

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)

AND

THE PRIVATE HEALTH INSURANCE ADMINISTRATION COUNCIL (PHIAC)

1. Objective

- 1.1 This memorandum of understanding (MOU) sets out a framework for cooperation between APRA and PHIAC (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 reduce duplication and compliance costs and achieve effective enforcement and compliance outcomes for the relevant industries and the agencies.
- 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. Responsibilities

- 2.1 APRA is responsible for the prudential regulation of authorised deposit taking institutions (ADIs), which include 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. Benefit fund friendly societies are regulated under the *Life Insurance Act 1995* (the Life Act) following amendments to the Life Act by the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No.1) 1999*.
- 2.2 APRA does not regulate friendly societies that carry on solely health insurance business; these are regulated under the *Private Health Insurance Act 2007* (the PHI Act) by PHIAC. APRA does, however, regulate the non-health benefit fund business of those friendly societies that carry on both health insurance business and life insurance business. Friendly societies such as these are called 'jointly regulated friendly societies'.

- 2.3 PHIAAC is an independent statutory authority which regulates the private health insurance industry. Under section 264-5 of the PHI Act, the PHIAAC is required to take all reasonable steps to perform its functions and exercise its powers with a view to achieving an appropriate balance between: fostering an efficient and competitive health insurance industry; protecting the interests of consumers; and ensuring the prudential safety of individual private health insurers.
- 2.4 The agencies have a common interest in the development of administrative policy for the regulation of those parts of the insurance industry for which they hold jurisdiction. There is a conjunction of interests to ensure close cooperation in relation to protecting the interests of consumers, which includes consistency in the supervision and regulation of insurers.

3. Regulatory Policy Development

- 3.1 Changes in regulatory policy or regulatory decisions on particular matters by either agency may have implications for the other agency. Each agency therefore will notify the other of any proposed changes to regulatory policies or decisions which may impact on the responsibilities of the other, and provide an opportunity to comment on any proposed changes.
- 3.2 The agencies agree that, where appropriate, consultations will occur in relation to policy statements and media releases which are being formulated, which may be of interest to, or have an effect on the other agency. Where appropriate, the agencies may consider issuing a policy statement or media release jointly.

4. Mutual Assistance

- 4.1 The agencies recognise that it is important that they cooperate to promote public confidence in those parts of the insurance industry for which they hold jurisdiction.
- 4.2 The agencies agree to provide each other with assistance in relation to the exchange of information, appropriate referral of matters and cooperation in regulation, compliance, supervisory intervention and enforcement within the framework of this MOU, and which is consistent with all relevant legislative provisions and policies.

5. Information Sharing

- 5.1 Full and timely exchange of information is a crucial element in co-ordination between APRA and PHIAC.
- 5.2 APRA gathers a wide range of information on life insurance companies, which are prudentially regulated. PHIAC gathers a wide range of information in its role in supervising and regulating the Australian private health insurance industry.
- 5.3 The agencies agree that subject to legislative provisions, information available to one agency, which is relevant to the operations of the other, 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 or 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.
- 5.4 When exchanging confidential information, the agencies acknowledge the confidentiality and secrecy requirements of the legislation 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.
- 5.5 The agencies will work together to avoid duplication in the collection of information so as to minimise the reporting burden on relevant institutions.
- 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, or it is required, authorised or permitted by law to disclose the confidential information. Where the receiving agency is required, permitted or authorised to disclose confidential information provided pursuant to this MOU it will immediately notify the providing agency.
- 5.7 Subject to legal restrictions and appropriate cost sharing, each agency may arrange for information relevant to its responsibilities to be collected from the relevant entities by the other agency.

6. Unsolicited Assistance

- 6.1 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.
- 6.2 Each agency agrees, subject to legal restrictions, to use its best endeavours to notify the other agency 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 agency, notwithstanding that it may not have received a request from the other agency for such information.

7 Major Supervisory Intervention of Related Groups

- 7.1 The agencies will cooperate to notify each other where one agency considers that it might commence a major supervisory intervention, in respect to an entity which falls within the definition of a related group. This may include: commencing an investigation; issuing a direction; accepting an enforceable undertaking; appointing an inspector or external manager; commencing proceedings in the Federal Court; or any other significant enforcement action taken under either agency's respective legislation.

