

Australian Capital Territory

Road Transport (Third-Party Insurance) (Industry Deed) Approval 2013*

Disallowable instrument DI2013-51

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 2013.

2 Commencement

The instrument commences on the day after notification.

3 Approval

For the purpose of section 6 of the *Road Transport (Third-Party Insurance) Regulation 2008* the approved Industry Deed is at Schedule 1 to this instrument.

4 Industry Deed

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

Andrew Cappie-Wood
CTP Regulator

22 April 2013

*Name amended under Legislation Act, s 60

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> (the “Nominal Defendant”) 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, the Nominal Defendant 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. Pursuant to section 6 of the *Road Transport (Third-Party Insurance) Regulation 2008* (the “Regulation”), this instrument is the insurance Industry Deed as defined under section 9 of the Act.
- D. Under section 13 of the Act, the Nominal Defendant is the ACT Insurance Authority (“ACTIA”), a statutory authority established pursuant to section 7 of the *Insurance Authority Act 2005*. 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 the Part 5.2 of the Act, have applied to the CTP Regulator and have 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 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 Definitions

In this Deed, unless the contrary intention appears:

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

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

“arbitrator” means a consulting actuary who is a Fellow of The Institute of Actuaries of Australia appointed by the President for the time being of The Institute of Actuaries of Australia.

“business day” means a day upon which banks or a majority of them are open for normal business in Canberra and for this purpose a bank is a banking business as defined in subsection 5 (1) of the *Banking Act 1959* (Cth).

“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 regulator” has the same meaning as section 14 of the Act.

“Deed” means this 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 person or if the person is not a CTP insured person, the Nominal Defendant.

“market share” has the same meaning as section 216 of the Act.

“responsible person” has the same meaning as in the Dictionary to the Act.

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

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

1.2 Further Definitions

In this Deed, unless the contrary intention appears, words defined in the Dictionary of the Act, which are not defined in subclause 1.1, shall have the same meaning in this Deed as they do in the Act.

1.3 Interpretation

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

- (a) words importing one gender shall include the other gender;
- (b) words importing the singular shall include the plural and vice versa;
- (c) 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;
- (d) headings and underlining are for reference only and have no effect on the construction, interpretation or meaning of the clauses;
- (e) the Schedules referred to in this Deed form part of and are subject to the terms of this Deed;
- (f) 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;
- (g) all sums of money and all payments made under this Deed shall be in Australian dollars.

1.4 Operative Date

This Deed shall commence on:

- (a) in the case of a CTP insurer, the date on which its CTP insurer licence commences under the *Road Transport (Third-Party Insurance) Act 2008*; and
- (b) in the case of the Nominal Defendant on the date 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 as 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 person who intends to become a licensed CTP insurer and is 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 to be a Notifiable Instrument.

2.2 Date of Accession

An accession deed shall operate from the date on which the person executing 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 person 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

- (1) All licensed CTP insurers must follow the Administration and Business Rules as approved by the CTP regulator.
- (2) The Administration and Business Rules are to be a Notifiable Instrument.

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
 - (v) a pedestrian with one motor vehicle or other motor vehicles notwithstanding that there has been no contact between the motor vehicles;

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 a panel of persons approved by the insurers for that purpose who shall determine a dispute or difference under this clause as they see fit with a view to expeditiously and with as little formality as possible resolve the dispute or difference;
- (c) in this clause a reference to an insurer includes a reference to the Nominal Defendant but does not include the liability of the Nominal Defendant pursuant to sections 61 and 63 of the Act;
- (d) where one motor vehicle is being towed by another motor vehicle or is attached to another motor vehicle for towing, then if one of those motor vehicles is involved in a collision both motor vehicles shall be deemed to be involved in the collision.

4.2 Sharing of motor accident claims

- (1) If 2 or more CTP insurers are liable or potentially liable in relation to a motor accident claim, then each CTP insurer must share in the claim costs of that claim.

- (2) 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.
- (3) 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

- (1) 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 immediately be notified in writing to the CTP regulator.
- (2) The CTP regulator must refer a dispute of which notice is given under subsection (1) to a referee.

