

# Commercial Rules

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## **Purpose of the Commercial Rules**

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The purpose of these Commercial Rules is to complement the existing legislative and contractual framework, supplement the Regulator Rules (Rules) and provide CTP Insurers with an enforceable framework that underpins internal procedures relevant to dealings they have with the Regulator, Scheme Stakeholders and each other. They are issued pursuant to the Commercial Deed.

Before the CTP Insurer was granted Approval under section 101(1) of the MV Act, it agreed to comply with these Commercial Rules. The Regulator will review the CTP Insurers' compliance with the Commercial Rules and monitor complaints received by it about CTP Insurers' Claims handling practices.

These Commercial Rules do not overrule or substitute a CTP Insurer's obligations under the MV Act, other relevant legislation, or applicable common law. In any circumstance where the contents of these Commercial Rules are inconsistent with the requirements of governing legislation or applicable common law, those requirements will take precedence. It is the responsibility of CTP Insurers to be aware of and to comply with their legal obligations.

The Regulator may monitor and review compliance with these Commercial Rules.

Internal auditing of compliance with these Commercial Rules must form part of each CTP Insurer's risk management and compliance program. CTP Insurers have a responsibility to report to the Regulator any results of audit programs conducted by CTP Insurers.

These Commercial Rules are subject to continuous review and subsequent updates will be published by the Regulator.

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## Definitions

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**AAAM** means the Association for the Advancement of Automotive Medicine;

**Accident** means a collision or impact caused by, or arising out of, the use of a motor vehicle;

**Administration Expenses** means such amounts as the Regulator may determine from time to time in accordance with section 99A(14) of the MV Act to be costs associated with CTP Insurance;

**AIS** means the anatomical based coding system set out in *Abbreviated Injury Scale (AIS) 2005* and the *Update 2008 Manual* created by AAAM to classify and report Injury data, as replaced from time to time;

**Approval** means a grant by the Minister of approval in response to an application by a person under section 101 of the MV Act;

**APRA** means the Australia Prudential Regulation Authority established pursuant to the *Australian Prudential Regulation Authority Act 1998 (Cth)*, as amended and replaced from time to time;

**Business Continuity** means ensuring a CTP Insurer can continue to conduct CTP Insurance Business in the event of unforeseen circumstances that adversely impact normal conduct of CTP Insurance Business;

**Business Day** means any day except Saturdays, Sundays and declared public holidays in South Australia;

**Business Model** means the tools, processes, systems and resources a CTP Insurer uses to conduct CTP Insurance Business;

**Business Plan** means a written plan that provides a detailed description of the goals, strategies and actions that the CTP Insurer will adopt to conduct CTP Insurance Business including those matters described at Commercial Rules 1.1.2 and 1.1.3;

**CCR** means the CTP Claims Register maintained by the Regulator;

**Central Locked Folder** means a secure system for the upload of Premium Rate Filings, as notified by the Regulator from time to time;

**Claim** means a claim for loss or damage:

- (a) under, asserted to be under, or capable of being validly made under, a Policy; or
- (b) a Nominal Defendant Claim;

**Claimant** means an individual who makes a Claim or on whose behalf a Claim is made, including their properly appointed representative, agent or their lawyer where applicable;

**Claims Consultant** means a person employed by a CTP Insurer to handle Claims on behalf of that CTP Insurer;

**Commercial Deed** means the document of that name executed between the State of South Australia and the CTP Insurer;

**Complaint** means an expression of dissatisfaction relating to a CTP Insurer operating its CTP Insurance Business;

**Confidential Information** means the information identified as confidential in the Commercial Deed;

**CTP Insurance** means compulsory third party insurance under Part 4 of the MV Act;

**CTP Insurance Business** means business relating to CTP Insurance;

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**CTP Insurer** means any person or body (whether incorporated or not) approved by the designated Minister under Part 4 of the MV Act to carry on CTP Insurance Business in South Australia, but excludes the Motor Accident Commission;

**CTP Insurer Group** means the CTP Insurer together with all other persons that have received or may be the subject of an Approval;

**CTP Insurer Deed** means the document of that name between the State of South Australia and the CTP Insurer;

**Customer** means a person who holds or intends to hold a Policy with a CTP Insurer;

**Data** means all hard copy and electronic representation of CTP Insurance scheme information including:

- (a) open, closed and archived documents;
- (b) accounts, records and all other information relating to Claims made against the CTP Insurance scheme;
- (c) document reproduction, document imaging, correspondence and file communication;
- (d) reports and reporting specifications which outline how each reported data element is defined or derived; and/or
- (e) any other storage form directed by the Regulator;

**Disaster Recovery** means the restoration of Business Continuity as quickly as possible following any major disaster or failure that affects conduct of CTP Insurance Business;

**Financial Year** means the year commencing 1 July and ending 30 June in the following year;

**First Charge** means a charge given pursuant to section 66(7) of the RTW Act by Return to Work SA, a Self-Insured Employer or the LGA as the case may be to a CTP Insurer;

**Government Agency** means any State or Commonwealth government department or office or any public, statutory, governmental, semi-governmental or judicial body, local government council, instrumentality, entity or authority and any self-regulatory organisation of government;

**Hack** or **Hacking** means the unauthorised access or attempt to obtain authorised access to any portion, feature, transmissions or aspect of software, hardware or system or any portion, feature, transmissions or aspect of the network connected to software, hardware or system by any method, including reverse look-up, tracing, hacking, decoding, password mining or any other illegitimate means;

**Hacker** means a person or persons who participate in Hacking;

**Incentive** means any reward, benefit or gift, including a commission or rebate, membership or loyalty program, administration payment or general financial support offered or provided, directly or indirectly, to the Customer or any other person (and includes for the avoidance of doubt any Inducements), unless permitted by the MV Act. Without limiting the foregoing, "Incentive" includes:

- (a) the offering of any Inducement; and
- (b) the offering or provision of any benefit given directly or indirectly in respect of a product or service sold or distributed by or through a CTP Insurer or any related company of a CTP Insurer, where that benefit is given by reason of or in connection with the actual or proposed issue or holding of a Policy;

**Inducement** means any commission, discount, gift, rebate or any other form of financial benefit or inducement within the meaning of section 129A of the MV Act;

**Injury** means:

- (a) bodily injury including pure mental harm or nervous shock; or
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(b) where the context admits – the death of a person;

**insured person** has the meaning given to that term in the MV Act;

**Insurer Premium** means the component of a Premium paid or payable to a CTP Insurer (excluding GST) after deduction of Administration Expenses and exclusive of stamp duty;

**LGA** means Local Government Authority;

**LGA Claim** means a claim given or forwarded to the LGA pursuant to section 30(4) of the RTW Act;

**LSA** means the Lifetime Support Authority of South Australia established under the LSS Act;

**LSS** means Lifetime Support Scheme as established under the LSS Act;

**LSS Act** means the *Motor Vehicles (Lifetime Support Scheme) Act 2013 (SA)*, as amended and replaced from time to time;

**LSS Rules** means the Lifetime Support Scheme Rules made under section 56 of the LSS Act;

**Malware** means any software designed or intended to:

(a) disable, damage, encrypt, erase, disrupt or impair any Data, software, hardware, network or system; and/or

(b) permit unauthorised access to, or use of, Data, software, hardware, a network or a system;

**Market Share** of a member of the CTP Insurer Group means, at any particular time, the market share of that member, expressed as a percentage, and determined by dividing the aggregate value of Premiums for all Policies issued by the member during the previous 12 Months, by the aggregate value of Premiums for all Policies issued by all members of the CTP Insurer Group during the previous 12 Months, as assessed by the Regulator;

**Minister** has a meaning consistent with the usage of that term in the MV Act (as applicable);

**Month** means:

(a) a calendar month; or

(b) if calculating a month from a certain date, the period from that date to the day prior to the same date in the next calendar month (or if the next month does not contain the same date then the last day of the next month);

**motor vehicle** has the meaning given to that term in the MV Act;

**MV Act** means the *Motor Vehicles Act 1959 (SA)*, as amended and replaced from time to time;

**Non-AIS Code** means codes issued by the Regulator, as updated from time to time, to report insufficient medical information, Injuries not in the AIS, or additional information that is claimable but not an Injury;

**Nominal Defendant** means a person appointed by the Minister to be the nominal defendant and for the time being holding that appointment, as described in the MV Act;

**Nominal Defendant Claim** means a claim for loss or damage:

(a) against, or capable of being validly made against the Nominal Defendant as contemplated by Part 4 of the MV Act; or

(b) in relation to a self-propelled wheelchair or other motor vehicle that is taken to be subject to a Policy, as described in section 12A of the MV Act;

**Notable Claims** means those Claims which are sensitive or have a wide reaching impact on the CTP Insurance scheme as described by Commercial Rule 18.1.1;

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**Personnel** means any employee or contractor of a CTP Insurer who is engaged by the CTP Insurer in conducting the CTP Insurance Business but not including Third Party Service Providers or Subcontractors;

