



Memorandum of Understanding

between the

Australian Communications and Media Authority

and the

Australian Securities and Investments Commission

1. The agencies

- 1.1 The Australian Communications and Media Authority (ACMA) is a statutory agency established by section 6 of the *Australian Communications and Media Authority Act 2005*. ACMA regulates broadcasting services, radiocommunications, telecommunications, unsolicited communications and certain Internet content in Australia.
- 1.2 The Australian Securities and Investments Commission (ASIC) is a regulatory and law enforcement agency charged with promoting market integrity and consumer protection across the financial services sector. ASIC was established by section 7 of the *Australian Securities and Investments Commission Act 1989* and continues under section 261 of the *Australian Securities and Investments Commission Act 2001*. Its responsibilities include the administration and enforcement of the *Corporations Act 2001*.

2. Purpose

- 2.1 This Memorandum of Understanding (MOU) states the mutual understanding of, and principles that underpin, the working relationship between the agencies.
- 2.2 The MOU is to:
 - 2.2.1 guide and facilitate the agencies' collaboration, cooperation and mutual assistance in the performance of their respective statutory functions; and
 - 2.2.2 provide transparency about the agencies' efforts to coordinate activities and minimise duplication.
- 2.3 Both agencies recognise the need for, and will use best efforts to give effect to, the purposes through active collaboration and cooperation at all levels within them in the course of discharging their respective statutory functions and objectives.

3. Scope

- 3.1 The MOU is not intended to create binding legal, financial or other resource obligations on either agency.
- 3.2 The MOU is not intended to be exhaustive in the subject matters within its scope. The agencies may enter into any other arrangements for cooperation and collaboration to the full extent permitted by the law.

4. Liaison

- 4.1 The agencies will hold regular liaison meetings and establish direct lines of communication at all levels of their operations for the purposes.
- 4.2 Each agency will designate liaison contact officers to facilitate communication and exchange of information between the agencies. Each agency may change its liaison contact officers at its discretion and will advise the other agency before, or as soon as practicable after, any change.
- 4.3 The agencies will liaise as necessary to progress matters of mutual interest, to improve the efficiency and effectiveness of information sharing, and to identify and discuss opportunities for joint compliance, enforcement, education and/or training activities.
- 4.4 The agencies agree that, where appropriate, they will consult with each other on publication and stakeholder communication on any matters of mutual interest, including in relation to media

releases, statements or responses to the media, and administrative guidance and any other related materials.

5. Confidentiality and security of information

5.1 Both agencies will ensure that requests for exchange, and the provision, of information between them accord with the exercise of their respective powers and functions including compliance with:

5.1.1 the authorised disclosure provisions under their respective enabling legislation; and

5.1.2 other applicable laws including the *Privacy Act 1988*.

5.2 Information may be provided by one agency (the providing agency) to the other (the recipient agency) upon request, at the providing agency's discretion. A providing agency may also give information to the recipient agency without a request if the providing agency is reasonably of the view that the information is likely to assist the recipient agency in performing its functions and meeting its objectives.

5.3 A recipient agency will take all reasonable measures to protect the information received under this MOU from unauthorised use or disclosure. It will keep the information secure and confidential in accordance with all applicable statutory obligations on either agency or both agencies (as advised by the providing agency).

5.4 If the recipient agency intends to disclose information received under this MOU to any third-party government agency, it will give the providing agency an opportunity to make any submissions on the matter:

5.4.1 in its initial request to the providing agency for the information, where practicable; and

5.4.2 prior to any such disclosure.

5.5 If information provided under this MOU becomes the subject of a subpoena, freedom of information request, or other legal demand for access, the recipient agency will immediately notify the providing agency to enable the providing agency to advise on any intended action relating to the release, disclosure, publication or production of such information.

5.6 If information provided under this MOU becomes the subject of any inadvertent or unauthorised disclosure, the recipient agency will as soon as practicable notify the providing agency of the details, in addition to any legal obligations the recipient agency may have in relation to the matter.

