

**Application for urgent interim and final
authorisation under s88(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

Suncorp Group Limited

**on behalf of itself and other providers of
insurance**

1 April 2020

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1 Summary

1.1 Background

This application is made by Suncorp Group Limited (**Suncorp**), on behalf of:

- (a) itself and its related bodies corporate;
- (b) Allianz Australia Limited;
- (c) QBE Insurance (Australia) Limited; and
- (d) any other insurer or insurance broker who in the future wishes to engage in the conduct the subject of the application provided the ACCC is notified in advance,

(the **Participating Insurers**).

The Participating Insurers seek interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (CCA) to engage in the "**Proposed Conduct**" described in section 3 of this application.

The Proposed Conduct seeks to introduce industry initiatives to be adopted on a voluntary basis by the Participating Insurers in order to provide additional support to the community in the face of the COVID-19 event including for example by:

- facilitating SME policyholders to continue their insurance coverage rather than cancelling their coverage due to financial hardship arising from the COVID-19 event. This includes by:
 - offering existing SME policyholders who are experiencing financial hardship the ability to elect to defer premium payments for up to 6 months (as explained at paragraph 3.2(a)); and
 - offering continuation of cover for unoccupied premises with no change to premium, in order to enable SMEs to retain insurance coverage (as explained in paragraph 3.2(c)); and
- supporting the ongoing business of insurance brokers by offering their clients an alternative to cancellation by deferring premium payments for eligible policies (which in turn reduces the lost business and commission to brokers in the longer term).

Importantly, the initiatives outlined in the Proposed Conduct section of this application are not mandatory and Participating Insurers who choose to participate may independently elect to implement more extensive relief measures.

1.2 Proposed time frame

Authorisation under this application is sought for conduct the effects of which may extend to 31 December 2020, by means of arrangements or understandings in place **up to and including 30 June 2020**. The 30 June 2020 date means:

- *in relation to the proposed deferred payment conduct set out at paragraph 3.2(a):* that existing SME policyholders will be able to elect to defer for up to 6 months the premiums for their policy renewals that fall due from the date of authorisation to 30 June 2020. The last policy renewal date covered by this application for authorisation would be 30 June 2020 and, assuming the SME policyholder requests a full 6 month deferral, Participating Insurers would not seek to collect the premium on that insurance policy until at least 6 months after that date (being 31 December 2020); and
- *in relation to the other Proposed Conduct initiatives set out at paragraphs 3.2(b) to 3.2(e):* that those initiatives apply to eligible policies and supply arrangements (as described in those paragraphs) current up to and including 30 June 2020, with the effects of implementing the initiatives potentially continuing beyond this date (see section 3.6 for an explanation of the term of the authorisation sought). Policies that fall for renewal after 1 July 2020 do not form part of this application for authorisation.

The voluntary nature of the initiatives means that a Participating Insurer may independently choose not to collect the premium, or may independently choose to provide the other relief outlined in the Proposed Conduct initiatives, for a longer period. Participating Insurers may also apply their own hardship policies in addition to the relief contemplated by this application.

To provide customers with urgent relief, the Participating Insurers request that the ACCC grant interim authorisation for the period from the date of this application until the ACCC has granted final authorisation and that the interim authorisation be granted urgently.

2 Parties to the Proposed Conduct

2.1 Applicant

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
<p>Suncorp Group Limited (ACN 145 290 124) and its related bodies corporate</p> <p>Level 28, 266 George St Brisbane QLD 4000</p> <p>(07) 3135 4155</p>	<p>Belinda Speirs Group General Counsel Suncorp Group Limited</p> <p>██████████ ██ ██████████ ████████████████████ ████████████████████</p>	<p>Supply of financial services including banking, wealth management and insurance products</p>

2.2 Address in Australia for service of documents

Peta Stevenson
Partner
King & Wood Mallesons

[REDACTED]

2.3 Other Persons who propose to engage in the Proposed Conduct

Each of the Participating Insurers relevantly supply various insurance products including personal insurance products such as home and contents, motor and vehicle, and travel insurance; business and commercial insurance products; corporate insurance; public and product liability insurance; and professional indemnity insurance.