**Policy** has an equivalent meaning to the term "policy of insurance" as used in the MV Act;

**Premium** means the premium appropriate to the motor vehicle insured under a Policy as determined by the Regulator from time to time, which premium, for the avoidance of doubt, includes Administration Expenses and the Insurer Premium;

**Premium Band** for a given Premium Class is the range of amounts between and including the amounts of the minimum and the maximum Insurer Premiums that can be charged by each CTP Insurer for that Premium Class;

**Premium Class** means a premium class set out in the CTP Insurance Premium Schedule as notified by the Regulator from time to time;

**Premium Effective Date** is the date on which an Insurer Premium comes into effect;

**Premium Rate Filing Day** means the date on which each CTP Insurer is required to submit Premium Rate Filings to the Regulator in accordance with Commercial Rule 3.2;

**Premium Rate Filings** means submissions by a CTP Insurer to the Regulator that:

- (a) detail the Insurer Premium that the CTP Insurer proposes be payable in respect of each Premium Class for the relevant Financial Year (or the remainder of the Financial Year for revised Premium Rate Filings made in accordance with Commercial Rule 3.4);
- (b) detail the CTP Insurer's rationale for proposing the Insurer Premium in respect of each Premium Class with reference to the applied assumptions regarding projected Claim costs and frequency, insurer expenses and margins and economic variables;
- (c) detail the CTP Insurer's proposed Premium Effective Date; and

are in the format determined by the Regulator from time to time;

**Quarter** or **Quarterly** means each three Month period commencing 0000 hours on 1 July, 1 October, 1 January and 1 April each Financial Year and ending at 2400 hours on 30 September, 31 December, 31 March and 30 June respectively;

**Records** mean all information that is made or kept, or received and kept, by a CTP Insurer in conducting CTP Insurance Business in any form (including written and electronic) and includes:

- (a) Data;
- (b) CTP Insurer insurance records and files;
- (c) contracts with Third Party Service Providers and Subcontractors;
- (d) reports and other documentation prepared in connection with any audit or inspection by the Regulator or its representatives;
- (e) reports, specifications, user or technical manuals, designs, plans, spread sheets, drawings, pictures; and
- (f) books and accounts;

**Regulator** means the State acting through its designated agent the CTP Regulator established under the *Compulsory Third Party Insurance Regulation Act 2016* (SA);

**Remediation Plan** means a plan in writing signed by the Accounts Manager of the CTP Insurer nominated under Commercial Rule 12.1.1 (or a person acting in that person's position) detailing:

- (a) the nature and extent of any breach of a Scheme Document to which the plan relates;
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- (b) the actions that the CTP Insurer has taken to date and proposes to undertake to remedy the breach as soon as reasonably practicable (but in any event within six Months);
- (c) the actions that the CTP Insurer has taken to date and proposes to undertake going forward to prevent the breach re-occurring; and
- (d) a project plan detailing the timing of completion of each action proposed to be undertaken by the CTP Insurer;

**Return to Work SA** means the Return to Work Corporation of South Australia trading as ReturnToWorkSA established pursuant to the *Return to Work Corporation of South Australia Act 1994* (SA), as amended and replaced from time to time;

**Return to Work SA Claim** means a claim given or forwarded to Return to Work SA pursuant to section 30(4) or (5) of the RTW Act;

**RTW Act** means the *Return to Work Act 2014* (SA), as amended and replaced from time to time;

**RTW Injury** means, in connection with a claim under the RTW Act:

- (a) any physical or mental injury including:
  - (i) loss, deterioration or impairment of a limb, organ or part of the body;
  - (ii) a disease; or
  - (iii) disfigurement; or
- (b) where the context admits – the death of a person,

and includes an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury;

**Rule** means a rule regarding the conduct of CTP Insurance Business set out in Schedule 1 to the CTP Insurer Deed or issued by the Regulator in accordance with the CTP Insurer Deed or pursuant to law, as varied, revoked and replaced from time to time;

**SAFA** means the South Australian Government Financing Authority established under the *Government Financing Authority Act 1982* (SA);

**Scheme Documents** means the documents which regulate the conduct of CTP Insurance Business by a CTP Insurer, to which the CTP Insurer is a party, including:

- (a) the CTP Insurer Deed;
- (b) the Commercial Deed;
- (c) the Rules; and
- (d) these Commercial Rules;

**Scheme Start Date** means 1 July 2016;

**Scheme Sensitive Matters** means any matter or event that has had or could have a material adverse effect on the CTP Insurance scheme as described in Commercial Rule 18.2;

**Scheme Stakeholder** means any party that may have an interest in and/or provide services to the CTP Insurance scheme, aside from the CTP Insurer;

**Section 33 expenses** means the medical and like expenses which are compensable pursuant to the provisions of section 33 of the RTW Act;

**Self-Insured Employer** means an employer who is registered as a self-insured employer under either Part 9 Division 1 by Return to Work SA under the RTW Act, or the Crown or any agency or instrumentality of the Crown taken to be registered as a self-insured employer under section 130 of the RTW Act;

**Self-Insured Employer Claim** means a claim given or forwarded pursuant section 30(4) of the RTW Act to a Self-Insured Employer;

**South Australian Cyber Security Framework** means the South Australian Government framework on cyber security – *South Australian Cyber Security Framework* as amended from time to time;

**Staff Incentive** means any program designed to incentivise or motivate the behaviour of any Personnel directly involved in the CTP Insurer's conduct of its CTP Insurance Business as part of their day to day responsibilities, including but not limited to incentive structures, remuneration (excluding base salary amounts) and performance metrics;

**State Records Act** means the *State Records Act 1997 (SA)*, as amended and replaced from time to time;

**Subcontractor** means any subcontractor or agent engaged by a CTP Insurer to fulfil all or part of its obligations to conduct CTP Insurance Business, not including a Third Party Service Provider;

**Third Party Service Provider** means any person who provides services to a CTP Insurer for the purposes of conducting CTP Insurance Business;

**Transfer Plan** means a written plan that specifies the plans and procedures which the CTP Insurer will adopt to facilitate an orderly and efficient transfer of its CTP Insurance Business;

**Trigger Event** means the occurrence of any one or more of the following:

- (a) a movement of  $\pm 1.5\%$  per annum or more in the economic gap rate (the average discount rate minus the average wage inflation rate);
- (b) a movement of  $\pm 5\%$  in core claim frequency since the previous pricing review, adjusted for seasonality. Core claims exclude workers' compensation recovery claims, interstate claims and no-fault children's claims;
- (c) a change in legislative or legal precedents that changes the required risk premium by  $\pm 5\%$  or more;
- (d) a change in regulation that changes the required risk premium by  $\pm 5\%$  or more; or
- (e) a combination of the above factors that changes the required risk premium by  $\pm 5\%$  or more;

**TRUMPS** means the Transport Regulation User Management Processing System, as operated by the Regulator or its agent; and

**Worker** means a worker within the meaning of section 4(1) of the RTW Act, who has made a claim under that Act.

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## **1 Business Plans**

### **1.1 Requirements of a Business Plan**

1.1.1 A CTP Insurer must prepare a Business Plan annually.

1.1.2 The Business Plan must include a description of the CTP Insurer's Business Model including:

- (a) organisational structure;
  - (b) Claims management;
  - (c) business systems for Policy and Claimant information; and
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- (d) fraud detection and management.

1.1.3 The Business Plan must also include details of:

- (a) the CTP Insurer's marketing strategy for the forthcoming year and how any strategy is likely to impact its Market Share;
- (b) the CTP Insurer's audit plan for CTP Insurance Business for the next 12 Months;
- (c) planned innovation to Claims management practices;
- (d) performance against service level standards for CTP Insurance Business;
- (e) operational issues that have occurred in the past or could occur in future;
- (f) future risks that may impact on the conduct of CTP Insurance Business;
- (g) any Subcontractor arrangements relating to the administration of Policies or Claims;
- (h) any arrangements relating to the administration of Policies and Claims occurring outside the State of South Australia;
- (i) reinsurance arrangements relevant to the conduct of CTP Insurance Business;
- (j) business systems' age and estimated future lifetime and known capability gaps;
- (k) fraud detection strategy for the next 12 Months;
- (l) the CTP Insurer's strategy for maintaining its systems in accordance with the requirements set out in Commercial Rule 6;
- (m) the CTP Insurer's Record retention periods as required by Commercial Rule 10.2; and
- (n) the CTP Insurer's Staff Incentives as required by Commercial Rule 11.

1.1.4 The Regulator may, from time to time, direct that the Business Plan be in a prescribed form or contain particular content.

## 1.2 Revision of Business Plan

1.2.1 The Business Plan must be revised by the CTP Insurer:

- (a) at least once per year;
- (b) when there is a change to the Scheme Documents or to these Commercial Rules that affects the content of the Business Plan;
- (c) if the CTP Insurer, in conducting CTP Insurance Business, departs significantly from its previous Business Plan; and
- (d) when the Regulator directs the CTP Insurer to revise its Business Plan.

