



**ASIC**

Australian Securities & Investments Commission



**Australian Government**

**Department of Jobs and Small Business**

**MEMORANDUM OF UNDERSTANDING**

**between the**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

**and the**

**AUSTRALIAN GOVERNMENT - DEPARTMENT OF JOBS AND SMALL BUSINESS**

**April 2018**

**MEMORANDUM OF UNDERSTANDING**  
**between the**  
**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
**and the**  
**AUSTRALIAN GOVERNMENT DEPARTMENT OF JOBS AND SMALL BUSINESS**

This Memorandum of Understanding (**MOU**) sets out a framework for cooperation between the Australian Securities and Investments Commission (**ASIC**) and the Australian Government Department of Jobs and Small Business (**DJSB**) (the **Agencies**) to facilitate liaison, co-operation, assistance and the exchange of information between the Agencies for the effective and efficient performance of their respective functions.

**1. PURPOSE**

- 1.1 The Agencies recognise that the need for cooperation and mutual assistance at all levels between the Agencies is desirable to assist in and enhance the discharge of their respective functions and to maximise the effectiveness of their regulatory oversight functions.
- 1.2 The Agencies agree to assist each other with the exchange of relevant information, appropriate referral of matters and co-operation as appropriate in compliance, education and enforcement activities, within the framework of this MOU and consistent with all relevant laws.

**2. RESPONSIBILITIES**

- 2.1 The *Australian Securities and Investments Commission Act 1989* (Cth) established ASIC. ASIC continues in existence under the *Australian Securities and Investments Commission Act 2001*. ASIC is a regulatory and law enforcement Agency charged with (among other things):
  - (a) monitoring and promoting market integrity and consumer protection in relation to the Australian financial system;
  - (b) promoting confident and informed participation of investors and consumers in the financial system;
  - (c) the registration and oversight of corporate insolvency practitioners and administration of the corporate insolvency provisions in the *Corporations Act 2001*; and
  - (d) administration of the *National Consumer Credit Protection Act 2009*.
- 2.2 The DJSB is an Executive Agency of the Commonwealth responsible for national policies and programs that help Australians find and keep employment and work in safe, fair and productive workplaces:
  - (a) The DJSB administers the Fair Entitlements Guarantee (**FEG**), a last resort scheme that provides financial assistance for payment of certain unpaid employee entitlements to employees who have lost their jobs due to the insolvency of their employers. As a last resort scheme, financial assistance under the FEG is available only where no other

source of funds exists to meet employee entitlement obligations of the insolvent employer. After assistance is paid, the Commonwealth stands in the shoes of the employee, becoming a creditor of the relevant insolvent employer.

- (b) The FEG Recovery Program (hereafter referred to as 'the **Program**') strengthens the integrity and sustainability of the FEG scheme by optimising the recovery of FEG funds from the assets of insolvent entities. Under the Program, funding is available for insolvency practitioners and other parties to launch recovery actions, including legal proceedings that would otherwise not have been possible to pursue.

- 2.3 This MOU does not create any legally binding obligations. The liaison, cooperation and other information sharing contemplated in this MOU is subject to all applicable laws and regulations governing the exchange of confidential, protected or personal information.

### **3. LIAISON BETWEEN AGENCIES**

- 3.1 To promote co-operation between the Agencies, ASIC and the DJSB will meet regularly to discuss operational and policy matters.
- 3.2 The Agencies agree that liaison in respect of routine operational matters will occur on an 'as needed' basis between appropriate staff of the Agencies.
- 3.3 In order to ensure effective liaison, the Agencies have exchanged, and will continue to update, lists of contact officers at both the regional and national level.

### **4. REGULATION AND POLICY DEVELOPMENT**

- 4.1 Each Agency will use its best endeavours to notify the other of proposed policy changes including regulatory policy and guidance that are likely to impact on the regulatory functions and responsibilities of the other Agency and provide the opportunity to consult the other Agency about those changes.
- 4.2 Each Agency will use their best endeavours to provide advance notice of proposed publication of regulatory guidance or media releases that may be of interest to, or have an impact on the regulatory functions and responsibilities of the other Agency.
- 4.3 Where appropriate, the Agencies may consider whether to issue a regulatory or policy document or media release jointly having regard to the subject matter and policy objectives of each Agency.

### **5. MUTUAL ASSISTANCE AND COOPERATION**

- 5.1 The Agencies recognise the need for cooperation and mutual assistance at all levels to discharge their respective responsibilities. The Agencies agree to use best endeavours to

provide each other with mutual assistance, exchange of relevant information and appropriate referrals of matters in areas of mutual interest to assist them to discharge their respective responsibilities.

