



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION

AND

THE AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY

Note: This is a compilation of the MOU, incorporating the amendments made by a Variation to the MOU dated 21 June 2019.

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This Memorandum of Understanding (MoU)

is made on 15 December 2016

Between

The Australian Competition and Consumer Commission (the ACCC)

and

The Australian Communications and Media Authority (the ACMA)

1 Agencies to the MoU

- 1.1 The Agencies to this MoU are the ACCC and the ACMA, and in this MoU, the term ‘Agency’ will mean either the ACCC or the ACMA as the context allows.
- 1.2 The ACCC is an independent Commonwealth statutory authority responsible for enforcing consumer protection and fair trading laws and for promoting competition in the marketplace. Under the *Competition and Consumer Act 2010* (Cth) (CCA) and other legislation, the ACCC is responsible for, amongst other matters, administering the telecommunications access regime, for the economic regulation of the communications sector and for general consumer protection and anti-competitive conduct regulation.
- 1.3 The ACMA is an independent Commonwealth statutory authority established by section 6 of the *Australian Communications and Media Authority Act 2005* (ACMA Act). The ACMA is Australia’s regulator for broadcasting and datacasting services, radiocommunications, telecommunications, spam, telemarketing and interactive gambling.
- 1.4 The ACCC and the ACMA have regulatory roles and responsibilities in relation to the communications and media sectors, and undertake activities that affect those sectors. The work of the Agencies is often complementary and may at times intersect on particular topics, issues or projects, particularly in relation to:
 - (a) technical regulation (such as licensing and standards for industry participants);
 - (b) radio frequency spectrum allocation;
 - (c) competition issues in communications and related sectors (such as media ownership);
 - (d) communications-specific consumer protection;
 - (e) economic regulation of communications networks; and
 - (f) monitoring and reporting in relation to the communications and media sectors.

2 Purpose of the MoU

- 2.1 The purpose of this MoU is to promote effective co-operation and communication between the Agencies and to assist each Agency in the performance of its roles and responsibilities, including decision-making, and to contribute to the effective regulation of the communications and media sectors.
- 2.2 This MoU creates a framework to facilitate engagement between the Agencies, including consultation, collaboration and sharing information.
- 2.3 The Agencies recognise the complex, dynamic and evolving nature of the communications and media sectors, and the broad range of activities that occur within those sectors.
- 2.4 The Agencies also recognise that mutual cooperation through the sharing of knowledge and expertise will contribute significantly to the ability of both Agencies to effectively and efficiently discharge their respective functions. The Agencies acknowledge that cooperation is subject to the legal, policy and operational limits on the powers of each Agency, including in relation to the collection, use and disclosure of information.
- 2.5 This MoU does not create any enforceable rights or impose any legally binding obligations on either Agency.
- 2.6 Nothing in this MoU affects the exercise of the legislative functions or responsibilities of the Agencies.

3 Consultations

- 3.1 Where appropriate, each Agency will notify the other Agency of any matter that may be relevant to the carrying out by the other Agency of its roles and responsibilities, and keep the other Agency informed of the progress of those matters.
- 3.2 Where either Agency is required, under legislation or otherwise, to consult the other, the Agency required to consult (the consulting Agency) will endeavour to provide the other Agency with at least 7 business days as the period within which the other Agency is to provide comments in response, whilst recognising that, on occasion, comments may be required urgently due to circumstances beyond the control of the consulting Agency.
- 3.3 The Agencies acknowledge the appointment of Associate Members (to be interpreted within the meaning specified in clause 3.7) as an important mechanism to facilitate engagement between the Agencies and to benefit the decision-making of each Agency. Each Agency will provide support to enable effective participation by Associate Members at meetings convened by each Agency.
- 3.4 The Agencies will continue consultation with each other through:

- (a) bilateral meetings at member and senior executive level;
- (b) the ACMA Consumer Consultative Forum;
- (c) the Telecommunications Regulators' Roundtable;
- (d) other consumer and telecommunications forums; and
- (e) meetings at officer level as agreed between the Agencies on current matters of interest to each Agency, which may include recent law reform, policy issues, recent judgments, media releases or other matters of mutual interest.

3.5 The Agencies may agree to establish additional regular meetings on relevant topics, or to alter the nature and scope of regular meetings as appropriate. This may occur, for instance, where new issues emerge in the communications and media sectors that warrant additional regular engagement between the Agencies.

3.6 The Agencies will also explore other opportunities for sharing perspectives on matters relevant to both, especially in relation to matters regarding the promotion of competition, innovation and investment in the communications and media sectors. The Agencies may agree to establish processes applicable to any arrangement to share expertise.