## 1.3 Provision of Business Plans

1.3.1 The CTP Insurer must provide the Regulator with a Business Plan each year, by 31 March of the relevant year.

1.3.2 The CTP Insurer must provide the Regulator with a copy of its revised Business Plan within 10 Business Days of notice from the Regulator.

## 1.4 Notification and queries from the Regulator

1.4.1 The Regulator may, from time to time, direct a CTP Insurer to provide further details in relation to the Business Plan.

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- 1.4.2 CTP Insurers must be reasonably available to respond to any queries from the Regulator in relation to information contained in the Business Plan.
- 1.4.3 The Regulator may, in a format and timeframe determined by it, direct a CTP Insurer to report on any aspect of the Business Plan, compliance with these Commercial Rules or their market practices.

### **1.5 Variance of CTP Insurance Business**

- 1.5.1 A CTP Insurer may vary the way it conducts CTP Insurance Business as long as:
- (a) any variance complies with the Scheme Documents and any Rule issued by the Regulator; and
  - (b) any material variance is disclosed to the Regulator in accordance with these Commercial Rules.

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## **2 Business Continuity and Disaster Recovery**

A CTP Insurer must maintain and submit to the Regulator, as requested, a plan or plans for Business Continuity and Disaster Recovery which are, as far as is reasonably practicable, consistent with Standards Australia AS/NZS 5050:2010 and APRA Prudential Standard CPS 232.

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## **3 Premium determination**

### **3.1 Determination of Premium Bands**

- 3.1.1 Premium Bands will be determined by the Regulator annually by any mechanism it sees fit.
- 3.1.2 At least 11 weeks prior to the start of each Financial Year, the Regulator will notify the CTP Insurers in writing of the Premium Bands determined by the Regulator for each Premium Class for the upcoming Financial Year (**Premium Bands Notice**).
- 3.1.3 The Premium Bands Notice will include:
- (a) a summary of the bases for the determination of the Premium Bands by the Regulator; and
  - (b) the Premium Rate Filing Day for the relevant Financial Year.
- 3.1.4 The Regulator will review the adequacy of Premium Bands outside of the annual cycle if one of the Trigger Events occurs. Each CTP Insurer acknowledges that this may result in Premium Bands being re-set outside of the annual cycle and the CTP Insurer being required to re-submit Premium Rate Filings during the course of the Financial Year, in which case they must re-submit Premium Rate Filings in accordance with Commercial Rule 3.4.

### **3.2 Premium Rate Filings**

- 3.2.1 By 5pm ACST on the Premium Rate Filing Day of the relevant Financial Year, each CTP Insurer must submit Premium Rate Filings to the Regulator by uploading its Premium Rate Filings into the Central Locked Folder.
- 3.2.2 Once uploaded in accordance with Commercial Rule 3.2.1, the CTP Insurer cannot change the proposed Insurer Premiums set out in the Premium Rate Filings or otherwise submit a revised Premium Rate Filing other than in accordance with Commercial Rule 3.4.
- 3.2.3 Within one Business Day of uploading its Premium Rate Filings to the Central Locked Folder in accordance with Commercial Rule 3.2.1, the CTP Insurer must upload a Premium data file into TRUMPS.
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- 3.2.4 Within three Business Days following receipt of an email notification that a Premium data file has been loaded into TRUMPS by a CTP Insurer, the Regulator (or its nominee) will review the Premium Rate Filings and Premium data files as uploaded in accordance with Commercial Rule 3.2.3 and by notice in writing to the CTP Insurer prior to the commencement of the Financial Year (which may be provided via a TRUMPS system notification):
- (a) if the Insurer Premium for each Premium Class in the Premium Rate Filing and Premium data file are consistent and fall within the Premium Bands determined by the Regulator for the applicable Premium Class for the specified Financial Year, approve the Insurer Premiums and determine the applicable Premium for entry into TRUMPS; or
  - (b) if the Insurer Premiums for any Premium Class in the Premium Rate Filing and Premium data file are inconsistent and/or fall outside of the applicable Premium Band for that Premium Class, reject the entire Premium Rate Filing (in which case the Insurer Premium payable for that Premium Class will be as determined in accordance with Commercial Rule 3.3).
- 3.2.5 For the avoidance of doubt, an Insurer Premium will fall within the Premium Band if the Insurer Premium is equal to or greater than the floor limit and equal to or less than the ceiling limit for the designated Premium Class.
- 3.2.6 On the same Business Day the CTP Insurer receives notification that a CTP Insurer's Premium data file has been approved by the Regulator, the CTP Insurer must activate their Premium data file within TRUMPS.

### **3.3 Failure to submit valid Premium Rate Filings**

If a CTP Insurer fails to submit valid Premium Rate Filings for a Financial Year in accordance with Commercial Rule 3.2 (or to submit Premium Rate Filings at all) or if the CTP Insurer's Premium Rate Filing is rejected, then the Insurer Premium payable in respect of that CTP Insurer for the relevant Financial Year will be deemed to be:

- (a) if the failure is in respect of the first Financial Year, the maximum Insurer Premium in the Premium Band payable for each Premium Class; and
- (b) if the failure is in respect of a subsequent Financial Year, the Insurer Premium approved by the Regulator as payable in the preceding Financial Year for each Premium Class, except that:
  - (i) if the Insurer Premium approved by the Regulator as payable in the preceding Financial Year for any Premium Class is below the Premium Band for the relevant Financial Year, the Insurer Premium payable in respect of the CTP Insurer for that Premium Class will be the minimum Insurer Premium in the Premium Band payable for the relevant Premium Class; and
  - (ii) if the Insurer Premium approved by the Regulator as payable in the preceding Financial Year for any Premium Class is above the Premium Band for the relevant Financial Year, the Insurer Premium payable in respect of the CTP Insurer for that Premium Class will be the maximum Insurer Premium in the Premium Band payable for the relevant Premium Class.

### **3.4 Revising Premium Rate Filings during the Financial Year**

- 3.4.1 CTP Insurers may submit revised Premium Rate Filings during the course of a Financial Year (or as required by Commercial Rule 3.1.4) in accordance with this Commercial Rule 3.4.
- 3.4.2 The CTP Insurer must provide the revised Premium Rate Filings by uploading them into the Central Locked Folder. The revised Premium Rate Filings must include a Premium Effective Date that is at least two Months and up to a maximum of six Months in the future from Premium activation performed in accordance with Commercial Rules 3.4.3 to 3.4.5.
- 3.4.3 Within one Business Day of uploading the Premium Rate Filings into the Central Locked Folder, CTP Insurers must upload their Premium data file into TRUMPS.

- 3.4.4 Within two Business Days following receipt of an email notification that a Premium data file has been loaded into TRUMPS by a CTP Insurer, the Regulator (or its nominee) will review the Premium Rate Filings and Premium data files as uploaded in accordance with Commercial Rule 3.4.2 and by notice in writing to the CTP Insurer:
- (a) if the Insurer Premium for each Premium Class in the Premium Rate Filing falls within the Premium Bands determined by the Regulator for the applicable Premium Class for the specified Financial Year and the Premium Effective Date is within the required time period outlined in Commercial Rule 3.4.2, approve the Insurer Premiums detailed in the Premium Rate Filings and determine the applicable Premium for entry into TRUMPS; or
  - (b) if the Insurer Premiums for any Premium Class in the Premium Rate Filing falls outside of the applicable Premium Band for that Premium Class and/or the Premium Effective Date falls outside of the time period specified in Commercial Rule 3.4.2, reject the entire Premium Rate Filing, in which case the then applicable Insurer Premium for the relevant Premium Class will continue to apply.
- 3.4.5 On the same Business Day the CTP Insurer receives notification that a CTP Insurer's revised Premium data file has been approved by the Regulator, the CTP Insurer must activate its Premium data file within TRUMPS.
- 3.4.6 On activation of the revised Premium Rate Filing, a new revised Premium Rate Filing associated Premium data file cannot be submitted with a Premium Effective Date that is before or equal to a currently activated Premium Effective Date.

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## **4 Transfer**

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### **4.1 Application**

- 4.1.1 This Commercial Rule 4 applies to a CTP Insurer that is transferring all or a portion of its CTP Insurance Business to another CTP Insurer, voluntarily and with the consent of the Regulator pursuant to the Scheme Documents and/or section 5(1)(h) of the *Compulsory Third Party Insurance Regulation Act 2016 (SA)*.
- 4.1.2 The CTP Insurer acknowledges in the event it transfers CTP Insurance Business to another CTP Insurer, it is critical for there to be continuity of the CTP Insurance scheme and minimal, if any, disruption to the CTP Insurance scheme and Scheme Stakeholders.