Name, address (registered office), telephone number and ACN	Contact person’s name, position, telephone number and email address	Short description of business carried out by applicant
<p>Allianz Australia Limited (ACN 000 006 226) and its related bodies corporate</p> <p>Level 8 2 Market St Sydney NSW 2000 (02) 8258 5032</p>	<p>Caroline Chivers Acting Group General Counsel Allianz Australia Limited</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Supply of insurance and risk management products and services including personal, business and corporate insurance, and loss control and risk management strategies</p>
<p>QBE Insurance (Australia) Limited (ACN 003 191 035) and its related bodies corporate</p> <p>Level 27, 8 Chifley Square Sydney NSW 2000 (02) 9375 4444</p>	<p>Tatyana Virgara General Counsel and Company Secretary QBE Insurance (Australia) Limited</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Supply of insurance products and services including home and contents, car and vehicle, and business insurance</p>

3 Proposed Conduct

3.1 Background

Following the announcement of the COVID-19 outbreak as a pandemic, the Australian Government has sent clear signals to the financial community to consider financial hardship measures, particularly for small businesses. For example, on 19 March 2020 the Federal Government and the Reserve Bank of Australia announced an injection of \$105 billion into the economy “to support lending to small and medium sized businesses”, and on 20 March 2020 the Treasurer congratulated “the announcement by the Australian Banking Association (**ABA**) that their members will defer loan repayments for six months for small businesses who need assistance because of the impacts of the coronavirus” for the reason that it “will provide a big

boost to the confidence of small businesses at this difficult time.”¹ The creation of the National COVID-19 Coordination Commission by the Prime Minister on 25 March 2020 further confirms the importance of cooperative work between private sector entities to support Australian families, businesses and communities.²

The initiatives the subject of the Proposed Conduct (as defined below) are similarly intended to provide support to small and medium-sized businesses in light of the COVID-19 event. Small and medium-sized business in Australia are experiencing economic and financial shock to a significant extent and with increasing severity as they are seeking to withstand a sharp decline in revenue while having to continue servicing their existing financial obligations. The measures are designed to support insured businesses who are impacted by the coronavirus. By supporting these insured SME policyholders, Participating Insurers will seek to benefit business owners, their employees, their suppliers and customers.

3.2 Description of conduct for which authorisation is sought

The Participating Insurers propose to engage in initiatives with a view to providing additional support to the community in the face of the COVID-19 pandemic. The initiatives the subject of the Proposed Conduct are intended to provide a minimum level of relief by Participating Insurers who choose to participate; however, the Proposed Conduct initiatives are not compulsory and Participating Insurers can opt not to participate.

Participating Insurers may also independently elect to implement more extensive relief measures.

Specifically, the Participating Insurers seek authorisation to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct, which has the purpose, effect or likely effect of:

- (a) offering existing **SME policyholders** who are experiencing financial hardship from the impact of the COVID-19 event **the ability to elect to defer premium payments for up to 6 months (Deferred Payment)**.

Assuming a 6 month deferral, the effect of this initiative would be that a Participating Insurer would continue to renew existing policies and provide cover under policies for which annual or monthly premiums fall due **in the period to 30 June 2020**, but would only seek to collect those premiums after that 6 month period. The collection of those premiums after that period would remain subject to negotiation between the policyholder and the Participating Insurer at the relevant time, and to any other relief available from individual Participating Insurers, for example in accordance with their hardship provisions.

Participating Insurers may independently develop further initiatives to organise **flexible arrangements** including enabling a transition to flexible payment arrangements (for example, monthly payment options for premiums or recoveries);

¹ See <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/banks-step-support-small-business>

² See <https://www.pm.gov.au/media/national-covid-19-coordination-commission>

- (b) offering SME policyholders, who need to respond to significant changes in revenue due to the impact of the COVID-19 event by electing to cancel their insurance policies, a refund of all unused premium **with no administration or cancellation fees applying**;
- (c) offering SME policyholders who need to close the premises of insured businesses due to the impact of the COVID-19 event **continuing cover on the premises with no changes to premium**;
- (d) offering all policyholders (including consumer, SME and larger businesses) who can no longer travel as planned due to the impact of the COVID-19 event a credit or **refund for any unused travel insurance premium** (meaning the portion of the premium for the period outstanding) **with no administration or cancellation fees applying**; OR
- (e) **reducing payment times for SME suppliers and contractors** involved in servicing claims for a Participating Insurer to no more than 15 business days to assist small and medium-sized businesses and individual property owners, and to help stimulate the economy.

