

Australian Capital Territory

Road Transport (Third-Party Insurance) (Industry Deed) Approval 2016 (No 1)

Disallowable instrument DI2016-271

made under the

Road Transport (Third-Party Insurance) Regulation 2008, Section 6

1 Name of instrument

This instrument is the Road Transport (Third-Party Insurance) (Industry Deed) Approval 2016.

2 Commencement

The instrument commences on the day after notification.

3 Approval

I approve the deed at Schedule 1 as the required content for an Insurance Industry Deed (for the purpose of section 6 of the *Road Transport (Third-Party Insurance) Regulation 2008*).

4 Insurance Industry Deed

The Insurance Industry Deed at Schedule 1 provides for the matters mentioned in section 10 of the *Road Transport (Third-Party Insurance) Act 2008*.

5 Revocation

The Road Transport (Third-Party Insurance) (Industry Deed) Approval 2013 (DI2013-51) is revoked.

Karen Doran
CTP Regulator

24 October 2016

Road Transport (Third-Party Insurance) Act 2008

INDUSTRY DEED

THIS DEED is made the day of .

Between:	THE AUSTRALIAN CAPITAL TERRITORY (the “Territory”) of the first part;
AND:	AUSTRALIAN CAPITAL TERRITORY INSURANCE AUTHORITY a Corporation established pursuant to the <i>Insurance Authority Act 2005</i> (“ACTIA”) of the second part.
AND:	The insurers holding a CTP insurer licence pursuant to the <i>Road Transport (Third-Party Insurance) Act 2008</i> (the “CTP Insurers”) of the third part;

RECITALS

- A. The *Road Transport (Third-Party Insurance) Act 2008* (the “Act”) is an Act about third-party insurance, and for other purposes.
- B. Pursuant to section 183 of the Act, a Corporation is eligible for a CTP insurance licence only if, amongst other things, it is a party to the Insurance Industry Deed. The Insurance Industry Deed is a Deed that is between the Territory, ACTIA and licensed insurers which regulates the conduct of CTP insurance business and matters incidental to the conduct of CTP insurance business and the compulsory third party insurance scheme under the Act, as defined in section 9 of the Act. Section 10 of the Act provides that the Deed may include provisions for a number of matters set out in that section and that the regulations may also prescribe what may or must be included in the Insurance Industry Deed or anything else relating to the content of the Deed.
- C. Under section 6 of the Road Transport (Third-Party Insurance) Regulation 2008 (the “Regulation”), the CTP Regulator must approve the required content for an insurance industry deed, this approval being a disallowable instrument. Pursuant to section 6, this is the Insurance Industry Deed as defined under section 9 of the Act.
- D. Under section 13 of the Act, ACTIA, a statutory authority established pursuant to section 7 of the *Insurance Authority Act 2005*, is the Nominal Defendant. Part 2.7 of the Act confers certain authorities and obligations on the Nominal Defendant in relation to personal injury caused by a motor accident involving an unidentified motor vehicle, uninsured motor vehicle or an unregistered vehicle permit.
- E. The CTP Insurers are Corporations who, pursuant to Part 5.2 of the Act, have applied and been issued by the CTP Regulator with a CTP insurer licence.
- F. Pursuant to section 9 of the Act, the parties have agreed to the terms of this Insurance Industry Deed for the purpose of regulating the conduct of CTP

insurance business (as defined by the Act) and matters incidental to the conduct of the CTP insurance business and the compulsory third-party insurance scheme under the Act.

NOW THIS DEED WITNESSES:

1. DEFINITIONS AND INTERPRETATION

1.1 Dictionary

Words defined in the dictionary of the Act, unless the contrary intention appears, apply to this Deed.

1.2 Further Definitions

In this Deed, unless the contrary intention appears, the following definitions apply:

“Act” means the *Road Transport (Third-Party Insurance) Act 2008*, and includes any Regulation, determination or instrument made under it.

“ACTIA” means the Australian Capital Territory Insurance Authority in its capacity as the Nominal Defendant.

“accession deed” means the accession deed referred to in clause 2.

“business day” means a day that is not a Saturday or Sunday; or a public holiday or bank holiday in the ACT.