### **4.2 Transfer Plan**

- 4.2.1 When applying to the Regulator for consent to transfer its CTP Insurance Business, the CTP Insurer must provide to the Regulator a Transfer Plan detailing how it will transfer CTP Insurance Business to another CTP Insurer, including:
- (a) a detailed overview of the CTP Insurer's approach and strategy;
  - (b) a project timeline with timeframes; and
  - (c) a risk matrix which identifies all transfer risks, their potential impact on the CTP Insurance scheme, and the mitigation strategies that will be adopted by the CTP Insurer.
- 4.2.2 A CTP Insurer must include in the Transfer Plan details of the roles and responsibilities of Personnel responsible for the management and provision of the transfer.
- 4.2.3 A CTP Insurer will include in the Transfer Plan:
- (a) the human resource management strategies that will be adopted to:
    - (i) manage the change process;
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- (ii) retain and support Personnel in conducting CTP Insurance Business during the period of transfer; and
    - (iii) ensure that adequate Personnel and resources are available to conduct CTP Insurance Business once the CTP Insurer has transitioned out of the CTP Insurance scheme; and
  - (b) internal staff communication strategies.
- 4.2.4 A CTP Insurer will include in the Transfer Plan:
- (a) details of the performance management strategies that will be adopted by it to maintain conduct of CTP Insurance Business;
  - (b) strategies to ensure Personnel maintain workloads that are not in excess of those set out in the CTP Insurer's Business Model;
  - (c) details of any Staff Incentives; and
  - (d) Personnel resource options to ensure the continuation of conduct of CTP Insurance Business.
- 4.2.5 A CTP Insurer will include in the Transfer Plan details of the strategies the CTP Insurer will adopt to work collaboratively with the Regulator and any new CTP Insurer to ensure the orderly transfer of:
- (a) Personnel who seek to transfer to the new CTP Insurer;
  - (b) Claim files that are fully maintained and up to date;
  - (c) Data and other information required under the agreement; and
  - (d) communications from Scheme Stakeholders.

## **5 Disputes with the Regulator**

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### **5.1 Disputes**

Any dispute or difference whatsoever between the Regulator and a CTP Insurer will be dealt with in accordance with clause 27 (Dispute resolution) of the Commercial Deed and any Rules issued by the Regulator from time to time.

### **5.2 Continued Performance**

Notwithstanding the existence of a dispute between the Regulator and a CTP Insurer, the CTP Insurer must continue to:

- (a) conduct CTP Insurance Business; and
- (b) act consistently with these Commercial Rules.

## **6 Systems**

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### **6.1 Systems requirements**

- 6.1.1 A CTP Insurer must take all steps to ensure it has appropriate systems and associated information technology as is necessary to properly and efficiently conduct CTP Insurance Business and provide the Data required by the Regulator.
  - 6.1.2 A CTP Insurer must ensure that in conducting CTP Insurance Business it does not knowingly (whether by act or omission) adversely affect or alter the operation, functionality or technical
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environment of a Regulator's systems, information technology equipment, interfaces or processes without approval by the Regulator.

- 6.1.3 The Regulator may, from time to time, by providing reasonable prior written notice and following consultation with the CTP Insurer, direct the CTP Insurer to make any required changes to its systems and associated information technology, including but not limited to changes to data fields to capture Data and information technology upgrades to comply with any technical specifications required by the Regulator.

## **6.2 Malware control by CTP Insurer**

If any Malware is directly or indirectly introduced into the Regulator's system by a CTP Insurer or its representatives, it must:

- (a) immediately notify the Regulator;
- (b) immediately take action to remove the Malware and remedy any damage caused by the Malware;
- (c) keep the Regulator informed regularly of the status of the Malware removal and remedial actions being taken; and
- (d) ensure any relevant protection against Malware is updated to address that and similar Malware.

## **6.3 Anti-Hacking control by a CTP Insurer**

- 6.3.1 A CTP Insurer must not, by act or omission, Hack, or encourage or assist others to Hack into the Regulator's system, software or interface.

- 6.3.2 A CTP Insurer must take all preventative measures to prevent Hacking of the Regulator's system, software or interface.

- 6.3.3 If Hacking is detected in connection with the Regulator's system, software or interface, the CTP Insurer must:

- (a) immediately notify the Regulator;
- (b) work with the Regulator to remove the Hacker from the system and remedy any damage caused by the Hacker;
- (c) keep the Regulator informed regularly of the status of the Hacker and remedial actions being taken; and
- (d) ensure any relevant protection against Hacking is updated to address that and similar Hacking.

## **6.4 Data Security**

- 6.4.1 The CTP Insurer must maintain a system for information security management and outsourcing which is, as far as is reasonably practicable, consistent with the South Australian Cyber Security Framework, ISO27001, APRA Prudential Standard CPS 231, and APRA Prudential Standard CPS 234.

- 6.4.2 On becoming aware that there has been, or is likely or reasonably suspected to have been, any loss, corruption, misuse or unauthorised access of Data (including Data held by a Subcontractor or Third Party Service Provider), or any other suspected or known breach of this Commercial Rule 6.4, the CTP Insurer must:

- (a) immediately provide preliminary notice of the breach to the Regulator (whether by email, telephone or otherwise and for the avoidance of doubt, at the same time as, or as soon as is reasonably practical following any notification to a regulator, including APRA);
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- (b) provide further details in writing within five Business Days of providing the preliminary notice; and
- (c) keep the Regulator informed regularly of the status of the breach and any remedial actions being taken.

## **6.5 System User Management**

- 6.5.1 The Regulator may grant specific Personnel access to certain Regulator systems.
- 6.5.2 CTP Insurers must proactively manage Personnel access to the Regulator's systems and notify the Regulator within one Business Day where Personnel no longer require access to Regulator systems.

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## **7 Response to subpoenas, court documents and court orders**

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- 7.1.1 Subpoenas and court orders must be dealt with by the CTP Insurer and within the timeframes specified in the subpoena or court order (as applicable).
- 7.1.2 If the Regulator receives a subpoena, notice to produce or court order requiring attendance at court to give evidence or produce documents that relate to a Claim managed by a CTP Insurer, it must be referred to that CTP Insurer's legal advisors who are required to:
  - (a) advise the relevant business area or Claims Consultant;
  - (b) determine the validity of the subpoena, and if valid then ensure compliance with the subpoena; and
  - (c) comply with any directions made by the Regulator.

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## **8 Injury Coding**

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### **8.1 Reporting Injury codes**

In managing Claims, CTP Insurers must ensure that all Injuries (including pre-existing conditions or pre-existing Injuries) are coded in accordance with the AIS and reported to the CCR as follows:

- (a) on receipt of an Injury claim form (using a Non-AIS Code if no medical evidence is available);
- (b) on first receipt of medical information by the CTP Insurer;
- (c) within six weeks of receipt of any additional medical information that differs from previous medical information; and
- (d) on closing the Claim file, using the highest medical authority available in relation to the Injury (then in accordance with the AIS where applicable, or otherwise using a Non-AIS Code).

### **8.2 Assigning Injury codes**

CTP Insurers must ensure at all times that Personnel performing Injury coding are:

- (a) accredited by an AIS Injury coding course developed by AAAM (or equivalent tertiary-recognised Injury coding classification course); and
  - (b) appropriately trained or have prior knowledge of medical terminology, anatomy and physiology.
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## **9 Data collection and provision**

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### **9.1 Reporting of Data**

- 9.1.1 The Regulator may, from time to time, direct the CTP Insurer to provide specified Data in a specified format.
- 9.1.2 CTP Insurers must ensure all Data extracts required by these Commercial Rules are correct and in accordance with any technical specifications directed by the Regulator.

### **9.2 Report categories**

- 9.2.1 The Regulator may, from time to time, direct the CTP Insurer to provide specified reports in a specified format.
- 9.2.2 The following reports may be required:
- (a) Quarterly written Premium report;
  - (b) Nominal Defendant Claim report;
  - (c) share claims report;
  - (d) self-audit report;
  - (e) Business Plan;
  - (f) Complaints report;
  - (g) Quarterly scheme— Notable Claims and Scheme Sensitive Matters report; and
  - (h) any other report as directed by the Regulator.
- 9.2.3 CTP Insurers must ensure all reports required by these Commercial Rules are clear, complete, concise and correct, and are provided in accordance with any technical specifications or timeframes requested by the Regulator.

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## **10 Obligation to store and maintain Records**

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### **10.1 Records are captured**

Records must be captured into corporate record keeping systems upon creation or receipt, or as soon as practicable afterwards. In particular the CTP Insurer must:

- (a) identify and document any specific administrative or legal requirements for Personnel to capture Records;
  - (b) assign responsibility for the capture of Records created by the Regulator;
  - (c) inform all Personnel of the need to capture Records into record keeping systems upon creation or receipt, or as soon as practicable afterwards;
  - (d) identify the crucial points in its business transactions where Records need to be captured;
  - (e) assign a unique claim number for all new Claims lodged; and
  - (f) review business processes to ensure all Records that ought to be captured are captured.
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## **10.2 Destruction of Records**

10.2.1 When destroying Records the CTP Insurer must:

- (a) only destroy Records when the retention period for such Records, as set out in the CTP Insurer's Business Plan, has elapsed;
- (b) ensure it destroys those Records in a secure and confidential manner;
- (c) if assigning responsibility for destruction of Records, ensure any private contractor provides a certificate of destruction confirming confidential destruction;
- (d) if Records are in electronic format, destroy them by reformatting or rewriting to ensure the Data and any "pointers" in the system are destroyed and cannot be recovered; and
- (e) keep a record of all Records destroyed.

