MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY
(APRA)

AND

THE MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES
(MAA)
1. Objective

1.1 This memorandum of understanding (MOU) sets out a framework for cooperation between APRA and the MAA (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 supervision of authorised deposit-taking institutions (ADIs – 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 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 NSW 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 MAA to participate in the NSW CTP scheme and provides regular advice on the insurers’ stability and solvency to the MAA (Schedule One). Consequently, APRA has a keen interest in any knowledge of a general insurer’s business operations, including any information, which may come into the possession of the MAA.

2.2 As soon as is practicable, APRA will advise the MAA of any general insurer licensed to write NSW CTP insurance that APRA has assessed as being at critical risk of failure.

A notifiable change in the risk assessment of an insurer outside of regular information exchange between the MAA and APRA will include, while not being limited to, a critical fall in the insurer’s MCR 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”.

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2.3 As soon as is practicable, APRA will advise the MAA of its intention to do any of the following in relation to a general insurer licensed to write NSW CTP insurance:

- Appoint an Inspector to investigate a general insurer; and provide MAA 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. MAA Responsibilities

3.1 The MAA is responsible for the regulation of compulsory third party-personal injury insurance (CTP) in New South Wales. General insurers must be authorised to write insurance business under the Insurance Act 1973 before the MAA may license a general insurer to issue CTP insurance policies. The MAA supervises general insurers’ compliance with licence conditions applying to the insurers under the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988. In addition, the MAA is the Nominal Defendant, so it guarantees the payment of all NSW CTP claims in the event of a general insurer’s insolvency. The MAA relies on information provided by APRA to ascertain that general insurers underwriting the NSW CTP scheme meet APRA’s solvency requirements and so the MAA has a very strong interest in APRA’s monitoring activities in relation to the solvency of licensed CTP general insurers.

3.2 The MAA 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 MAA will also consult with APRA prior to applying for a Supreme Court order to protect the interests of CTP policy-holders where the MAA is of opinion that that the CTP insurer is unable to meet its NSW 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 cooperation in regulation, compliance, and enforcement within the framework of this agreement and which is consistent with all relevant laws.
5. **Information Sharing**

5.1 The MAA may require information from APRA to assist the MAA in meeting its obligations and in its determination of an insurer's application for a NSW CTP licence and in making decisions about the potential exercise of its reserve powers under the *Motor Accidents Compensation Act 1999* to suspend or cancel an insurer's licence.

5.2 Full and timely exchange of information is a crucial element in co-ordination between APRA and the MAA.

5.3 APRA gathers a wide range of information on the entities that it prudentially supervises. The MAA gathers a limited range of information relating to its prudential role on the entities it licenses and supervises.

5.4 The agencies agree that, subject to legislative provisions, information available to one agency, which is relevant to the responsibilities of the other agency, will be shared as requested. Each agency will provide relevant information 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, such as claims of legal professional privilege.

5.5 When exchanging confidential information, APRA and the MAA 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 agreement 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 sharing, each agency may arrange for information relevant to its responsibilities to be collected from financial entities by the other agency.

5.8 Except as provided for in Part Two of Schedule One to this MOU, requests by an agency for information subject to any secrecy provisions 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.
5.9 The following officers are authorised to request information that is subject to secrecy provisions:

**APRA:** Pursuant to s 56 (5) (a) of the APRA Act, 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

**MAA:** The General Manager, the Deputy General Manager, the Manager Insurer Licensing & Performance, and the Principal Financial & Compliance 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 s 56 (5) (a) of the APRA Act, the Manager, Industry and Technical Services (ITS) and the Manager Statistics or the holders of equivalent positions, subject to the approval of the release by an APRA General Manager; and

**MAA:** The General Manager, the Deputy General Manager, the Manager Insurer Licensing & Performance, and the Principal Financial & Compliance Analyst, or the holders of equivalent positions.

6 **Standing Requests for Specified Information**

6.1 Standing requests for specified information by APRA and MAA, including details the officers in each agency authorised to manage the requests, are set out in the attached Schedule One.

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 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.

8. **Cost of Provision of Information**

8.1 In general, the agency which 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 provision of that information.
9. Interagency Co-operation

9.1 In addition to the exchange of information both agencies agree that there will be 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; and
- the sharing of relevant statistical information and other corporate materials including guidelines and manuals.

Ian Laughlin
Member
Australian Prudential Regulation Authority

Date: 18/5/12

Andrew Nicholls
Acting General Manager
Motor Accidents Authority of NSW

Date: 10 May 2012
SCHEDULE ONE

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

In this schedule 'NSW CTP insurer' means an insurer that holds a NSW CTP licence under the Motor Accidents Compensation Act 1999 and its predecessor the Motor Accidents Act 1988, including an insurer whose NSW CTP licence has been suspended by the MAA.

PART ONE – Regular information exchange

1.1 Prior to MAA/APRA supervisory liaison meetings, or as required, the APRA Manager Industry and Technical Services will provide full PAIRS assessments of NSW CTP insurers whenever revised, with sensitive corporate group information blacked out if necessary.

This documentation may include APRA’s view of the risk contagion to the NSW CTP insurer from other operations of the broader corporate group, through the strategy and planning and capital support elements of the assessment.

- At the written request of the MAA, the provision by the APRA Manager Statistics of quarterly and annual insurer APRA basis solvency data for NSW CTP insurers for the most recent two financial quarters.

PART TWO – Agency liaison arrangements

- Twice-yearly liaison meetings between the MAA executive and APRA executive managers for agency level discussions on policy and matters of broad mutual interest, as described in 9.1;

- At or around the same date as these meetings, MAA consultations with APRA frontline supervisors co-ordinated by the Manager Industry and Technical Services to discuss NSW CTP insurer-specific prudential supervision issues;

- Continuous liaison through single contact points in each agency (the Manager Industry and Technical Services in APRA and the Principal Financial & Compliance Analyst or the holder of an equivalent position in the MAA), 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 MAA any other information in APRA’s possession that relates to the MAA’s licensing of NSW CTP insurers.