

## MEMORANDUM OF UNDERSTANDING

### BETWEEN

**THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)** of Level 26, 400 George Street, Sydney

### AND

**THE COMMISSIONER FOR FAIR TRADING, OFFICE OF FAIR TRADING, DEPARTMENT OF COMMERCE** of Level 20, 227 Elizabeth Street, Sydney ("the Commissioner")

#### 1. BACKGROUND

- 1.1 APRA is established by section 7 of the *Australian Prudential Regulation Authority Act 1998* (Commonwealth) ("the APRAA").
- 1.2 Section 8(1) of that Act provides that the purpose of APRA is to regulate bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards, and to develop the administrative practices and procedures to be applied in the performance of its regulatory role.
- 1.3 In that regard, APRA is responsible for the prudential regulation of authorised deposit taking institutions ("ADIs") such as banks, building societies and credit unions, life insurance companies (including benefit fund friendly societies), general insurance companies and superannuation funds.
- 1.4 The Commissioner has functions under the *Fair Trading Act 1987* ("the FTA"), the *Home Building Act 1989* ("the HBA") and the *Home Building Regulation 2004* ("the HBR").
- 1.5 As the prudential regulator of insurance companies, APRA has an interest in knowledge of an insurer's business operations, including information, which may come to the attention of the Commissioner regarding companies that provide insurance for the purposes of Part 6 of the HBA.
- 1.6 Part 6 of the HBA prohibits, in certain circumstances, the doing of residential building work, supply of a kit home or sale of land on which residential building work is done or proposed to be done unless a contract of insurance with an approved insurer which complies with the HBA is in force.
- 1.7 Among other things, section 102(2) of the HBA provides that the insurance must be of a kind approved by the Minister and be provided by an insurer approved by the Minister.



- 1.8 Section 103 of the HBA provides that the HBR may set out requirements for professional indemnity insurance and other similar forms of insurance entered into for the purposes of Part 6.
- 1.9 Section 9A of the FTA permits the Commissioner to enter into information sharing agreements with relevant agencies and authorises the Commissioner and a relevant agency to request and receive information from one another and disclose information to the other in certain circumstances. APRA is a "relevant agency" for the purposes of section 9A.
- 1.10 APRA and the Commissioner wish to enter into an information sharing arrangement for the exchange of information regarding insurers who provide home warranty insurance or professional indemnity insurance or other similar forms of insurance for the purposes of Part 6 of the HBA in order to promote the financial stability and solvency of general insurers.

## **2. TERM**

- 2.1 This MOU commences on the date that the last party signs this MOU and expires three years from that date unless this MOU is further extended in writing under clause 9.

## **3. RESPONSIBILITIES OF PARTIES**

- 3.1 The Commissioner and APRA agree that, subject to legislative provisions, information available to one party, which will assist the other party to perform its functions or exercise its powers, will be shared as requested.
- 3.2 When exchanging confidential information, APRA and the Commissioner acknowledge the confidentiality and secrecy requirements of the Acts 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, in order to protect that information from unauthorised use, or disclosure. The party 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.
- 3.3 Each party 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 party which has provided the confidential information.
- 3.4 The obligations under clause 3.2 and 3.3 continue after the expiry or early termination of this MOU.
- 3.5 Without limiting the information which the Office of Fair Trading of the Department of Commerce (OFT) may provide under clause 4.1, OFT will provide APRA with information regarding approved insurers, including any instances of a failure by such insurers to provide insurance in accordance with the provisions of Part 6 of the HBA and Part 5 of the HBR and any action to suspend an insurer pursuant to section 103AA of the HBA.



#### **4. MUTUAL ASSISTANCE**

- 4.1 The parties recognise that it is important they co-operate to promote the efficient regulation of the general insurers authorised by APRA to carry on insurance business in NSW and a confident and informed market in that regard, particularly relating to policy-holders, beneficiaries under policies and contractor licence holders in respect of the home warranty insurance scheme.
- 4.2. Subject to applicable law, the parties agree to provide each other with mutual assistance in relation to the exchange of information, appropriate referral of matters and cooperation in compliance within the framework of this MOU.

#### **5. AGREED PRINCIPLES OF INFORMATION SHARING**

The parties agree that:

- 5.1 Full and timely exchange of information is a crucial element in co-ordination between APRA and OFT.
- 5.2 Subject to relevant legislative provisions, information available to one party, which will assist the other party to perform its functions or exercise its powers, will be shared as requested.

#### **6. COST OF PROVIDING INFORMATION**

- 6.1 In general, the party which receives a request for information shall bear the cost incurred in locating the information and providing it to the party which requests the information.
- 6.2 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 two parties may negotiate a costing arrangement in relation to the cost burden of the provision of that information.

#### **7. INTER-PARTY CO-OPERATION**

- 7.1 Both parties agree to meetings to exchange information, discuss matters of mutual interest and co-operate on such matters.
- 7.2 Such information and 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 agency;
  - (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.

7.3 From time to time, APRA and OFT may discuss and develop possible strategies and responses to be implemented in scenarios involving adverse consequences for the home warranty insurance scheme or general insurance industry in NSW, eg the insolvency of an approved insurer.

#### 8. EXTENSION

The parties may, before or on the expiration date of this MOU, agree in writing to extend this MOU for a specified period.

**SIGNED by Lyn Baker, COMMISSIONER FOR  
FAIR TRADING, OFFICE OF FAIR TRADING,  
DEPARTMENT OF COMMERCE**, but not so as  
to incur any personal liability in the presence of:

\_\_\_\_\_  
Name of Witness

**SIGNED by Dr. John Laker, CHAIRMAN,  
AUSTRALIAN PRUDENTIAL  
REGULATION AUTHORITY**, but not so as  
To incur any personal liability, in the presence of:

\_\_\_\_\_  
Name of Witness

22 JUNE 2007