8. Cost of Provision of Information and Support Services

- 8.1 In general, the agency which receives the request for information shall bear the cost incurred by it in locating and providing the information to the agency which requests the information.
- 8.2 Each agency will endeavour to provide support services to the other to assist in the discharge of supervisory functions. 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 the effect to the requesting agency and, the agencies may negotiate a cost sharing arrangement in relation to the provision of that information.

9 Administrative Arrangements

9.1 The agencies will provide a contact point to which initial request for information or assistance under this MOU should be directed. A contact point may nominate another person within the agency to whom all further correspondence should be directed. The officers responsible for the administration of the MOU are:

- a person holding the position of Member of APRA; and
- the person holding the position of Chief Executive Officer of PHIAC.

9.2 The MOU may be amended by written agreement between the Member of APRA and the Chief Executive Officer of PHIAC. Both agencies will notify the other of any changes to their legislation which may impact on the arrangement established by the MOU. Any consequential changes necessary to the MOU will be subject to consultation.

9.3 The officers responsible for the day to day operations under the MOU are:

- the person holding the position of General Counsel or General Manager at APRA; and
- the person holding the position of General Counsel at PHIAC.

9.4 Changes of contact officers will be notified within ten working days and transitional arrangements put in place to deal with communication in the interim.

10 Review of the MOU

10.1 Upon the one year anniversary of the MOU, representatives of the agencies will review the flow of information between the agencies and consider, if appropriate, necessary amendments to the MOU. Thereafter, periodic review of the MOU may take place on request from either party, from time to time.

10.2 Nothing in this paragraph precludes the parties from mutually determining to amend the MOU at any time.

11 Disputes

11.1 Any dispute about the interpretation or application of the MOU will be resolved

by consultations between the agencies, and will not be referred to any tribunal or third party for settlement.

12. Definitions

12.1 In this MOU:

“PHI Act” means the *Private Health Insurance Act 2007* (Cth) as in force for the time being;

“Life Act” means the *Life Insurance Act 1995* (Cth) as in force for the time being;

“Private health insurer” means an organisation registered under section 126 of the PHI Act; and

“Related group” means a group of entities in which one or more other entities is regulated under the *Life Act 1995* and is in part a parent or a subsidiary of a private health insurer regulated under the PHI Act.

12.2 For the purposes of the definition of “related group”, an entity (first entity) is related to another entity (second entity) if the first entity is:

- a holding company (as defined in the *Corporations Act 2001* (Cth));
- a subsidiary (as defined in the *Corporations Act 2001* (Cth)) of the second entity;
- a subsidiary of a holding company of the second entity; or
- a shareholder or member of the second entity or of a related entity.

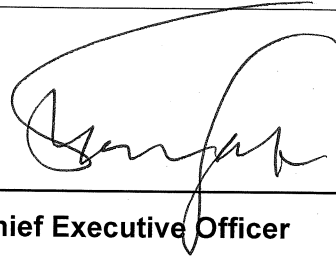
13 This MOU comes into effect on this date and replaces the previous MOU signed on 21 January 2000.

SIGNED on behalf of

**PRIVATE HEALTH INSURANCE
ADMINISTRATION COUNCIL by**

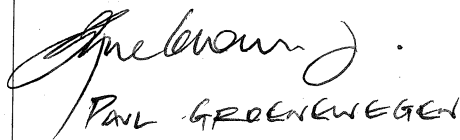
In the presence of

Name and title of Witness



**Chief Executive Officer
Shaun Gath**

Dated 21/12/2010



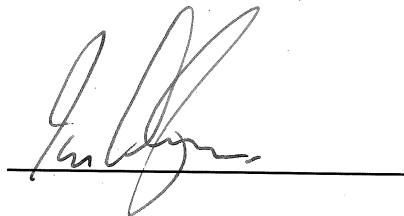
PAUL GROENEWEGEN

SIGNED on behalf of

**THE AUSTRALIAN PRUDENTIAL
REGULATION AUTHORITY by**

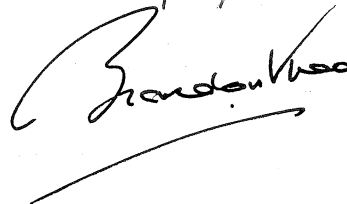
In the presence of

Name and title of witness



**Member
Ian Laughlin**

Dated 16/12/10



**BRANDON KUOO
EGM - 510**