6. Areas of collaboration

6.1 The areas of collaboration and information exchange under this MOU include, but are not limited to, mutual assistance, joint action and/or exchange of information concerning:

6.1.1 ACMA's compliance, enforcement, cost recovery, revenue assurance and education functions in relation to the *Broadcasting Services Act 1992*, the *Radiocommunications Act 1992*, the *Telecommunications Act 1997*, *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Spam Act 2003*, the *Do Not Call Register Act 2006*, and the *Interactive Gambling Act 2001*, as well as associated regulations, standards and codes of practice.

6.1.2 ASIC's administration, investigation, enforcement and education functions in relation to the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001*, the *Corporations legislation* (as defined in section 9 of the *Corporations Act 2001*), the *ASIC Supervisory Cost Recovery Levy Act 2017*, the *ASIC Supervisory Cost Recovery*

Levy (Collection) Act 2017, the Insurance Contracts Act 1995, the National Consumer Credit Protection Act 2009, the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009, the Retirement Savings Accounts Act 1997, the Business Names Registration Act 2011, the Business Names Registration (Transitional and Consequential Provisions) Act 2011, the Superannuation Industry (Supervision) Act 1993, and the Superannuation (Resolution of Complaints) Act 1993, as well as associated regulations and codes.

6.2 The areas of priority concern for either agency in relation to its specified functions above include, where:

- 6.2.1 either agency suspects illegal 'phoenix'¹ activity by, or connected with, an entity of potential concern to the other agency;
- 6.2.2 an entity may be subject to deregistration by ASIC that is the subject of compliance, investigation or enforcement action by ACMA;
- 6.2.3 an agency has information or intelligence that indicates potential serious or systemic non-compliance with the regulatory requirements relating to the functions of either or both agencies; and
- 6.2.4 any other matters identified for priority attention from time-to-time by an agency.

6.3 The agencies may facilitate their collaboration through any appropriate arrangements, including:

- 6.3.1 formal referral of a matter by an agency where both agencies agree the matter more appropriately falls within the jurisdiction of the other agency;
- 6.3.2 temporary secondments and/or exchange of staff to facilitate a transfer of expertise and skills; and/or
- 6.3.3 provision of joint training, or an invitation to participate in training conducted or facilitated by an agency that may be relevant to the other agency.

7. Commencement, review and termination

7.1 The MOU will take effect when signed by both the Chair of the ACMA and the Chair of ASIC, on the date it is signed by the agency last to sign (Effective Date).

7.2 The MOU will be reviewed by the end of the third year after its Effective Date. However, either agency may in writing to the other request a variation of the MOU at any time. A variation is made when agreed in writing by both agencies. All variations will be recorded in the change register at Schedule A.

7.3 If there is a disagreement over any matter within the scope of this MOU, the agencies will seek to resolve them at an officer level. Any disagreement or matter not so resolved will be referred to the Chair of the ACMA and the Chair of the ASIC for resolution.

7.4 An agency may terminate this MOU by its Chair giving 30 days written notice to the Chair of the other agency. The termination will take effect on the expiry of the notice unless otherwise arranged by the agencies.

¹ ASIC describes illegal phoenix activity as involving creating a new company to continue the business of an existing company that is deliberately liquidated to avoid paying taxes, creditors and employee entitlements.

- 7.5 If the MOU is terminated, information exchanged under the MOU and held by either agency will be treated as if the MOU were still in force, to the extent permitted by law.
- 7.6 The MOU will remain in force unless terminated under clause 7.4 or otherwise mutually by the agencies.

8. Signatures

Signed for and on behalf of the **Australian Communications and Media Authority** by:

Name: *NERIDA O'LOUGHLIN*

Position: *CHAIR*

Signature: 

Date: *27 May 2019*

Signed for and on behalf of the **Australian Securities and Investments Commission** by:

Name: *JAMES R.F. SHIPTON*

Position: *CHAIR*

Signature: 

Date: *4 MAY 2019*

Schedule A

Change register

Date change agreed	Clauses changed	Details of change