“claim costs” means the amounts paid out by the insurer to or on behalf of a claimant in relation to a claim or the legal costs (including disbursements) of the claimant relating to the claim as the result of the final settlement or verdict in relation to a claim (not the insurers general administration costs).

“claims handling costs” means the reasonable amount:

- (a) paid by the insurer to another person (other than a related body corporate of the insurer as determined under the Corporations Law or an employee of the insurer or that related body corporate); or
- (b) incurred by an insurer or a related body corporate which are permitted under the Guidelines,

for the provision of medical, legal or investigative services in respect of a motor accident claim including payments made in relation to recovery actions.

“CTP Insurer” means a corporation licensed as a CTP insurer under the Act.

“Deed” means this Insurance Industry Deed as amended from time to time together with any accession deed executed in accordance with clause 2.

“insurer” of a motor vehicle for a motor accident claim means the licensed CTP Insurer for the CTP policy under which the person is insured and includes ACTIA (ie. the motor vehicle is not subject to a CTP policy issued by a CTP Insurer).

“sharing agreement” means the agreement to share the cost of claims under clause 4 of this Deed.

“suspended licensee” means a CTP Insurer whose licence has been suspended pursuant to section 194 and section 195 of the Act.

1.3 Interpretation

Chapters 14 and 15 of the *Legislation Act 2001* (the “Legislation Act”) apply to the interpretation of this Deed. The following principles also apply to the extent that they are not inconsistent with the Legislation Act:

- (a) a reference to a clause shall be a reference to all of its subclauses, and a reference to a subclause shall be a reference to all its sub-subclauses unless the contrary intention appears;
- (b) headings and underlining are for reference only and have no effect on the construction, interpretation or meaning of the clauses;
- (c) the Schedules referred to in this Deed form part of and are subject to the terms of this Deed;
- (d) where the last day of any period prescribed or allowed by this Deed for the doing of anything falls on a day that is not a business day, the thing may be done on the first business day following that day;
- (e) all sums of money and all payments made under this Deed shall be in Australian dollars.

1.4 Operative Date

- (1) This Deed shall commence:
 - (a) for a current CTP Insurer and ACTIA on the date the Deed is signed by each party; and
 - (b) for a new CTP Insurer, the date on which its CTP insurer licence commences under the *Road Transport (Third-Party Insurance) Act 2008*.
- (2) The deed fully signed by insurers on 14 June 2013 (“prior deed”) ceases to have effect on the date this Deed is signed by current CTP insurers and ACTIA. To remove doubt, the prior deed continues to apply to any matter arising before commencement of this Deed.

1.5 Ceasing to be a Party - CTP Insurers

A CTP Insurer shall cease to be a party to this Deed on the date the CTP Insurer licence of that CTP Insurer is cancelled under the Act by the CTP regulator or otherwise cancelled under the Act, so long as any liability under this Deed has been discharged or transferred to another insurer.

2. ACCESSION

2.1 Execution of Deed of Accession

- (1) A corporation, intending to become a licensed CTP Insurer and not already a party to this Deed, may become a party to this Deed by executing an accession deed in the form of Schedule 2 or in such other form as the parties may approve.
- (2) An executed accession deed is a Notifiable Instrument.

2.2 Date of Accession

An accession deed operates from the date on which the corporation that executed the accession deed becomes a licensed CTP Insurer.

2.3 No Other Consent Necessary

The consent or agreement of any other party is not required for a corporation executing an accession deed to become a party to this Deed.

3. ADMINISTRATION AND BUSINESS PROCESSES

3.1 Administrative and Business Processes for licensed CTP insurers

Insurers must follow administration and business processes as outlined in the Insurance Industry Deed, eg., follow the Sharing Guidelines, with the intent of removing wasteful litigation from the claims management process.

The co-operation of insurers is integral to good outcomes being achieved and sound business processes extend to section 4.6, 'Insurers to co-operate'.

The administration processes outlined in section 4.7 should also be followed.