4.4 Method of sharing claim costs

- (1) Insurers required to share in 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 as soon as practicable after notice of a motor accident claim is given under Part 4.2 of the Act.
- (2) If the basis on which claim costs are to be shared is not agreed under subsection (1) within 2 months after notice of the motor accident claim is given, 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.

4.5 Conduct of a claim

- (1) Where insurers are required to share in the claim costs of a motor accident claim, 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 a question about which insurer is to be the claim manager under subsection (1) has not been resolved within 2 months after notice of the motor accident claim is given, the insurer of the motor vehicle that 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 or each other insurer; and
 - (c) otherwise deal with the motor accident claims or series of motor accident claims.
- (4) If the insurers still cannot agree on a claim manager under subsection (2) then the matter is taken to be in dispute between the insurers and they must immediately give written notice of the dispute to the CTP regulator.
- (5) The CTP regulator must refer a dispute of which notice is given under subsection (4) to a referee.

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, with information in respect of the motor accident claim or to the referee all information required by the referee.

4.8 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 this clause;
- (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.

4.9 Disputes

If there is any dispute or difference as to any matter arising under this clause, that dispute or difference may be referred to a referee and 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.

4.10 Variation

If the insurers agree, they may vary the terms of the sharing agreement with the approval of the Territory which approval shall not be unreasonably withheld.

5. BULK BILLING

5.1 Insurers to be Party to any Bulk Billing Agreement

If the CTP insurers agree to enter into a bulk billing agreement then unless that agreement has expired or has been terminated any person 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 and that person 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.

5.2 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 the subject of that agreement.

5.3 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.

6. OTHER OBLIGATIONS OF INSURERS

6.1 Exchange Information

A CTP insurer shall provide to any other CTP insurer, on request, any information in respect of a motor accident claim in which the CTP 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. ADVERSE ACTION BY THE TERRITORY

7.1 Right to Immediately Surrender Licence

The Territory and CTP regulator agree with the CTP insurers that if during a period of 2 years from the date of this Deed any of the following events should occur:

- (a) legislation is passed by the Australian Capital Territory Legislative Assembly which varies or replaces the Act and which materially adversely affects CTP insurers or any one of them;
- (b) regulations are gazetted and not disallowed by the Australian Capital Territory Legislative Assembly under the Act or any Act replacing or amending that Act which materially adversely affects CTP insurers or any one of them;
- (d) there is a material adverse failure to observe or perform any provision of this Deed by the Territory or the Nominal Defendant and if that failure is capable of remedy and is not remedied within 20 business days of a notice by any CTP insurer to the CTP regulator, as the case may be, specifying the failure and requiring it to be remedied,

then a CTP insurer adversely affected by an event specified in this clause may, by notice to the CTP regulator given within 3 months of the event, surrender its licence and the CTP regulator shall immediately suspend that licence.

7.2 Compensation

If an event specified in subclause 7.1 occurs, then the Territory in addition to any amount that may be payable under subclause 7.6 shall, within 28 days after they have been assessed, pay to each CTP insurer who has surrendered its licence under subclause 7.1 by way of liquidated damages:

$$5\%xP$$

where "P" is the aggregate premium income of the CTP insurer for the last 12 complete months immediately prior to the date the CTP insurer gives notice to the CTP regulator surrendering its licence under subclause 7.1.

7.3 Deemed no Adverse Affect

A CTP insurer shall not be adversely affected by an event specified in subclause 7.1 if:

- (a) the event will or is reasonably likely to reduce the amount payable in respect of most motor accident claims;
- (b) there is a variation of the Act or the regulations to which the CTP insurers agree; or

- (c) the event makes significant changes to reporting and procedural requirements and the premium rates are increased to adequately compensate for the increased cost of those requirements in future years.