(the **Proposed Conduct**).

In relation to the Proposed Conduct initiatives set out at (a)-(d) above:

- these initiatives will be available to eligible policyholders on an opt-in basis. This means that eligible policyholders (set out at (a)-(d) above) will be required to contact Participating Insurers or insurance brokers (as relevant to their circumstances) in order to take advantage of the Proposed Conduct initiatives; and
- policyholders will self-assess whether their businesses have faced hardship (including financial hardship) and have been impacted by COVID-19 and no further verification will be required.

The Proposed Conduct initiative at (e) is to be automatically applied by Participating Insurers wherever possible and is not subject to notification of hardship following the COVID-19 event.

3.3 Definitions and criteria

In connection with the Proposed Conduct, Participating Insurers may apply the following definitions and criteria:

- (a) an SME is a small to medium enterprise. Specifically, an SME for the purposes of the Proposed Conduct is an individual, partnership, company or trust that is carrying on a business and:
 - (i) employs fewer than 20 employees (or 100 if a manufacturing business); and
 - (ii) has an aggregated annual turnover of less than \$10 million.

Each Participating Insurer may independently choose to apply a higher threshold by extending this definition, or may specify the particular SME policyholders eligible for each Proposed Conduct initiative to be provided by that Participating Insurer; and

- (b) any policyholder of a Participating Insurer that is entitled to relief under each Participating Insurer's existing hardship programs retains that entitlement, in addition to any entitlement provided by the Proposed Conduct.

3.4 Examples of SME insurance policies

The types of SME insurance policies that the Proposed Conduct may apply to include (but are not limited to) business interruption cover, directors' and officers' ("D&O") liability insurance, professional indemnity insurance, public and products liability insurance, building or property damage insurance, motor insurance, equipment breakdown cover, industrial special risks insurance, theft cover, superannuation trustees' liability and association liability. Each Participating Insurer will have its own product offering and these examples are indicative only.

3.5 Role of brokers in the Proposed Conduct

Participating Insurers will seek to ensure that the Proposed Conduct initiatives are delivered efficiently and effectively whether:

- insurance is supplied directly by the Participating Insurer; or
- the supply of insurance is intermediated through insurance brokers.

For directly supplied insurance, a Participating Insurer will liaise directly with its customers in relation to their implementation of the Proposed Conduct Initiatives.

For intermediated customers, it is anticipated that brokers may be involved in the Proposed Conduct in two roles:

- (a) brokers as intermediaries of insurance products supplied by facilitating the implementation of Proposed Conduct initiatives offered to their clients by Participating Insurers such as Suncorp, QBE and Allianz. In this role, brokers may act as agents of the client (that is, the customer of the insurance product) or may be agents of the Participating Insurer; and
- (b) devising and offering Proposed Conduct initiatives on their own behalf and subject to their own commercial circumstances.

For this reason, brokers are captured in the definition of Participating Insurers.

The impact of the Proposed Conduct on brokers will depend on the terms of a broker's arrangements with Participating Insurers and with the broker's clients. Those terms may include one or more of:

- fee for service arrangements, with no commission paid on renewals – the proposed Deferred Payment conduct would not affect those brokers' financial position; and
- commissions payable on renewals – where brokers do receive commission for premiums paid and do pass on the benefit of the Deferred Payment to their customers, those brokers' commissions will also be deferred for the period.

So as to minimise the impact to brokers, however, the Proposed Conduct sought under this authorisation:

- is limited to the period to 30 June 2020 only, with the effects of implementing the initiatives potentially continuing until up to 31 December 2020 (see section 3.6 for an explanation of the term of the authorisation sought);
- is limited to SME policyholders who are an individual, partnership, company or trust, that are carrying on a business, employ fewer than 20 employees (or 100 if a manufacturing business), and have an aggregated annual turnover of less than \$10 million (with Participating Insurers being able independently to choose to relax these thresholds).