10.2.2 The CTP Insurer must ensure Third Party Service Providers and Subcontractors:

- (a) have and comply with a procedure that regularly deletes any copies of Records that may be stored on the hard drive of a printer, scanner, photocopier or personal computer or similar; and
- (b) in accordance with these Commercial Rules destroy the hard drive of any such equipment if the equipment is no longer used in conducting CTP Insurance Business.

10.2.3 The CTP Insurer must keep a record of Records being held off site from its office, for short and long-term retention.

## **10.3 Access to Records is managed**

A CTP Insurer must manage the access and release of its Records to ensure:

- (a) the Regulator has access to the Records and can inspect the Records without undue delay;
- (b) such access to the Records does not compromise the reliability of those Records;
- (c) any Confidential Information contained within those Records remains confidential; and
- (d) the access to any Records that could expose the Regulator to legal liability is not allowed without prior approval of the Regulator.

## **10.4 State Records Act**

The CTP Insurer must:

- (a) not do or cause to be done any act, matter or thing which may result in a contravention of the State Records Act by the Regulator or its representatives; and
- (b) in consultation with the Regulator, do and cause to be done such acts, matters and things as may be required to ensure the Regulator complies with its obligations under the State Records Act.

## **11 Staff Incentives**

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11.1.1 Details of all Staff Incentives must be provided by CTP Insurers to the Regulator in the Business Plan.

11.1.2 CTP Insurers must ensure that any Staff Incentives will not have a negative impact on motor vehicle owners, Claims or Claimants that is inconsistent with the obligation and objectives of

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the CTP Insurance Scheme, and that there is no conflict between Staff Incentives and the obligations and objectives of the CTP Insurance Scheme.

- 11.1.3 CTP Insurers must have an organisational structure in place to monitor the effectiveness and impact of Staff Incentives.

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## **12 Incentives**

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- 12.1.1 The CTP Insurer must nominate an Accounts Manager for CTP Insurance Business (or equivalent position) to execute a statutory declaration in accordance with Commercial Rule 12.1.3.
- 12.1.2 A nomination is subject to approval by the Regulator. The Regulator may reject a nomination and require a more suitable employee be nominated.
- 12.1.3 Within six weeks following the end of each Financial Year, the nominated Accounts Manager will sign a statutory declaration warranting to the Regulator that, having made all reasonable enquiries, she/he is not aware of:
- (a) any times throughout that Financial Year at which the CTP Insurer did not comply with the obligations prescribed by Rule 4.1 (Incentives for CTP insurance business prohibited); nor
  - (b) any Incentives having been offered or provided to any Customer or to any other representative or intermediary of the CTP Insurer (including without limitation a motor dealer) during that Financial Year.
- 12.1.4 The CTP Insurer's Accounts Manager for CTP Insurance Business will be personally liable for any false declaration made in accordance with this Commercial Rule 12.

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## **13 Subcontractors and Third Party Service Providers**

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The CTP Insurer must ensure that any arrangements the CTP Insurer has with Subcontractors and Third Party Service Providers, including reinsurers, comply with the confidentiality obligations prescribed by clause 26 (Confidentiality) of the Commercial Deed.

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## **14 Duty to Cooperate with Regulator**

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A CTP Insurer must:

- (a) attend and actively participate in forums convened or attended by the Regulator to discuss the management and performance of the CTP Insurance scheme, to review the CTP Insurance scheme and to discuss new initiatives for the CTP Insurance scheme;
  - (b) assist the Regulator to develop, refine and improve the functions, tasks, responsibilities and duties of CTP Insurers under these Commercial Rules;
  - (c) assist the Regulator to identify any potential legislative or operational reforms to the CTP Insurance scheme and provide feedback on any new CTP Insurance scheme initiatives;
  - (d) assist the Regulator in the management of Scheme Stakeholder relationships where it is reasonable for a CTP Insurer to do so; and
  - (e) comply with the Regulator's compliance monitoring program, as amended from time to time.
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## **15 Nominal Defendant**

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### **15.1 Allocation of Nominal Defendant Claims**

- 15.1.1 Where it is alleged an Accident has arisen out of the use of an uninsured or unidentified motor vehicle within the State of South Australia, the Nominal Defendant will be substituted for the person who would otherwise have been indemnified by the Policy.
- 15.1.2 Subject to the Scheme Documents, the Regulator will allocate Nominal Defendant Claims to CTP Insurers in proportion to their Market Share by any mechanism it sees fit.
- 15.1.3 A CTP Insurer must not refuse the allocation of a Nominal Defendant Claim to it, unless the CTP Insurer has an actual or potential conflict of interest.

### **15.2 Management of Nominal Defendant Claims**

- 15.2.1 CTP Insurers, in relation to a Nominal Defendant Claim, must:
- (a) have processes in place to identify any actual or potential conflicts of interest; and
  - (b) where an actual or potential conflict of interest arises, expediently notify the Regulator of the conflict of interest.
- 15.2.2 The Regulator may give directions to a CTP Insurer as to re-allocation of a Nominal Defendant Claim if a conflict of interests exists or as the circumstances warrant.

### **15.3 Investigation of Nominal Defendant Claims**

Where the CTP Insurer is allocated a Nominal Defendant Claim involving an unidentified motor vehicle, the CTP Insurer may make reasonable attempts to identify the motor vehicle alleged to have been at fault in the Accident.

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## **16 Complaints about CTP Insurers**

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- 16.1.1 CTP Insurers must have the necessary systems in place to undertake an analysis of trends to highlight emerging Complaints or patterns of Complaint.
- 16.1.2 Where recurring Complaints appear, the CTP Insurer must take remedial action to improve its procedures and processes.
- 16.1.3 CTP Insurers must have in place a tracking system with timeframes to monitor the progress of Complaints.
- 16.1.4 Where CTP Insurers receive a Complaint from the South Australian Ombudsman, a minister of the State of South Australia or any member of the Parliament of South Australia, CTP Insurers must:
- (a) notify the Regulator immediately;
  - (b) provide the Regulator with a proposed response to the Complaint; and
  - (c) respond to the Complaint within the timeframe specified in the Complaint.

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## **17 Prohibition on recovery of an excess in certain cases**

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Members of the CTP Insurer Group must not, under section 124AB of the MV Act, seek to recover from an insured person money paid and/or costs incurred by the CTP Insurer.

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## **18 Notable Claims and Scheme Sensitive Matters**

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### **18.1 Notable Claims**

- 18.1.1 CTP Insurers must identify Claims that may reasonably be considered to be sensitive or may potentially have a wide reaching impact on the CTP Insurance scheme and notify the Regulator of those Claims (which for the avoidance of doubt, includes a potential claim).
- 18.1.2 In identifying Claims under Commercial Rule 18.1.1, CTP Insurers should have regard to:
- (a) the potential for precedents to be set that may affect the operation of the CTP Insurance scheme including any matters on appeal or test cases where the outcome could result in new or different interpretations of existing law;
  - (b) severe Injuries where the estimated reserve is significant;
  - (c) the potential for media scrutiny;
  - (d) the potential for adverse social impact; or
  - (e) the potential for fraud or criminal conduct to be proven against a Claimant relevant to the defence of a Claim.
- (Note: this list is not exhaustive, and in considering whether a Claim is notable CTP Insurers should err on advising the Regulator of matters they believe could be sensitive or have a wide reaching impact on the CTP Insurance scheme).
- 18.1.3 If CTP Insurers are in any doubt as to whether a Claim should be brought to the Regulator's attention it should contact the Regulator to discuss the Claim further.
- 18.1.4 The Regulator may, from time to time, provide direction to a CTP Insurer regarding the management, resolution or conduct of a Notable Claim if it is in the broader interests of the CTP Insurance scheme to do so.

### **18.2 Scheme Sensitive Matters**

A CTP Insurer must notify the Regulator as soon as it becomes aware of:

- (a) any matter or event that has had or could have a material adverse effect on:
  - (i) the ability of the CTP Insurer to perform its obligations under the MV Act, Scheme Documents or these Commercial Rules; or
  - (ii) the reputation of the Regulator;
- (b) any litigation, arbitration, tax claim, dispute or administrative or other proceeding in relation to it conducting CTP Insurance Business under the MV Act, the Scheme Documents or these Commercial Rules other than Claims brought under the MV Act or workers compensation claims; and
- (c) any dispute between it and a Government Agency in relation to performance of its obligations under the Scheme Documents or these Commercial Rules. The Regulator may, from time to time, direct the CTP Insurer to provide it with information and documentation (except documents or information the subject of legal professional privilege) relevant to the Scheme Sensitive Matter.