4. SHARING AGREEMENT

4.1 Interpretation

In this clause, unless the contrary intention appears:

- (a) "collision" in relation to a motor accident means the physical contact of:
 - (i) one motor vehicle with another or other motor vehicles;
 - (ii) a person or thing in or on one motor vehicle with another motor vehicle or other motor vehicles;
 - (iii) a person or thing in or on one motor vehicle with the passengers or goods in or on another motor vehicle or other motor vehicles;
 - (iv) one motor vehicle and another motor vehicle or other motor vehicles and a pedestrian or cyclist;

- (v) a pedestrian or cyclist with one motor vehicle or other motor vehicles notwithstanding that there has been no contact between the motor vehicles; or
- (vi) both motor vehicles where one motor vehicle is being towed by or attached to another motor vehicle for towing, and one of the motor vehicles is involved in the collision;

and, includes consecutive contacts between the same where collisions, although not contemporaneous, are so closely related in time as to constitute one event or occurrence;

- (b) “referee” means a person or one of the persons selected from a panel approved by the insurers who shall determine a dispute or difference under this clause.

4.2 Sharing of motor accident claims

- (1) If 2 or more insurers are liable or potentially liable in relation to a motor accident claim, then each insurer must share in the claim costs of that claim.
- (2) Sharing in a motor accident claim for ACTIA is limited to vehicles that are subject to an unregistered vehicle permit and/or an uninsured vehicle and to the extent of the liability prescribed under section 59 and 61 of the Act. Costs are not shared by ACTIA for unidentified motor vehicles (section 63).
- (3) For the purpose of this clause, the insurer of a motor vehicle is potentially liable in relation to a motor accident claim if that motor vehicle is involved in a collision that gives rise to a motor accident claim.
- (4) However, the requirement to share in the claim costs under subsection (1) does not include the insurer of a motor vehicle involved in a collision where the motor accident claim is made by the driver of that motor vehicle, unless the responsible person for that motor vehicle:
 - (a) caused the collision; and
 - (b) was indemnified in relation to that collision by the insurer.

4.3 Dispute about whether a motor vehicle was involved in a collision

If there is a dispute in relation to whether an insurer is liable or potentially liable for the purpose of clause 4.2, and the dispute is not resolved within one month, then the dispute must be referred to the referee by the disputing insurer. Referral to the referee should be notified in writing to the CTP regulator.

4.4 Conduct of a claim – claim manager

- (1) Questions about which insurer is to be the claim manager are to be resolved as soon as practicable after notice of a motor accident claim is given under Part 4.2 of the Act.

- (2) If the question about which insurer is to be the claim manager has not been resolved by agreement within two months, the insurer of the motor vehicle that principally caused or appears to have principally caused the collision shall be the claim manager.
- (3) The claim manager shall be authorised to, as it sees fit:
 - (a) settle and compromise the motor accident claim;
 - (b) seek contribution or take recovery action for costs on behalf of itself and each other insurer; and
 - (c) otherwise deal with the motor accident claim or series of motor accident claims.

4.5 Method of sharing claim costs

- (1) Insurers required to share the claim costs of a motor accident claim under the Sharing Agreement are to agree the basis on which claim costs are to be shared between them.
- (2) If the basis on which claim costs are to be shared is not agreed under subsection (1) within 2 months of each insurers' liability being determined by the insurer, the claim costs are to be shared between the licensed insurers in the proportions that the number of motor vehicles insured by each insurer bears to the total number of vehicles involved in the accident.

4.6 Insurers to Co-operate

Each of the insurers shall co-operate in the handling and settlement of all motor accident claims to which this clause applies and shall provide to any other insurer, who is or is likely to share the claim cost, information in respect of the motor accident claim or to the referee all information required by the referee.

4.7 Sharing Guidelines

The insurers may agree to make or vary Guidelines to give effect to the administration of the Sharing Agreement and those Guidelines may provide for but are not limited to:

- (a) the means by which insurers are to agree on the basis on which claim costs are to be shared between them;
- (b) the proportion (if any) and means by which insurers will share claims handling costs;
- (c) the appointment, process, functions, determinations and costs of a referee in relation to disputes or differences under clause 4;
- (d) the means of determining which insurer will manage the motor accident claim;
- (e) the procedure involved with applying for, responding to and reconciling sharing claims;
- (f) monetary or other limitations or exclusions to sharing;
- (g) sharing recoveries; and
- (h) reporting requirements between insurers.