3.7 For the purposes of clause 3.3 and clause 3A, 'Associate Member' means:

- (a) a member of the ACCC who has been appointed as an associate member of the ACMA under the ACMA Act; and
- (b) a member of the ACMA who has been appointed as an associate member of the ACCC under the CCA.

3A Cross-Appointments of Associate Members

3A.1 Further to the acknowledgments contained in clause 3.3, the Agencies acknowledge that the appointment of Associate Members is intended to:

- (a) facilitate the sharing of information and analysis between the Agencies;
- (b) enable Associate Members to directly contribute to the deliberations of the Agency to which they are appointed on regulatory matters of common interest to the Agencies; and
- (c) promote better decision-making by the Agencies in cases where:
 - (i) the Agencies are considering regulatory matters of common interest; and/or

(ii) the matter in question has potential implications for both Agencies' regulatory objectives; and/or

(iii) the matter relates to regulated entities that are or may be the subject of action or investigation by both Agencies.

3A.2 In the case of an Associate Member who is appointed to the ACMA, their appointment will relate to the matters which are specified in an instrument made by the Minister for Communications and the Arts under subsection 24(4) of the ACMA Act. In the case of an Associate Member who is appointed to the ACCC, their appointment will relate to the exercise of the powers of the ACCC which are specified in the instrument made by the Chairperson of the ACCC under subsection 8A(4) of the CCA. The Agencies will endeavour to cause the nature and scope of the matters and powers that are vested in Associate Members of the ACCC and the ACMA to be as similar as the circumstances permit.

3A.3 The Agencies acknowledge that each Associate Member will:

- (a) be obliged to observe the statutory requirements and administratively-established protocols of the Agency to which they are appointed; and
- (b) seek to contribute to the deliberations of that Agency through the provision of information, analysis and advice available to them as a result of their membership of the Agency to which they were originally appointed.

3A.4 The Agencies acknowledge that, in the ordinary course:

- (a) Associate Members may attend meetings of the Agency to which they are appointed (be they Authority, Commission or committee meetings) only in cases where, and to the extent that, the meeting deals with matters such as are referred to in paragraphs 3A.1(b) or (c); and
- (b) prior to attending any such meeting, the Associate Member will use their best endeavours to advise the chair of the meeting of their proposed attendance.

3A.5 The Agencies acknowledge that nothing in this MOU is intended to limit the legal rights and responsibilities of Associate Members.

4 Referral of matters

4.1 Subject to any specific legal requirement to the contrary, each Agency, where appropriate, will promptly refer to the other Agency any complaint or enquiry that it receives which is relevant to the roles and responsibilities of the other Agency. If the matter is or becomes relevant to both Agencies, each Agency will inform the other of any subsequent developments as clause 3.1 provides.

4.2 Any such referral will be made in writing and addressed to the relevant Agency's liaison contact officer (refer to clause 10.1). Where, however, engagement on particular topics regularly occurs between the Agencies via specified persons, it may be appropriate for the Agency to refer a matter on that topic to that specified person.

5 Requests for information, documents or assistance

5.1 Each Agency will consider any reasonable requests by the other Agency (the Requesting Agency) to provide assistance (including the provision of information or documents) on a case by case basis, where such assistance is relevant to the Requesting Agency's statutory roles and responsibilities. For the purposes of this MoU, the Agency to whom a request has been made by the Requesting Agency is to be referred to as the 'Requested Agency'.

5.2 Requests are to include the details in Appendix A. The Agencies may consult with each other to clarify the content of any request.

5.3 The provision of assistance will be subject to operational considerations and the legal obligations of each Agency regarding the collection, use and disclosure of information, imposed by statute or otherwise. In relation to a particular request, the Agencies will advise each other of those relevant obligations and of the application of those obligations to that request.

5.4 An Agency may, in the exercise of its discretion, decline a request, in whole or in part.

6 Procedure for provision of information, documents or assistance

6.1 Each Agency will use its best endeavours to advise the other Agency in a timely manner whether it will accept or decline a request and, if accepted, a time frame for responding to the request.

6.2 Where the consent of a person is required, or a person is required to be advised of the request before an Agency is able to comply with the request, the Agency will advise the Requesting Agency of this fact before contacting that person.

6.3 An Agency may provide requested information subject to any conditions that it considers appropriate, including:

(a) written restrictions or limitations as to the use, access or storage of the requested information or documents; and

(b) confidentiality requirements relating to the information or documents provided.

6.4 Where a Requested Agency seeks to impose a condition, it must advise the Requesting Agency of that condition prior to providing the information.

6.5 In the event that significant costs may or will be incurred in responding to a request, the Agencies may negotiate a cost-sharing arrangement in relation to the request.

