

MEMORANDUM OF UNDERSTANDING

Between

The Australian Charities and Not-for-profits Commission

And

The Australian Securities and Investments Commission

1 BACKGROUND

- 1.1 The purpose of this Memorandum of Understanding (MoU) is to express the understanding between the Australian Charities and Not-for-profits Commission (ACNC) and the Australian Securities and Investments Commission (ASIC) of the working relationship between the two agencies.
- 1.2 This MoU will guide collaboration, cooperation and mutual assistance in respect of the statutory functions of each agency. In addition to matters covered by this MoU, ACNC and ASIC acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral or multilateral and include information sharing, staff secondments, mutual training arrangements, joint task forces and service agreements.
- 1.3 This MoU is not intended to create legally binding obligations on either agency.
- 1.4 There are no funding arrangements or costs involved in this MoU.

2 PURPOSE

- 2.1 This MoU sets out the principles that underpin the relationship between the ACNC and ASIC, and is to be applied with that aim in mind.
- 2.2 The ACNC and ASIC will work together to pursue common interests and demonstrate their commitment to a whole of government approach to protecting and promoting confidence in the integrity of the legislative schemes administered by the ACNC and ASIC.
- 2.3 The ACNC and ASIC recognise the need for the fullest collaboration and cooperation between the two agencies at all levels to discharge their respective functions and to achieve their statutory purposes, to the extent permitted by law. The ACNC and ASIC also acknowledge that timeliness and accountability strengthen the effective discharge of their respective roles and responsibilities.
- 2.4 When a matter is not dealt with explicitly in this MoU, it is expected that both the ACNC and ASIC will discuss the matter and resolve it quickly in accordance with the principles established by this MoU.

3 SCOPE

- 3.1 Specific matters requiring greater detail will be included as annexures to this MoU.
- 3.2 This MoU and its annexures are intended to supersede any previous MoUs or arrangements between the agencies on the same subject matter.
- 3.3 Any reference to "MoU" in this document is to be read to include the annexure and schedules attached to this MoU from time to time.

4 **ACNC**

4.1 The ACNC is the Australian Government charity regulator established under the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (the ACNC Act). The ACNC is responsible for registering charities and monitoring, regulating and enforcing compliance with the ACNC Act and other relevant legislation outlined in Schedule A.

4.2 The objects of the ACNC Act are to:

- maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

4.3 ACNC registration is a prerequisite for access to certain Commonwealth tax concessions and may also be a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.

5 **ASIC**

5.1 ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. ASIC was established by section 7 of the Australian Securities and Investments Commission Act 1989 (Cth) and is continued in existence by section 261 of the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act). It is responsible for the administration and enforcement of the Corporations Act 2001 (Cth) and the relevant provisions of legislation outlined in Schedule A.

5.2 The objects of the ASIC Act, set out that in performing its functions and exercising its powers, ASIC must strive to:

- maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
- promote the confident and informed participation of investors and consumers in the financial system; and
- administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and
- receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and
- ensure that information is available as soon as practicable for access by the public; and
- take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

6 LIAISON

- 6.1 The agencies agree that there will be regular liaison meetings between the agencies.
- 6.2 To facilitate and enhance the full and timely sharing of information between the two agencies, officers of ASIC and the ACNC may meet for discussions in relation to specific areas of common interest.
- 6.3 Each agency will appoint liaison contact officers for the purpose of liaison, communication and exchange of information between the agencies under this MoU. Each agency may change its liaison contact officers as necessary, and will advise the other agency of its initial liaison contact officers and of any changes to the liaison contact officers.
- 6.4 The ACNC and ASIC will be responsible for the day to day operation of this MoU and will liaise as required to discuss the progress of current matters of common interest, to improve the sharing of information, to attempt to identify opportunities for joint enforcement or other activities where appropriate, and to resolve problems that may arise either in audit, investigation or prosecution of particular matters or other relationships between the two agencies.
- 6.5 The ACNC and ASIC agree that, where appropriate, they will consult with each other in relation to arrangements for consistent guidance, joint publications, resources and joint contact with stakeholder groups. The ACNC and ASIC may issue joint media releases or publications in relation to any joint enforcement or other activities. The agencies will collaborate in drafting proposed joint media releases or other joint publications.