4.8 Referee

If there is any dispute or difference as to any matter arising under this clause, the dispute or difference may be referred to a referee, with notification to the CTP regulator in writing.

The referee is to determine the dispute or difference as they see fit with a view to expeditiously and with as little formality as possible resolving the dispute or difference. After considering the dispute or difference, the referee may give a direction to the parties to the dispute or difference and that direction shall be final and binding upon all parties to the dispute or difference.

4.9 Variation

If the insurers agree, they may vary the terms of the Sharing Agreement in writing. The variation shall require the approval of the Territory, approval of which shall not be unreasonably withheld.

5. BULK BILLING

5.1 Territory to Provide Insurers with Opportunity to Enter Bulk Billing Agreements

The Territory agrees that it will provide all CTP Insurers with the opportunity to enter into any bulk billing agreement which the Minister for Health or the CTP Regulator enters into with any insurer including any non-CTP insurer, statutory insurer or self-insurer.

5.2 Insurers to be Party to any Bulk Billing Agreement

If a CTP Insurer agrees to enter into a bulk billing agreement, unless that agreement has expired or has been terminated, any corporation who is granted a CTP insurer licence and becomes a party to this Deed shall be deemed to be a party to the bulk billing agreement on and from the date the CTP insurer licence is granted.

The corporation shall execute a counterpart of the bulk billing agreement or do such other act or thing that may be necessary or convenient to give effect to this clause.

5.3 CTP Regulator not to enter Separate Agreements with Insurers

During any period in which an agreement under this clause operates, the Territory shall ensure that either the Minister for Health or the CTP Regulator does not enter into any separate agreement with any CTP insurer in relation to the matters which are the subject of that agreement.

6. OTHER OBLIGATIONS OF INSURERS

6.1 Exchange of Information

An insurer shall provide to any other insurer, on request, any information in respect of a motor accident claim in which the insurers have a mutual interest or where the claimants are in any way related to each other or other parties involved in the motor accident claims.

7. AGREEMENT BY INSURERS

7.1 Approval Requirements

In relation to any matter requiring the consent, agreement or approval of all CTP insurers under the Act or this Deed, then if 75% of those CTP insurers representing at least 65% of the market share of all CTP insurers so agree, then all CTP insurers, as the case may be, shall be deemed to have given their consent, agreement or approval.

7.2 Method of Obtaining Approval

Consent, agreement or approval under subclause 7.1 may be evidenced by a document or series of documents setting out the matter consented to, agreed or approved by the required majority of CTP insurers.

7.3 CTP Insurers May Appoint Agent

For the purpose of entering into or negotiating any agreement supplementary to this Deed or relating to the third party business of CTP insurers or for any other matter, the CTP Insurers may pursuant to this clause appoint a person or persons as the agent or representative of all the CTP insurers for that purpose.

7.4 Other Agreements

If the insurers agree in writing on any matter relating to the operation of this Deed or the Act in accordance with subclause 7.1, then all insurers as the case may be shall be deemed to have given their agreement to that matter.

8. APPLICABLE LAW

This Deed shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties agree to submit to the non-exclusive jurisdiction of the Courts of the Territory.

9. NOTICES

9.1 Address for delivery of notices

Any notice, approval, request, consent or other communication given or made to a party under this Deed must be in writing and delivered in person or sent by post, email or facsimile transmission to the party at the following address, email address or facsimile number:

in the case of the CTP Regulator:

Address: 1 Constitution Ave, Canberra ACT 2601
GPO Box 158, CANBERRA CITY ACT 2601
Facsimile No: (02) 6207 0267
Email:

in the case of the ACT Insurance Authority in its capacity as Nominal Defendant

Address: 1 Constitution Ave, Canberra ACT 2601
GPO Box 158, CANBERRA CITY ACT 2601
Facsimile No: 02 6207 0301
Email:

in the case of the CTP Insurers:

at the address, email address, facsimile number set forth in Schedule 1 or in the accession deed executed by the particular CTP Insurer;

or such other address, email address, facsimile number as a party from time to time may notify to the other parties for the purpose of this clause.