The \$10 million turnover amount is a level that seeks to ensure that brokers are able to earn commission on premiums that fall outside the scope of the Proposed Conduct. As noted below in section 4, the \$10 million threshold seeks to avoid substantial further lost commission to brokers, many of whom are small business themselves;

- is voluntary;
- does not permit primary Participating Insurers (such as Suncorp, Allianz and QBE) to require brokers to pass on the benefit of the Proposed Conduct initiatives (absent any contractual direction in brokers' terms with the relevant Participating Insurer). So as to permit insurers to discuss the Proposed Conduct initiatives with brokers, and to facilitate the delivery of the Proposed Conduct initiatives to customers, brokers are included in the broader definition of Participating Insurers; and
- in relation to the proposed Deferred Payment specifically, any commission owed to brokers on the payment of deferred premiums is also merely deferred (assuming the premium is paid at the end of the deferral term). In circumstances where customers' cashflows are likely to be affected as a result of the COVID-19 event, a likely alternative may be that customers cancel their policy, which would mean lost ongoing business and commission for brokers.

3.6 Term of authorisation sought

The Proposed Conduct initiatives are a temporary measure to provide community support from financial hardship facing the community in light of the COVID-19 pandemic. The Participating Insurers seek authorisation to engage in the Proposed Conduct until 30 June 2020, with the effects of implementing the initiatives potentially continuing until up to 31 December 2020, as explained below.

The 30 June 2020 date means, in relation to the proposed Deferred Payment conduct, that:

- existing SME policyholders will be able to elect to defer for up to 6 months their premium payments for policy renewals that fall due from the date of authorisation to 30 June 2020; and
- assuming a 6 month deferral is requested by the SME policyholder, the last policy renewal date covered by this application would be 30 June 2020 and Participating Insurers would not seek to collect the premium on that insurance policy until at least 6 months after that date (that is, 31 December 2020).

In relation to the other Proposed Conduct initiatives set out at paragraphs 3.2(b) to 3.2(e) above, those initiatives will apply to existing eligible policies or supply arrangements (as described in those paragraphs) current up to and including 30 June 2020, although payments (or credits) resulting from the initiatives could be made later (in accordance with each Participating Insurer's processes).

As noted above, the voluntary nature of the initiatives means that a Participating Insurer may independently choose not to collect the premium, or may independently choose to provide the other relief outlined in the Proposed Conduct initiatives, for a longer period. Participating Insurers may also apply their own hardship policies in addition to the relief contemplated by this application.

In addition to seeking to balance the benefits of the Proposed Conduct against the potential implications for brokers described at section 3.5 above, the relatively short-term nature of the application for authorisation has regard to the differentiated nature of the Australian insurance industry and varying abilities of insurers to bear such conduct for longer periods. It does, however, remain in the hands of each Participating Insurer to extend their own conduct on a unilateral basis for a longer period.

3.7 Application for interim authorisation

The Proposed Conduct is intended to support Participating Insurers to urgently address insurance-related needs and potential financial hardship arising from the COVID-19 situation and accordingly, interim authorisation is sought on an urgent basis.

The current Participating Insurers acknowledge that if, during the interim authorisation period, the ACCC identifies concerns about the Proposed Conduct, the ACCC may review and revoke that authorisation at any time.

3.8 Provisions of the CCA which might apply to the Proposed Conduct

The Participating Insurers are relevantly competitors for the supply of insurance products and services, including insurance products and services the subject of the Proposed Conduct. Absent authorisation, the Proposed Conduct may contravene sections 45AF, 45AG, 45AJ, 45AK, and/or 45 of the *Competition and Consumer Act 2010* (Cth).