### **18.3 Regulator involvement in Notable Claims and Scheme Sensitive Matters**

In respect of any Notable Claim or Scheme Sensitive Matter, CTP Insurers must, if requested by the Regulator:

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- (a) provide the Regulator with details as to the Claim or matter including the sensitive issues involved in the Claim or matter, its progress, Claim estimate, likely outcome, strategy and media sensitivity;
  - (b) provide the Regulator with copies of submissions, judgments or court orders, as relevant;
  - (c) keep the Regulator updated and advised on progress, likely outcomes, Claim estimate, strategy, relevant court or interlocutory dates and media sensitivity;
  - (d) allow the Regulator to make recommendations to it regarding the management and strategy;
  - (e) if proceeding to hearing, convene a conference with the Regulator and its legal advisors to discuss the Claim or matter 28 days prior to that hearing, or such lesser period as is reasonably practicable in the circumstances;
  - (f) otherwise, provide updates and advice to the Regulator to allow sufficient time for the Regulator to consult with Scheme Stakeholders and make recommendations to the CTP Insurer as to the conduct of the Claim or matter prior to any significant events, such as a hearing, mediation or conference; and
  - (g) provide the Regulator with a summary of the outcome of the Claim or matter.

## **19 Consultation regarding sanctions for breach of the Scheme Documents**

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For the purposes of clause 17.3 (Consultation) of the Commercial Deed, the following consultation process must be adhered to prior to the issue of a written demand by the Regulator under clause 17.1 (Sanctions payable by CTP Insurer) of the Commercial Deed (**Sanction Notice**):

19.1.1 Prior to the issue of a Sanction Notice, the Regulator must:

- (a) provide written notice to the CTP Insurer detailing the nature of the breaches of the Scheme Document (including any Rule or Commercial Rule) intended to be described in the Sanction Notice;
- (b) offer to consult with the CTP Insurer regarding the proposed Sanction Notice; and
- (c) if the CTP Insurer makes itself available to do so in accordance with Commercial Rule 19.1.2, meet with the CTP Insurer regarding the proposed Sanction Notice.

19.1.2 A meeting under Commercial Rule 19.1.1(c) may be undertaken at such time and place reasonably nominated by the Regulator, and by any of the following means:

- (a) in person;
- (b) by telephone; or
- (c) by videoconference.

19.1.3 Provided the contents of a Sanction Notice is broadly consistent with the information initially notified to the CTP Insurer under Commercial Rule 19.1.1, the Sanction Notice will be compliant with this Commercial Rule.

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## **20 Remediation**

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- 20.1.1 Notwithstanding clause 21.1.1 of the Commercial Deed, the Regulator may require that the CTP Insurer prepares a Remediation Plan in connection with any issue identified in any audit or compliance activity, regardless of whether or not such conduct constitutes a breach of the Scheme Documents.
- 20.1.2 Where the Regulator requires the preparation of a Remediation Plan in accordance with Commercial Rule 20.1.1, the CTP Insurer is to prepare the Remediation Plan and remediation is to be carried out in accordance with clause 21 (Remediation) of the Commercial Deed as if the conduct did constitute a breach of the Scheme Documents.

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## **21 Working with the LSA**

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### **21.1 Early notification and expeditious determination of applications**

- 21.1.1 The CTP Insurer must notify the LSA of potential participants under the LSS as soon as practicable, with the consent of the Claimant, if appropriate.
- 21.1.2 The CTP Insurer must take all necessary steps to comply with the application process under the LSS Act and LSS Rules, including the provision of necessary information and medical reports, including, where appropriate, obtaining the necessary consent from a Claimant.
- 21.1.3 Pursuant to section 48 of the LSS Act, the CTP Insurer must disclose any information or documents they have obtained under the MV Act in relation to a person who may become, or who has become, a Claimant, that is relevant to an application under the LSS, subject to Commercial Rule 21.7 (Confidentiality).
- 21.1.4 The CTP Insurer must not disclose any information and/or documents over which legal professional privilege is claimed, such as factual investigation reports.

### **21.2 Transition of Claimant between the LSS and CTP Insurance scheme**

In the transition of Claimants between the LSS and the CTP Insurance scheme, with respect to persons who are accepted as interim participants and who are ultimately accepted as lifetime participants in the LSS, the CTP Insurer must, in accordance with the application process, take all necessary steps to ensure that all relevant information and medical reports are disclosed to the LSA, including obtaining the consent of the Claimant, if required.

### **21.3 Non-party disclosure**

- 21.3.1 In the event that the CTP Insurer, in the course of proceedings under Part 4 of the MV Act, wishes to obtain information obtained and/or held by the LSA in relation to the Claimant by way of an order of the Court for non-party disclosure, the CTP Insurer must consult with the LSA on framing the appropriate terms of any such order for non-party disclosure, which:
- (a) outlines its interests in obtaining disclosure of relevant documents for the purposes of proceedings in its capacity as the CTP Insurer; and
  - (b) recognises the interests of the LSA in maintaining its long term relationship with participants.
- 21.3.2 The CTP Insurer must reimburse the LSA costs associated with photocopying documents in accordance with the applicable scale of costs relevant to the proceedings.

### **21.4 Financial responsibilities**

- 21.4.1 The CTP Insurer must recognise that, pursuant to the LSS Act:
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- (a) the LSA is responsible for payment of reasonable and necessary treatment, care and support needs of Claimants as at the date of acceptance of an application for participation under the LSS; and
- (b) the LSA ceases to become responsible for the payment of reasonable and necessary treatment, care and support needs of the Claimant as at the date of LSA's determination that a person is not eligible for lifetime participation under the LSS.

21.4.2 The CTP Insurers must comply with any reasonable requests from the Regulator to provide account information to the LSA so it may fulfil its obligations, as described in this Commercial Rule 21.

21.4.3 Where a CTP Insurer has paid for treatment, care and support needs for a Claimant whilst that person is a participant under the LSS, or where the LSA has paid for necessary and reasonable treatment, care and support needs for a Claimant after that person is no longer a participant under the LSS there must be, within six Months of the payment being made to the Claimant, a reconciliation between LSA and the CTP Insurer to ascertain if either party is entitled to reimbursement from the other, including through the provision of supporting accounts or information.

21.4.4 If reimbursement is required between the parties under Commercial Rule 21.4.3, the CTP Insurer must communicate with the LSA to determine the amount of such reimbursement.

## **21.5 Conflict resolution**

21.5.1 The CTP Insurers must accept the review processes in Part 5 of the LSS Act and Part 3 of the LSS Rules govern any disputes regarding LSS eligibility.

21.5.2 To facilitate those processes, the CTP Insurers must:

- (a) provide any relevant information or documentary material, including any additional materials that may be requested by the review officer or expert review panel, whichever relevantly applies; and
- (b) reach agreement with the LSA to nominate a relevant contact person for the conduct of disputes and requests for information and for reimbursement of any costs paid in error.

## **21.6 Governance structure and reporting**

The CTP Insurers must attend the working group interface meetings between the Regulator and the LSA at the request of the Regulator.

## **21.7 Confidentiality**

21.7.1 When dealing with personal information relating to a Claimant, the CTP Insurers must take all necessary steps to ensure the privacy and confidentiality of that personal information in accordance with their obligations under the MV Act and to the *Privacy Act 1988* (Cth).

21.7.2 Without limiting Commercial Rule 21.7.1, the CTP Insurers must treat as confidential all Confidential Information obtained by them from the LSA in connection with these Commercial Rules and must not divulge such Confidential Information to any other person except to their Personnel, Subcontractors or Third Party Service Providers, and then only to those persons who need to know that Confidential Information.

21.7.3 Commercial Rule 21.7.2 does not apply to information which was rightfully in the possession of a party prior to the Scheme Start Date or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of Commercial Rule 21.7).

21.7.4 The obligations as to confidentiality under this Commercial Rule 21.7 will survive any expiry or termination of these Commercial Rules.

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## 22 Working with the Return to Work Corporation of South Australia

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**BACKGROUND:**

- A. Return to Work SA is responsible for the administration of the RTW Act.
- B. Return to Work SA and the Regulator expect that a significant number of the Claims made against CTP Insurers under Policies will be made by Claimants who are also in receipt from Return to Work SA of benefits under the RTW Act. In those circumstances Return to Work SA may be entitled, under section 66 of the RTW Act, to a First Charge on any damages payable by CTP Insurers to Claimants.

### 22.1 Notification requirements

- 22.1.1 CTP Insurers acknowledge they may receive from Return to Work SA notices of First Charge in any Return to Work SA claim where the RTW Injury to the Worker arises out of the use of a motor vehicle in circumstances such that the driver or owner of the vehicle is potentially liable at common law to the Worker.
- 22.1.2 The CTP Insurer must accept receipt from Return to Work SA of any notice of First Charge.
- 22.1.3 Receipt by the CTP Insurer of a notice of First Charge from Return to Work SA within three years of the date of the trauma out of which the relevant RTW Injury arises suspends the operation of the time limit imposed on Return to Work SA by section 66(7)(g)(ii) of the RTW Act.
- 22.1.4 The CTP Insurer must, insofar as it may be necessary, consent to an extension of that time.
- 22.1.5 If it should come to the knowledge of the CTP Insurer that Return to Work SA has paid compensation to a Claimant and Return to Work SA has failed or omitted to give a notice of First Charge to the CTP Insurer, the CTP Insurer must promptly inform Return to Work SA of the Claimant's Claim and of the failure or omission.