7.4 Deemed Adverse Affect

Without limiting the generality of subclause 7.1, an event specified in paragraph (a) or (b) shall be deemed to materially adversely affect a CTP insurer:

- (a) if a reasonable insurer in the circumstances of the CTP insurer would not have applied for a licence if the event relied on under paragraph (a) or (b) of subclause 7.1 had occurred prior to the application for a licence by that CTP insurer; or
- (b) unless the CTP insurers agree, to a regulation reducing the discount rate applicable to damages.

7.5 Compensation to Suspended Insurers

If the Act is varied to require or the CTP regulator requires suspended CTP insurers to incur additional costs by reason of changes in reporting, audit and related requirements, then the reasonable costs of those additional requirements shall be paid by the Territory.

7.6 Retrospective Changes to Amounts Payable Under Motor accident claims

If at any time an event of a type specified in subclause 7.1 occurs whereby the amount payable in respect of a motor accident claim is increased in respect of motor accident claims arising from motor accidents occurring prior to a date 12 months after the date of the event, then the Territory, in addition to any damages payable under subclause 7.2, shall pay damages to each CTP insurer of an amount sufficient to fully fund the increased liability of that CTP insurer in respect of any additional amounts payable by that CTP insurer by reason of that event in respect of those motor accident claims.

7.7 Dispute Resolution

If there is any dispute or difference between the Territory and any CTP insurer in respect of the amount payable under subclause 7.6 then that amount shall be determined by an arbitrator independent to all parties to the dispute, subject to clause 16.

7.8 Extent of the Territory's Liability

The liability of the Territory for damages for an event specified in subclause 7.1 shall be determined exclusively in accordance with this clause 7 and that liability shall not exceed the liability so determined.

7.9 Clause does not Affect other Rights

Subject to subclause 7.8, this clause 7 is not to be construed so as to limit or restrict any other right or entitlement that a CTP insurer may have if there is any breach of the Act or this Deed.

8. AGREEMENT BY INSURERS

8.1 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.

8.2 Method of Obtaining Approval

A consent, agreement or approval under subclause 8.1 may be evidenced by a document or series of documents setting out the matter consented to, agreed or approved and executed by the required majority of CTP insurers.

8.3 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.

8.4 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 8.1, then all insurers as the case may be shall be deemed to have given their agreement to that matter.

9. 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 that State.

10. NOTICES

10.1 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, telex or facsimile transmission to the party at the following address, telex number or facsimile number:

in the case of the CTP regulator:

Address: GPO Box 158, CANBERRA CITY, ACT, 2601

Facsimile No: 026205 4376

Email: tom.mcdonald@act.gov.au

in the case of the Nominal Defendant: c/o ACT Insurance Authority

Address: GPO Box 158, CANBERRA CITY, ACT, 2601

Facsimile No: 02 6207 0301

Email: kerry.vandelaarschot@act.gov.au

in the case of the CTP Insurers:

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

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

10.2 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 such number or address; or
- (b) in the case of facsimile on receipt by the sender of the answerback code of the recipient at the end of the transmission,

but if such delivery or receipt is later than 5.00 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.

11. WAIVER

11.1 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.

11.2 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.

11.3 Remedies Cumulative

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

12. 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.

13. 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.

14. ASSIGNMENT

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

15. COSTS

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

16. ARBITRATION

If any dispute or difference is referred to the arbitrator under this Deed then unless otherwise agreed by the parties to the referral the arbitrator shall determine the dispute or difference in accordance with and subject to the Institute of Arbitrators Australia Rules for the conduct of Commercial Arbitrations.

IN WITNESS WHEREOF the Parties have executed this DEED as at the day and year written above.

SIGNED by _____)

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

presence of:)

Signature of witness

Full name of witness
(BLOCK LETTERS)

SIGNED by _____)

for and on behalf of the **Nominal Defendant**)

in the presence of:)

Signature of witness

Full name of witness
(BLOCK LETTERS)

SIGNED by _____)

for and on behalf of)

) _____

in the presence of:)

Signature of witness

Full name of witness
(BLOCK LETTERS)

SIGNED by _____)

for and on behalf of)

) _____

in the presence of:)

Signature of witness

Full name of witness
(BLOCK LETTERS)

Schedule 1

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