4 Public benefit

In addition to the general benefits outlined below, the Participating Insurers intend that Proposed Conduct initiatives will:

- help SMEs to reallocate insurance premium expenses towards other business needs which could include, for example, to remodel a café or restaurant to a take-away, home delivery business or grocery supplies store;
- prevent the unnecessary cancellation of cover by enabling SMEs to have continued cover for non-COVID-19 related events such as fire, storms, water damage from burst pipes, theft and so on that arise during the COVID-19 event, as these perils account for a large proportion of insured losses. Continuation of cover is especially important for SMEs with claims made

policies (such as professional indemnity or D&O insurance, which generally only provide policyholders with cover for claims made against them while the policy is active, regardless of when the event the subject of the claim occurred); and

- as many SME policies include requirements that premises remain occupied for cover to continue, and involve a higher premium if unoccupancy occurs, the continuation of cover with no change to premium for unoccupied premises will enable SMEs to retain insurance coverage.

Additionally, in relation to the proposal to offer a credit or refund to all policyholders for any unused travel insurance premium with no administration or cancellation fees (described at paragraph 3.2(d) above), the Participating Insurers intend that this particular initiative will:

- in the case of a refund, help policyholders to reallocate refunded insurance premium expenses towards other household or business needs; and
- in the case of a credit, facilitate policyholders applying their unused premiums to any travel insurance required for future personal or business travel and avoiding the need for additional expenditure, up to the value of the credit.

This benefit extends to all policyholders, including individual consumers, SME and larger businesses, in recognition that all travel insurance policyholders have been affected by the current travel conditions.

In granting interim authorisation to the ABA for authorisation AA1000475 on 20 March 2020 (**ABA Authorisation**), the ACCC recognised the urgency of the ABA's request for interim authorisation in light of the significant challenges that small and medium-sized businesses are facing due to the COVID-19 pandemic.

Similarly to the ACCC's findings in its grant of the ABA Authorisation:

- The Proposed Conduct is intended to enable Participating Insurers to offer initiatives with minimum features and provide small businesses with additional protections during this time.
- It is unlikely that interim authorisation will materially alter the competitive dynamics in any market, and markets will be able to return to substantially their current state once the emergency circumstances subside. In particular:
 - the Proposed Conduct initiatives are temporary measures and apply in respect of current insurance policies including insurance policies to be renewed before 30 June 2020. Authorisation of the conduct is only sought for approximately three months to 30 June 2020, with the effects of implementing the initiatives potentially continuing until up to 31 December 2020 (see section 3.6 for an explanation of the term of the authorisation sought);
 - Participating Insurers are able to determine whether and in what respects they wish to participate and are individually able to offer terms more favourable than those the subject of authorisation; and

- a number of insurance providers (in addition to Suncorp, Allianz and QBE) are likely able to provide the Proposed Conduct initiatives. For example, on 26 March 2020 IAG announced measures which are similar (but not identical to) the Proposed Conduct initiatives (**IAG Announcement**).³
- There are likely to be significant public benefits from the Proposed Conduct in the current unprecedented emergency circumstances, including:
 - urgently assisting eligible policyholders, including SME policyholders, experiencing financial difficulties by providing short term relief;
 - assisting eligible businesses to remain viable and continue to employ their workers; and
 - the process for an eligible policyholder to opt-in to access the Proposed Conduct initiatives is intended to be simple and accessible, including online and/or call centre registration as determined by each Participating Insurer.

The current Participating Insurers consider that the proposed definition of SME set out at 3.3(a) above is appropriate, because a higher threshold would involve substantial further lost commission to brokers, many of whom are small business themselves. The current Participating Insurers consider that the \$10 million threshold employed in the SME definition in this application will not disadvantage policyholders, as policyholders with a turnover of between \$10 million and \$50 million are sufficiently large and are likely to be provided bank or insurer support outside of the Proposed Conduct initiatives.

5 Public detriment

The Participating Insurers submit that the Proposed Conduct provides a net public benefit weighing up the public benefits and having regard to:

- the short term nature of the Proposed Conduct under this application for authorisation;
- the Proposed Conduct not being compulsory; and
- the Proposed Conduct being a minimum threshold only such that Participating Insurers can independently elect to implement more extensive relief measures.

³ See <https://www.iag.com.au/iag-introduces-support-measures-customers-impacted-coronavirus>

6 Declaration by applicant(s)

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Name: 

Position title: 

Date: 1 April 2020