### 22.2 Proof of Section 33 expenses

- 22.2.1 The CTP Insurer must ensure any print out of payments or notice of First Charge provided to it by Return to Work SA does not include any items Return to Work SA is not entitled to claim from the CTP Insurer such as rehabilitation expenses, legal costs and disbursements.
- 22.2.2 The CTP Insurer must accept the print out referred to in Commercial Rule 22.2.1 as conclusive proof each charge referred to therein was incurred, the amount of the charge for each service rendered is reasonable and Return to Work SA paid the amount of each charge.
- 22.2.3 Despite Commercial Rule 22.2.2, the CTP Insurer may still dispute whether the treatment provided was, in the circumstances, reasonable.

### 22.3 Exchange of information

- 22.3.1 Upon notice of First Charge being given by Return to Work SA to a CTP Insurer, the CTP Insurer must provide a copy of each medical report obtained by it to Return to Work SA without charge.
  - 22.3.2 Private investigators' and assessors' reports must not be provided to Return to Work SA, unless by agreement or required by the Regulator in a procedure commenced under Commercial Rule 22.6 (Procedure following a deadlocked negotiation). However, the CTP Insurer must disclose to the other the existence of any such reports that it has, with sufficient detail to enable each report to be identified. If the CTP Insurer is providing information or documentation that is confidential, it must ensure that information or documentation is identified to Return to Work SA as confidential.
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## **22.4 Settlement with Claimant**

- 22.4.1 The CTP Insurer must seek to negotiate a fair and reasonable settlement with each Claimant in circumstances where Return to Work SA has given a notice of First Charge to the CTP Insurer in relation to the Claimant's Claim against the CTP Insurer.
- 22.4.2 Where the CTP Insurer becomes aware of a dispute between a Claimant and Return to Work SA as to the amount which the CTP Insurer is to pay to Return to Work SA pursuant to First Charge, the amount in dispute must, upon an undertaking being given by the Claimant and the Claimant's solicitors the disputed amount will remain in the Trust Account of the Claimant's solicitors until resolution of such dispute, be paid by the CTP Insurer to the Claimant's solicitors.
- 22.4.3 In the absence of any such undertaking from the Claimant referred to in Commercial Rule 22.4.2, the CTP Insurer must interplead.

## **22.5 Procedure in the event a Worker does not pursue CTP Claim**

- 22.5.1 If a Worker has a right to recover an amount from a CTP Insurer under Part 4 of the MV Act and elects not to pursue a Claim against a CTP Insurer, the CTP Insurer must negotiate a settlement with Return to Work SA of Return to Work SA's entitlements.
- 22.5.2 The CTP Insurer will, in negotiating any such settlement referred to in Commercial Rule 22.5.1, proceed as if a Claim was being advanced, or will be advanced, by the Worker.
- 22.5.3 Subject to Commercial Rule 22.3.2, prior to a negotiation under this Commercial Rule 22.5, and free of charge, the CTP Insurer must, subject to obtaining all necessary consents to avoid breaching its privacy obligations, provide Return to Work SA with all medical reports, experts' reports, factual investigators' reports, surveillance reports and all other relevant material (excluding legally professionally privileged material) upon which the CTP Insurer will rely for the purpose of negotiation.
- 22.5.4 The CTP Insurer must use reasonable endeavours to obtain all consents to the disclosure of the information specified in Commercial Rule 22.5.3 it must obtain to avoid the disclosure of that information resulting in a breach of its privacy obligations.
- 22.5.5 Nothing in these Commercial Rules can be construed to require a CTP Insurer to make any payment to Return to Work SA which the CTP Insurer would not be required to make if the injured Worker had made a Claim or, having made a Claim, had continued to advance it.

## **22.6 Procedure following a deadlocked negotiation**

- 22.6.1 If Return to Work SA and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to Return to Work SA under these Commercial Rules, the CTP Insurer must notify the Regulator in writing of the existence of a deadlocked negotiation, and may request that the Regulator refer the matter to arbitration, whereupon the Regulator will (if agreed by Return to Work SA) refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).
- 22.6.2 The CTP Insurer agrees that, in relation to any dispute referred to arbitration in accordance with Commercial Rule 22.6.1:
- (a) the dispute will thereafter be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules;
  - (b) the CTP Insurer must provide to the independent arbitrator its original file which will comprise copies of the documents referred to in Commercial Rule 22.5.3; and
  - (c) the file referred to in Commercial Rule 22.6.2(b) must not include copies of any correspondence passing between the CTP Insurer and Return to Work SA or between the CTP Insurer and any legal practitioner engaged by it to act or advise.
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22.6.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with Return to Work SA.

## **22.7 Non-party discovery/subpoena**

22.7.1 For the purposes of defending a Claim brought by a Claimant against an insured person, the CTP Insurer may obtain Return to Work SA's file by way of non-party discovery.

22.7.2 In the event it is necessary for the CTP Insurer to obtain non-party discovery of Return to Work SA files relating to previous or subsequent claims, the CTP Insurer may require Return to Work SA to make such files available for inspection by the CTP Insurer and/or its solicitors or counsel at the premises of Return to Work SA or such other place as Return to Work SA may agree.

22.7.3 The CTP Insurer and/or its solicitors may select documents to be copied for it by Return to Work SA.

## **23 Working with Self-Insured Employers**

### **BACKGROUND:**

- A. The Self-Insured Employer is a self-insured employer for the purposes of the RTW Act.
- B. The Self-Insured Employer and the Regulator expect some Claims made against CTP Insurers under Policies will be made by Claimants who are also in receipt from the Self-Insured Employer of benefits under the RTW Act. In those circumstances the Self-Insured Employer may be entitled, under section 66 of the RTW Act, to a First Charge on any damages payable by CTP Insurers to the Claimants.

### **23.1 Notification requirements**

23.1.1 The CTP Insurer acknowledges a Self-Insured Employer may use its best endeavours to notify the CTP Insurer as soon as possible, but in any event within two Months of a Self-Insured Employer becoming aware of, any possible compensation paid by it under a Self-Insured Employer claim which arises out of an Accident resulting in a RTW Injury to a Worker under the RTW Act.

23.1.2 The CTP Insurer must advise a Self-Insured Employer if it becomes aware that a Self-Insured Employer has failed to issue a notice to the CTP Insurer in accordance with Commercial Rule 23.1.1.

23.1.3 The CTP Insurer must not take issue on any extension of time point provided notice has been given to it within the three year statutory limit.

23.1.4 The CTP Insurer must use its best endeavours to notify a Self-Insured Employer of any court conference date or trial date in any action involving a person who:

- (a) is a Claimant; and
- (b) has also made a Self-Insured Employer claim.

### **23.2 Exchange of information**

23.2.1 Subject to any restrictions imposed by law, medical reports obtained by a CTP Insurer with respect to each Worker or Claimant (as the case may be) must be provided to a Self-Insured Employer without charge.

23.2.2 Reports of private investigators and assessors and documents to which legal professional privilege attaches must not be provided to a Self-Insured Employer unless the CTP Insurer has reached an agreement with a Self-Insured Employer to the contrary.

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### **23.3 Non-party discovery/subpoena**

- 23.3.1 For the purposes of defending a Claim brought by a Claimant against an insured person, the CTP Insurer may obtain a Self-Insured Employer's file by way of non-party discovery.
- 23.3.2 In the event it is necessary for the CTP Insurer to obtain non-party discovery of a Self-Insured Employer's files, or in the alternative to subpoena a Self-Insured Employer's files for a court hearing, the CTP Insurer must limit its application to the case management file (including section 33 expense vouchers) and/or case management files, relating to previous or subsequent claims. The documents sought from such files, must be restricted to claim forms, medical reports, medical certificates and any determinations made from time to time and any court proceedings or correspondence arising out of those determinations.

### **23.4 Settlement**

- 23.4.1 Where there is any dispute between a Worker and a Self-Insured Employer as to the amount which the CTP Insurer will pay to a Self-Insured Employer pursuant to a charge notified under section 66 of the RTW Act, the amount must remain in the Worker's solicitor's trust account by way of an undertaking from the Worker and the Worker's solicitor until resolution of the dispute.
- 23.4.2 Failing an undertaking referred to in Commercial Rule 23.4.1 being provided by both the Worker and the Worker's solicitor, the CTP Insurer must accept the amount in dispute will be paid into Court.

