory levy or the risk equalisation levy, including matters such as how the levy is calculated and the rate at which late payment penalties are to be applied, is necessary.

## **5. Mutual Assistance and Co-ordination**

- 5.1. The Parties recognise the need for full collaboration and co-operation between them at all levels to effectively discharge their respective responsibilities. The Parties also acknowledge the importance of co-operation to promote confidence in the system for private health insurance and, where appropriate, the confident and informed participation of all stakeholders in that system.
- 5.2. Health and APRA will:
  - 5.2.1. Collaborate and encourage openness and accountability;
  - 5.2.2. Be responsive to each other's needs for ad hoc advice, information, and assistance;
  - 5.2.3. Be proactive and responsive to change; and
  - 5.2.4. Monitor the relationship to ensure it is efficient and effective.
- 5.3. The Parties agree to provide each other with mutual assistance in a timely manner in relation to the exchange of information, appropriate referral of matters and cooperation in relation to areas of mutual interest in relation to regulation, compliance, policy matters and enforcement consistent with all relevant laws.
- 5.4. The Parties agree to establish such arrangements as are appropriate to facilitate cooperation in matters such as co-ordinating information sharing, joint inspections or task forces, referral of cases and enforcement action or major supervisory intervention. The Parties will also co-ordinate operational matters such as administrative arrangements to avoid duplication, statistical collections, joint research work or industry consultation, and in relation to international fora. These arrangements will include APRA's Members and the Health Department Secretary, and their senior executives, as necessary.
- 5.5. The Parties agree that liaison in respect of routine operational matters will occur on an "as needed" basis between appropriate staff of the two Parties. In addition, the Parties will, where appropriate, consult each other in relation to arrangements for media releases, joint publications, and any proposal for joint contact with stakeholders concerning matters of mutual interest.
- 5.6. If requested by Health, APRA will endeavour to provide all reasonable assistance in relation to matters concerning the premium round for any particular year.

## **6. Dispute resolution**

- 6.1. Where the Parties disagree as to the matters covered by this MOU they will endeavour to resolve any issue expeditiously and amicably, and, in the meantime continue to perform their obligations. The matter in issue may be referred to Health and APRA's senior management for discussion.

## **7. Schedules to the MOU**

- 7.1. The Parties may, from time to time, discuss matters which are of common interest and then recorded in a Schedule to this MOU. The Schedules are intended to be 'living documents' in tune with the current environment and operational requirements.

## **8. Information Sharing**

- 8.1. APRA gathers a wide range of information on the private health insurance entities which it prudentially supervises. Health gathers a wide range of information in its role in relation to private health insurance.
- 8.2. The Parties agree that, subject to legislative provisions, information available to one Party, which is relevant to the responsibilities of the other Party, will be shared as requested. Each Party will provide relevant information to the other on a best endeavours basis, with due regard to the urgency of doing so.
- 8.3. When exchanging confidential information, the Parties acknowledge the confidentiality and secrecy requirements of the legislation under which each Party operates. The Party providing information has the right to specify the level of confidentiality attached to the information it provides to the other.
- 8.4. The Parties will work together to avoid duplication in the collection of information so as to minimise the reporting burden on private health insurers.
- 8.5. The Parties agree not to disclose any confidential information obtained pursuant to this MOU to a third party unless the Party wishing to disclose the information has obtained the prior consent of the Party which has provided the confidential information, or it is compelled by law to disclose the confidential information. In the event that it is compelled by law, it will notify the other Party and take all reasonable steps to assist production or ensure that the information remains confidential after production.
- 8.6. Subject to legal restrictions and appropriate cost sharing, each Party may arrange for information relevant to its responsibilities to be collected from private health insurers by the other Party.

## **9. Unsolicited Assistance**

- 9.1. Each Party 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 Party, be likely to assist that other Party in administering or enforcing the particular laws for which it is responsible.
- 9.2. Each Party agrees, subject to legal restrictions, to use its best endeavours to notify the other Party of the existence of any information of a kind referred to above, and with due regard to the urgency of doing so to provide such information to the other Party, notwithstanding that it may not have received a request from the other Party for such

information.

#### 10. Cost of Provision of Information

- 10.1. In general, the Party which receives a request for information will bear the cost incurred by it in locating and providing the information to the Party which requests the information.
- 10.2. If it appears to the Party 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 Party and the Parties may negotiate a cost-sharing arrangement in relation to the provision of that information.

#### 11. Termination

- 11.1. Either Party may terminate this MOU by giving notice in writing of not less than 14 days.

#### 12. Other

- 12.1. The Parties will co-operate to ensure that Australia has appropriate representation in regional and international regulatory fora and training initiatives. In some circumstances, there will be joint representation but where only one Party is represented it will consult with the other Party as needed before and after the particular gathering.

Unless otherwise notified, contact will be between the principal contact persons set out in Annexure A.

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Martin Bowles  
Secretary  
Department of Health

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Wayne Byres  
Chairman  
Australian Prudential Regulation Authority

Date: 10/5/2016

Date: 18/5/2016