5.2 Subject to each Agency's obligations at law, the Agencies will, where appropriate, provide assistance and cooperation in a timely manner in relation to:

- (a) the exchange of information;
- (b) appropriate referrals of matters;
- (c) exchange of technical information and expertise;
- (d) best practice regulation of the insolvency industry;
- (e) best practice enforcement procedures within the insolvency industry;
- (f) co-operative liaison with industry bodies;
- (g) participation in joint training programs; and
- (h) other general matters relating to regulation and enforcement.

5.3 The Agencies agree to use best endeavours to provide assistance and to cooperate when mutually beneficial in matters including:

- (a) the planning and implementation of surveillance programs;
- (b) evaluation of surveillance techniques;
- (c) industry education and consultation;
- (d) formation of joint task forces as contemplated in paragraphs 5.4 and 5.5 below; and
- (e) investigation and enforcement of, and monitoring compliance with, applicable laws.

5.4 From time to time, the Agencies may agree to conduct their investigations more effectively by establishing a joint task force consisting of staff members from both Agencies.

5.5 If both Agencies agree to take part in the joint task force, an agreed operational plan will be prepared between the Agencies setting out the objectives, expected duration, funding arrangements, publicity arrangements, accountability, and management of the joint task force.

## **6. ACCESS TO INFORMATION**

6.1 Each Agency holds information relevant to the other Agency's statutory responsibilities. Subject to each Agency's obligations at law, the Agencies agree to negotiate and enter into appropriate arrangements to facilitate access by one Agency to information held by the other Agency that is relevant to the first Agency's statutory responsibilities, to assist each Agency to perform their statutory functions.

## **7. UNSOLICITED ASSISTANCE**

7.1 Each Agency recognises that in the course of carrying out its functions and exercising its powers, it will periodically come into possession of information that would, if provided to the

other Agency, likely assist that other Agency in administering or enforcing the particular laws for which that Agency is responsible. The Agencies agree, subject to applicable laws, to use reasonable endeavours to notify the other Agency on a timely basis of the existence of information that the Agency holding that information considers may assist the other Agency to perform its regulatory and enforcement functions, notwithstanding that it may not have received a request from the other Agency for such information.

## **8. REQUEST FOR CONFIDENTIAL INFORMATION**

- 8.1 The Agencies will use their best endeavours to provide relevant information in a timely manner in response to requests for confidential information, subject to any relevant legal and operational considerations and any conditions that the provider of the information may impose when disclosing information.
- 8.2 The Agencies agree that where one Agency seeks confidential information from the other Agency, both agencies will use their best endeavours to confer without delay to determine the most appropriate basis for the release of information including whether it can be released to the requesting Agency.

## **9. CONFIDENTIALITY**

- 9.1 An Agency that receives information from the other Agency under this MOU, will take all reasonable steps to ensure that such information is only used or disclosed for the purpose for which it was obtained, or, as otherwise authorised by the other Agency, subject to applicable laws.
- 9.2 Where a legally enforceable demand would require the production of confidential information obtained by one Agency from the other under this MOU, the Agency subject to the demand will, prior to production, notify the other Agency in writing of the fact of receipt of the demand to enable the other Agency to determine what action, if any, it should take.

## **10. INTERNATIONAL REPRESENTATION**

- 10.1 The Agencies will use their best endeavours to cooperate to ensure that Australia has appropriate regional and international representation in areas of mutual interest.

## **11. TERMINATION**

- 11.1 Either Agency may give written notice to the other of its intention to terminate this MOU. The MOU will terminate 30 days after the date of receiving the notice. Cooperation will continue for all requests made before the effective date of this termination. In the event of termination, information obtained under this MOU will continue to be treated in accordance with the terms of the MOU.

11.2 The confidentiality obligations in this MOU survive the termination of this MOU.

## 12. COMMENCEMENT

12.1 This MOU comes into effect when signed by both an ASIC Commissioner and the Secretary of the DJSB or their authorised delegates.

## 13. VARIATION AND REVIEW

13.1 It is important that this MOU remain consistent, relevant and current. The Agencies will use best endeavours to review this MOU on an as needed basis from the commencement date of this MOU, and in the event that any issue arises.

13.2 The Agencies will negotiate in good faith should either Agency seek to vary this MOU.

13.3 This MOU can only be varied at any time by agreement in writing and signed by persons from the Agencies holding the appropriate delegation.

Dated this 10<sup>th</sup> day of April 2018

  
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**John Price**  
**Commissioner**  
**Australian Securities and**  
**Investments Commission**

  
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**Kerri Hartland**  
**Secretary**  
**Australian Government**  
**Department of Jobs and Small**  
**Business**