7 Confidentiality of requests and information or documents provided

7.1 An Agency will endeavour to keep confidential a request made to it under this MoU, the content of such a request and any other matters arising from consultation about the request, if requested to do so by the Requesting Agency.

7.2 Each Agency, subject to legal obligations requiring or authorising the disclosure or production, will maintain the confidentiality of the information or documents supplied by the other Agency in response to a request made under this MoU.

7.3 In exchanging confidential information, being information or documents held by either Agency in circumstances where the Agency is subject to a duty of confidence, whether arising by the application of statute, common law or equity, the Agencies acknowledge the confidentiality requirements of the laws and regulations under which each Agency operates.

7.4 Each Agency will comply with any confidentiality conditions and will not, subject to clause 7.2, release or disclose confidential information supplied to it under this MoU to a third party without the express written consent of the Requested Agency or as specified in the request.

7.5 In the event that the Requesting Agency receives a legally enforceable demand for disclosure of confidential information supplied to it by the Requested Agency under this MoU, before complying with the demand, the Requesting Agency will notify the Requested Agency, unless legal requirements or other circumstances make such a notification impermissible.

8 Permissible use of information or documents

8.1 Each Agency may use such information and documents in connection with carrying out its statutory functions or performing its duties, subject to any limitations on use applied as a condition by the other Agency under clause 6.3.

8.2 Each Agency will take reasonable steps to protect any information or documents provided to it under this MoU from being lost, and from any unauthorised use, modification, disclosure, recording or other misuse of the information or documents.

9 Term of MoU

9.1 This MoU commences on and from the date when it has been signed by both the Chairman of the ACCC and the Chairman of the ACMA.

- 9.2 From its commencement, this MoU will remain in force for a term of 10 years unless terminated earlier by one or both of the Agencies in accordance with clause 12.
- 9.3 The term of this MoU may be extended for a further specified period by the Agencies' written agreement.

10 Management of MoU

- 10.1 Each Agency will ensure that, at all times while the MoU is in force, at least one of its staff members is designated and known to the other Agency as its liaison contact officer for the purpose of this MoU. At the date of this MoU, the liaison contact officers for the Agencies are specified in Appendix B to this MoU.
- 10.2 Each Agency may change its liaison contact officer, as necessary, by written notice provided to the other Agency.
- 10.3 The Agencies' liaison contact officers may jointly decide whether to hold a coordination meeting as necessary to discuss matters of common interest.
- 10.4 The Agencies agree that any dispute arising out of the operation or implementation of this MoU will be discussed and resolved through a process of consultation between the Agencies' liaison contact officers. If the matter remains unresolved, the dispute will be referred to the Chairman of the ACCC and the Chairman of the ACMA, or their respective nominees.

11 Review and amendment of MoU

- 11.1 The Agencies will review the operation of the MoU on a periodic basis and will consult with each other with a view to improving its operation where necessary.
- 11.2 Any term of this MoU may be amended at any time with the mutual written consent of each Agency.
- 11.3 This MoU replaces the MoU between the ACCC and the Australian Communications Authority made on 10 June 1999.

12 Termination of MoU

- 12.1 Either Agency may terminate this MoU by giving at least 30 days written notice to the other Agency. The termination will take effect on the date that is 30 days after the notice is sent, unless otherwise agreed, in writing, between the Agencies.

13 Publication of MoU

- 13.1 The Agencies agree that this MoU may be publicised as each Agency considers appropriate including by placing it on the Agency's website.

Signed on this 15th day of December 2016

Signed on behalf of the Australian Competition and Consumer Commission	Signed on behalf of the Australian Communications and Media Authority
[signed] Rodney Sims Chairman ACCC	[signed] Richard Bean Acting Chairman ACMA

Appendix A – Request details

Requests for information, documents or assistance should include

- (a) the purpose for which the information, documents, or assistance is sought (identifying the provisions of any relevant law or other legal basis for the Requesting Agency seeking the information);
- (b) to whom, if anyone, the documents and information provided may be disclosed or released by the Requesting Agency (specifying the reasons and legal basis for the on-disclosure);
- (c) any information in the possession of the Requesting Agency that may:
 - (i) assist the Requested Agency in identifying persons who may be adversely affected by the disclosure; and
 - (ii) affect the Requested Agency's obligations to afford procedural fairness (if any) (including specifying whether the request is confidential, and the nature of any such affect); and
- (d) the suggested time period for reply and, if the request is urgent, the reasons for the urgency.

Appendix B – Liaison Contact Officers

ACCC liaison contact officer

The liaison contact officer is the Executive General Manager, Infrastructure Regulation Division.

ACMA liaison contact officer

The liaison contact officer is the Executive Manager, Strategy and Research Branch.