7 INFORMATION SHARING

- 7.1 Each agency is subject to statutory obligations of secrecy or confidentiality which govern the disclosure and use of confidential or protected information, including information provided pursuant to this MoU.
- 7.2 The ACNC and ASIC agree to exchange confidential and protected information if permitted by the relevant statutory provisions. Information may be provided by one agency in compliance with a request from the other agency. Subject to legislative restrictions, an agency may also provide information to the other agency, even if it has not been first requested, if the information would be likely to assist that other agency in administering or enforcing the particular laws for which that agency is responsible.
- 7.3 ASIC and the ACNC may keep each other advised, in a timely manner, of matters relevant to each other's jurisdiction. Subject to legislative restrictions on disclosure, ASIC and the ACNC may:
 - advise each other where either agency becomes aware during the normal course of their duties that there is or may be a matter of relevance to the other agency, such as referrals or complaints, and provide such information considered to be relevant to the other agency; and

- request from each other information about a specific entity; and
- share information about risks that have been identified with specific entities; and
- share intelligence identifying emerging risks, themes and opportunities where appropriate.

7.4 If information provided pursuant to this MoU becomes the subject of a subpoena, freedom of information request, or other legal demand for access, the recipient agency must immediately notify the owner agency, to enable the owner agency to advise any intended action relating to the release, disclosure, publication or production of such information, and to advise of its views concerning the same.

7.5 Nothing in this MoU derogates from any obligation which either agency may have under the Privacy Act 1988 (Cth) as amended from time to time, in relation to the protection of personal information.

8 AREAS OF COLLABORATION

8.1 Subject to legislative requirements, areas of collaboration and disclosure of information (which may be confidential or protected) would include, but not be limited to:

Mutual assistance

8.2 Mutual assistance to monitor/enforce compliance with ACNC and ASIC legislation, including information on potential breaches of legislation administered by either agency, of entities of interest to either or both; and

8.3 Temporary staff exchanges to facilitate transfer of expertise and skills.

Exchange of information related to charities registered with both the ACNC and ASIC.

8.4 Subject to legislative requirements, the ACNC and ASIC will exchange information as necessary to ensure consistency between the information recorded with respect to entities registered on the ASIC Register of Australian Companies and the ACNC Register.

8.5 Processes relating to the exchange of required information are attached in Schedule B.

Referral of matters

8.6 The agencies recognise that once a complaint is received or an initial investigation has been conducted by an agency, it may become apparent that the matter more appropriately falls within the jurisdiction of the other agency.

8.7 Both agencies therefore agree that in these instances, the enforcement objectives of each agency will be enhanced if, after consultation, the matter is formally referred to and continued by that other agency. Subject to legislative restrictions on disclosure the referrals should be made as soon as practicable after the principal contravention is identified.

8.8 The agencies acknowledge that there may be circumstances where matters will also be, subject to legislative restrictions on disclosure, referred to other relevant federal, state and/or territory regulatory agencies. In those circumstances, each agency may consult the other before a referral to a third agency.

9 ANNEXURES

9.1 Annexures to this MoU may be negotiated and added from time to time. These annexures form part of this MoU when agreed in accordance with paragraph 9.3.

9.2 Each annexure will relate to specific, mutually agreed priorities and issues. Annexures will include guidelines for the effective management of these issues and priorities.

9.3 An annexure is taken to be agreed under this MoU if it is signed by the Commissioner of the ACNC and a Commissioner of ASIC or their authorised representatives. An annexure takes effect from the date it is signed unless otherwise specified.

10 REVIEW AND TERMINATION OF THIS MOU

10.1 This MoU will be reviewed within three (3) years of the date of signing, either agency may request a variation of this MoU from time to time.