### **23.5 Obligation to negotiate**

- 23.5.1 The CTP Insurer must seek to negotiate a fair and reasonable settlement with each Worker who has made a Claim against the CTP Insurer under a Policy in circumstances where a Self-Insured Employer has given a notice of First Charge to the CTP Insurer in relation to the Worker's Claim against the CTP Insurer.
- 23.5.2 If a Worker has a right to recover an amount from a CTP Insurer under Part 4 of the MV Act and elects not to pursue a Claim against the CTP Insurer, the CTP Insurer must make an offer to the Self-Insured Employer and seek to negotiate a fair and reasonable settlement with the Self-Insured Employer in accordance with Commercial Rule 23.5.1 as if the Worker had made a Claim against the CTP Insurer under Part 4 of the MV Act.

### **23.6 Dispute resolution**

- 23.6.1 If a Self-Insured Employer and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to a Self-Insured Employer in respect of a Claim that is the subject of a First Charge, the CTP Insurer must notify the Regulator in writing of the existence of the dispute and may request that the Regulator refer the matter to arbitration, whereupon the Regulator (if agreed by the Self-Insured Employer) will refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).
- 23.6.2 The CTP Insurer agrees that, in relation to any dispute referred to arbitration in accordance with Commercial Rule 23.6.1:
- (a) the dispute will thereafter be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules;
  - (b) the CTP Insurer must provide to the independent arbitrator its original file which will comprise copies of the documents referred to in Commercial Rule 23.3; and
  - (c) the file referred to in Commercial Rule 23.6.2(b) must not include copies of any correspondence passing between the CTP Insurer and a Self-Insured Employer or legal practitioner engaged by the CTP Insurer to act or advise.
- 23.6.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with a Self-Insured Employer.
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## **24 Working with SAFA**

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### **24.1 Notification requirements**

- 24.1.1 The CTP Insurers must notify SAFA as soon as possible of it becoming aware of any Claim or proposed Claim against it as a CTP Insurer under Part 4 of the MV Act in connection with an Accident by a person who has made or intends to make a claim against the State of South Australia in connection with that Accident.
- 24.1.2 During the term of each such Claim the relevant CTP Insurer must periodically inform SAFA of progressive payments made to or on behalf of the Claimant.

### **24.2 Exchange of information, confidentiality and privilege**

- 24.2.1 Where a CTP Insurer has notified SAFA in accordance with Commercial Rule 24.1.1 or has received a notice provided by SAFA, the CTP Insurer must disclose to SAFA details of all other Claims made by the Claimant against any of the CTP Insurer's insured persons, which may be relevant to the Claimant's claim against SAFA.
- 24.2.2 Subject to any restriction imposed by law, medical reports obtained by a CTP Insurer with respect to each Claimant must be provided by the CTP Insurer to SAFA without charge. The CTP Insurer must use its best endeavours to obtain any consent necessary from parties involved in litigation to release medical reports to SAFA.
- 24.2.3 Exchange of such information (and any other information provided under these Commercial Rules) is done on a without prejudice basis and the CTP Insurer must accept this is not a waiver of legal professional or public interest privilege by it and documents exchanged under these Commercial Rules will only be disclosed to a Claimant or other person in accordance with the law.

### **24.3 Proof of payments**

- 24.3.1 The CTP Insurer must acknowledge and agree notification by it to SAFA of any monies paid by it to a Claimant does not bind SAFA and/or the State as to the quantum thereof, the reasonableness of each item or as to the reasonableness of incurring each item and it is open to SAFA and/or the State to negotiate with the CTP Insurer the amount recoverable.
- 24.3.2 The CTP Insurer must agree the notification of any claim for medical and like expense must contain full details of the name of the provider and the nature, cost and date of each item of expense.
- 24.3.3 The CTP Insurer must accept notification of any claim for medical and like expenses will contain full details of the name of the provider and the nature, cost and date of each item of expense.

### **24.4 Finalisation of Claim by agreement**

If SAFA and a CTP Insurer reach agreement regarding an amount payable by SAFA to the CTP Insurer or by the CTP Insurer to SAFA in respect of a Claim made by a Claimant, the CTP Insurer must execute a discharge in the form of Annexure A.

### **24.5 Dispute resolution**

- 24.5.1 If SAFA and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to SAFA or vice versa, in connection with a Claim specified in this Commercial Rule, the CTP Insurer must notify the Regulator in writing of the existence of the dispute and may request that the Regulator refer the matter to arbitration, whereupon the Regulator will (if agreed by SAFA) refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).
- 24.5.2 The CTP Insurer agrees that any dispute referred to arbitration in accordance with Commercial Rule 24.5.1:
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- (a) will be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules; and
  - (b) the CTP Insurer must provide to the independent arbitrator its original file.
- 24.5.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with SAFA.

## **25 Working with the LGA**

### **BACKGROUND:**

- A. LGA, through the Local Government Association Workers Compensation Scheme, provides local Government authorities with a fully integrated claim, rehabilitation and work, health and safety service.
- B. LGA and the Regulator expect some Claims made against CTP Insurers under Policies will be made by Claimants who are also in receipt from LGA of benefits under the RTW Act. In those circumstances LGA may be entitled, under section 66 of the RTW Act, to a First Charge on any damages payable by CTP Insurers to the Claimants.

### **25.1 Notification requirements**

- 25.1.1 The CTP Insurer acknowledges the LGA may use its best endeavours to notify the relevant CTP Insurer as soon as possible, but in any event within two Months of the LGA becoming aware of, any possible recovery of compensation paid by it under a LGA claim which arises out of an Accident resulting in an RTW Injury to a Worker under the RTW Act.
- 25.1.2 The CTP Insurer must notify LGA if it becomes aware the LGA has failed to issue a notice to the CTP Insurer in accordance with Commercial Rule 25.1.1. The CTP Insurer must not take issue on any extension of time point provided that notice has been given to it within the three year statutory limit.
- 25.1.3 The CTP Insurer must use its best endeavours to notify LGA of any court conference date or trial date in any action involving a person who:
- (a) is a Claimant; and
  - (b) has also made an LGA claim.

### **25.2 Exchange of information**

- 25.2.1 Subject to any restrictions imposed by law, medical reports obtained by a CTP Insurer with respect to each Worker or Claimant (as the case may be) must be provided to the LGA without charge.
- 25.2.2 Private investigators' and assessors' reports and documents to which legal professional privilege attaches must not be provided to the LGA unless the CTP Insurer has reached an agreement with the LGA to the contrary.

### **25.3 Non-party discovery/subpoena**

- 25.3.1 For the purposes of defending a Claim brought by a Claimant against an insured person, the CTP Insurer may obtain LGA's file by way of non-party discovery.
- 25.3.2 In the event it is necessary for the CTP Insurer to obtain non-party discovery of LGA files relating to previous or subsequent claims, or in the alternative to subpoena LGA's files for a court hearing, the CTP Insurer must limit its application to the case management file (including section 33 expense vouchers) and/or case management files relating to previous or subsequent claims. The documents sought from such files must be restricted to claim forms,

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medical reports, medical certificates and any determinations made from time to time and any court proceedings or correspondence arising out of those determinations.

#### **25.4 Settlement**

- 25.4.1 Where there is any dispute between a Worker and LGA as to the amount which the CTP Insurer will pay to LGA pursuant to a charge notified under section 66 of the RTW Act, the amount in dispute, upon an undertaking being given by the Worker and the Worker's solicitors the disputed amount will remain in the Worker's solicitor's trust account until resolution of such dispute, and be paid by the CTP Insurer to the Worker's solicitor.
- 25.4.2 Failing an undertaking referred to in Commercial Rule 25.4.1 being provided by both the Worker and the Worker's solicitor, the CTP Insurer must accept that the amount in dispute will be paid into Court.

#### **25.5 Obligation to negotiate**

- 25.5.1 The CTP Insurer must seek to negotiate a fair and reasonable settlement with each Worker who has made a Claim against the CTP Insurer under a Policy in circumstances where LGA has given a notice of First Charge to the CTP Insurer in relation to the Worker's Claim against the CTP Insurer.
- 25.5.2 If a Worker has a right to recover an amount from a CTP Insurer under Part 4 of the MV Act and elects not to pursue a Claim against the CTP Insurer, the CTP Insurer must make an offer to the LGA and seek to negotiate a fair and reasonable settlement with the LGA in accordance with Commercial Rule 25.5.1 as if the Worker had made a Claim against the CTP Insurer under Part 4 of the MV Act.

#### **25.6 Dispute resolution**

- 25.6.1 If LGA and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to LGA in respect of a Claim that is the subject of a First Charge, the CTP Insurer must notify the Regulator in writing of the existence of the dispute and may request that the Regulator refer the matter to arbitration, whereupon the Regulator will (if agreed by LGA) refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).
- 25.6.2 The CTP Insurer agrees that any dispute referred to arbitration in accordance with Commercial Rule 25.6.1:
- (a) will be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules; and
  - (b) the CTP Insurer must provide to the independent arbitrator its original file which will comprise copies of the documents referred to in Commercial Rule 25.3.
- 25.6.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with LGA.
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