9.2 Deemed delivery of notices

Any notice, approval, request, consent or other communication given or made pursuant to this clause shall be deemed to be duly given or made:

- (a) in the case of delivery in person, when delivered to the recipient at the nominated address;
- (b) in the case of delivery by priority post, within two business days from the day of posting. If not sent by priority post, six business days from the day of posting; or
- (c) in the case of facsimile or email, on the day the facsimile or email is sent

If delivery or receipt is later than 5.30 p.m. (local time) on a business day it shall be deemed to have been duly given at the commencement of business on the next business day.

Priority post is a reference to any means provided by Australia Post to facilitate faster delivery, including a priority label or Express Post.

10. WAIVER

10.1 Delay in Exercise of Rights

No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default by any other party under this Deed shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default thereafter occurring nor shall any waiver of any single breach or default be deemed to be a waiver of any other breach or default.

10.2 Waivers

Any waiver agreement, consent or approval of any kind or character on the part of any party of any breach or default by any other party or any waiver on the part of any party of any provisional condition of the Deed must be in writing and shall be effective only to the extent specifically set forth in such writing.

10.3 Remedies Cumulative

All remedies available to the parties under this Deed shall be cumulative.

11. ENTIRE AGREEMENT

The terms and conditions of this Deed together with any written amendments which are confirmed by the parties as amendments to this Agreement shall constitute the complete Deed between the parties and it is expressly agreed and declared that no further or other covenants or provisions in respect of this Deed or otherwise shall be deemed to be implied in this Agreement or to exist between the parties by way of collateral or other deed by reason of any promise, representation, warranty or undertaking given or made by any party to another party on or prior to the execution of this Deed and the existence of any such implicational collateral or other agreement is hereby negated.

12. AMENDMENTS OR VARIATION

No amendment or variation of this Deed by any other party shall be of any force or effect unless the amendment or variation is conferred in writing and signed by all parties.

13. ASSIGNMENT

The Deed may not be assigned in whole or in part by any party without the prior written consent of all other parties.

14. COSTS

The parties shall each bear their own legal and other costs incidental to the preparation, execution and implementation of this Deed.

IN WITNESS WHEREOF the Parties have executed this DEED this day

SIGNED by _____)

for and on behalf of the **CTP Regulator** in the)

presence of:) _____

Signature of witness

Date:

Full name of witness

(BLOCK LETTERS)

SIGNED by _____)

for and on behalf of the ACT Insurance Authority
in its capacity as **Nominal Defendant**)

in the presence of:) _____

Signature of witness

Date:

Full name of witness

(BLOCK LETTERS)

SIGNED by _____)

for and on behalf of _____)

_____)

in the presence of: _____)

Signature of witness Date:

_____ Full name of witness

(BLOCK LETTERS)

SIGNED by _____)

for and on behalf of _____)

_____)

in the presence of: _____)

Signature of witness Date:

_____ Full name of witness

(BLOCK LETTERS)

Schedule 1

Name of CTP Insurer	Address	Facsimile No.	Email
1.			
2.			
3.			
4.			

Schedule 2: Accession Deed

THIS DEED POLL is made the _____ day of

BY: [_____] of [_____] (the “ "Acceding Party" ”)

RECITALS

A. The Acceding Party proposes to apply to become a CTP insurer under the *Road Transport (Third-Party Insurance) Act 2008*.

B. It is a condition of the grant of licence under that Act that the CTP insurer become a party to the Insurance Industry Deed between the Territory, the ACT Insurance Authority in its capacity as Nominal Defendant and various CTP insurers and dated [_____] (the “Industry Deed”).

C. By clause 2 of the Industry Deed a corporation may become a party to the Industry Deed by executing an accession deed in the form of this Deed.

NOW THIS DEED WITNESSES:

The Acceding Party agrees to become bound by and to become a party to the Industry Deed on and from the date on which a licence under Part 5.2 of the *Road Transport Third Party Insurance Act 2008* is granted to the Acceding Party.

For the purposes of clause 9 of the Industry Deed the address, email and facsimile number of the Acceding Party is as follows:

Address:

Email:

Facsimile No:

IN WITNESS WHEREOF the Parties have executed this Deed on the day and year written above.

Director

Director or Company Secretary

Affix the Common Seal here (if required by Constitution or Articles of Association)