10.2 The ACNC and ASIC may not vary this MoU, except by agreement in writing signed by the Commissioner of the ACNC and a Commissioner of ASIC. All variations to the MoU are to be recorded in the Change Control Register at Schedule B.

10.3 If there is a disagreement over any matter related to issues covered in the MoU, the agencies will seek to resolve the disagreement at the operational level. Should this negotiation fail, the matter is to be referred to the Commissioner of the ACNC and a Commissioner of ASIC.

10.4 Either agency may terminate this MoU by giving 30 days written notice to the other agency. The termination will take effect on the expiry of the notice unless otherwise arranged by the agencies.

10.5 This MoU will remain in force unless terminated by the agencies.

10.6 This MoU shall take effect on and from the date when it becomes signed by both the Commissioner of the ACNC and a Commissioner of ASIC.

Signing Page

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

Name: John Price

Role: Commissioner

Signature:

A handwritten signature in blue ink, appearing to be 'J Price'.

Date:

18/5/2018

Signed for and on behalf of the Australian Charities and Not-for-profits Commission by:

Name: Gary Johns

Role: Commissioner

Signature:

A handwritten signature in blue ink, appearing to be 'G Johns'.

Date: 4 July 2018

ATTACHMENTS

- Schedule A: Schedule of legislation
- Schedule B: Change control register
- Annexure A: Processes
- Annexure B:
 - Correspondence for when Charity Reports Issue
 - Correspondence to direct ASIC Register users to ACNC Register

SCHEDULE A - SCHEDULE OF LEGISLATION

Australian Securities and Investments Commission

- Australian Securities and Investments Commission Act 2001
- Corporations Act 2001
- Business Names Registration Act 2011
- Business Names Registration (Transitional and Consequential Provisions) Act 2011
- Insurance Contracts Act 1984
- Superannuation (Resolution of Complaints) Act 1993
- Superannuation Industry (Supervision) Act 1993
- Retirement Savings Accounts Act 1997
- Life Insurance Act 1995
- National Consumer Credit Protection Act 2009, and
- Medical Indemnity (Prudential Supervision and Product Standards) Act 2003.

Australian Charities and Not-for-profits Commission

- Australian Charities and Not-for-profits Commission Act 2012 (Cth) (the ACNC Act)
- Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth) (the ACNC Consequential and Transitional Act).
- Australian Charities and Not-for-profits Commission Regulation 2013 (Cth) (the ACNC Regulation)
- Australian Charities and Not-for-profits Commission (Consequential and Transitional) Regulation 2016 (Cth)
- Charities Act 2013 (Cth) (the Charities Act)
- Charities (Consequential Amendments and Transitional Provisions) Act 2013 (Cth) (the Charities Consequential and Transitional Act), and
- Charities (Definition of Government Entity) Instrument 2013 (made under subsection 4(2) of the Charities Act).

SCHEDULE B - CHANGE CONTROL REGISTER

ANNEXURE A - PROCESSES

Name Change

- If an ASIC registered body notifies the ACNC of a name change via a paper form, the ACNC (a) checks whether the charitable company has changed its name on the ASIC register (b) advises the charity they must complete a name change with ASIC prior to changing its name on the ACNC Register if required.
- If an ASIC registered body notifies the ACNC of a name via the online Charity Portal, guidance advises that charities must follow any legal steps to change your name with your incorporating regulator, before telling the ACNC about the change. The ACNC audits online changes and (a) checks whether the charitable company has changed its name on the ASIC register (b) advises the charity they must complete a name change with ASIC prior to changing its name on the ACNC Register if required.

Information sharing

- The ACNC will send ASIC a scheduled report each day containing notification of the registration of charitable companies and the revocation of charitable companies by email to: acnc@asic.gov.au.
- The ACNC will give ASIC a copy of notices required in a timely manner.
- ASIC will send information to the ACNC regarding registered charities by email to: advice@acnc.gov.au.

[Attach letters]