



APRA Ref: APRA 14/003058  
ACC Ref: 13/16764

**MEMORANDUM OF UNDERSTANDING**

**FOR COOPERATION AND INFORMATION SHARING**

**BETWEEN THE AUSTRALIAN PRUDENTIAL  
REGULATION AUTHORITY**

**AND**

**THE AUSTRALIAN CRIME COMMISSION**

## 1. Parties

- 1.1. This Memorandum of Understanding (MoU) is between the following Parties:
- The Australian Prudential Regulation Authority (**APRA**) and
  - The Australian Crime Commission (**ACC**).
- 1.2. This MoU is a statement of intent and does not create any legally binding obligations on the Parties.

## 2. Definitions

- 2.1. The following definitions apply to this MoU:

<b>ACC</b>	means the Australian Crime Commission
<b>ACC Act</b>	means <i>Australian Crime Commission Act 2002</i> (Cth)
<b>ACC Board</b>	means the Board of the ACC.
<b>ACC CEO</b>	means the Chief Executive Officer of the ACC
<b>ACC Information</b>	has the same meaning as defined in s 4 of the ACC Act
<b>ACC Regulations</b>	means the <i>Australian Crime Commission Regulations 2002</i> (Cth)
<b>Annexures</b>	means annexures agreed by the Parties in accordance with <a href="#">paragraph 10</a>
<b>APRA</b>	means the Australian Prudential Regulation Authority
<b>APRA Act</b>	means Australian Prudential Regulation Authority Act 1998
<b>Days</b>	means any day which is not Saturday, Sunday or a public holiday in the Australian Capital Territory (ACT)
<b>Head of Agency</b>	means the Chairman of APRA with whom this MoU is made
<b>Head Agreement</b>	means the primary document of the MoU excluding any attached Annexures and/or Schedules (ACC Ref: 12/172234, APRA Ref: APRA14/003058)
<b>Information</b>	means any information relevant to this agreement including: <ul style="list-style-type: none"><li>• raw data</li><li>• processed information and</li><li>• intelligence products</li></ul>
<b>MoU</b>	any reference to “MoU” in this document is to be read to include any Annexures and Schedules attached to this document and in force from time to time
<b>Notice</b>	means written Notice in accordance with <a href="#">paragraph 14</a> of this MoU
<b>Party or Parties</b>	means a Party or the Parties who are signatories to this MoU
<b>PSPF</b>	means the Australian Government Protective Security Policy Framework
<b>Schedules</b>	refers to a document, identified as a Schedule, and attached to either: <ul style="list-style-type: none"><li>• this Head Agreement or</li><li>• an Annexure to the Head Agreement.</li></ul> NOTE: Schedules do not require signatures to be amended.

### **3. Purpose**

- 3.1. The purpose of the MoU is to provide a framework for cooperation between the Parties in relation to the sharing of information and intelligence and any other matters in respect of which the Parties have, from time to time, reached an understanding. This MoU is not intended to be legally binding. Each Party recognises that the lawful sharing of information and intelligence assists the other in the performance of its legislative functions.

### **4. Scope**

- 4.1. This MoU, its Annexures and/or Schedules if any, supersede any previous MoU or arrangements between the Parties on the same subject matter. It is intended that any difficulties or unforeseen consequences will be discussed by negotiation in accordance with the process set out in [paragraph 13](#) of this MoU.

### **5. Legislative Functions of the Parties**

- 5.1. This MoU recognises the legislative responsibilities of APRA and the ACC.
- 5.2. The ACC functions under s7A of the ACC Act include, but are not limited to:
- (a) to collect, correlate, analyse and disseminate criminal information and intelligence and to maintain a national database of that information and intelligence;
  - (b) to undertake, when authorised by the Board, intelligence operations;
  - (c) to investigate, when authorised by the Board, matters relating to federally relevant criminal activity;
  - (ca) to do any of the following (whether in its own name or through officers or members of staff of the ACC), as permitted or required for the purposes of Part IAB or IABA of the Crimes Act 1914 or any other law of the Commonwealth:
    - (i) to apply for, and to grant, integrity authorities in relation to members of staff of the ACC;
    - (ii) to conduct and participate in integrity operations in relation to members of staff of the ACC;
    - (iii) to assist the Australian Federal Police, Customs or the Australian Commission for Law Enforcement Integrity in making applications for integrity authorities;
    - (iv) to assist those agencies in the conduct of integrity operations;
  - (d) to provide reports to the Board on the outcomes of those operations or investigations;
  - (e) to provide strategic criminal intelligence assessments, and any other criminal information and intelligence, to the Board;
  - (f) to provide advice to the Board on national criminal intelligence priorities;
  - (g) such other functions as are conferred on the ACC by other provisions of the Act or by any other Act.
- 5.3. The functions of APRA include, but are not limited to:
- (a) the prudential supervision of banks, building societies and credit unions, life and general insurance companies, friendly societies, APRA regulated trustees and superannuation funds;
  - (b) acting as the national statistical agency for the Australian financial sector and playing a role in preserving the integrity of Australia's retirement incomes policy; and
  - (c) administering the Financial Claims Scheme.

## 6. Agreed Principles

- 6.1. The Parties are committed to a cooperative working relationship based on mutual respect, trust, and timely and open two way communication.
- 6.2. The Parties acknowledge that although they have different responsibilities, these responsibilities are often complementary or supportive.
- 6.3. The Parties acknowledge that the timely sharing of information and intelligence, and other cooperative arrangements, will contribute to the production of key intelligence products to support law enforcement and other investigatory processes.
- 6.4. The Parties will, in the spirit of cooperation, afford such assistance to each other as is practicable taking into consideration the level of resources and priorities in the ACC and APRA.
- 6.5. The Parties recognise that at times circumstances may inhibit a response to matters of concern. Each Party agrees to notify the other Party as soon as practicable in relation to any significant delays or changes to response capabilities.
- 6.6. The Parties recognise the need to ensure resources are effectively used and directed to matters of high priority in accordance with each Party's business interests and broader Government interests as a whole.

## 7. Information and Intelligence Sharing

- 7.1. Recognising that the proactive sharing of information and intelligence is necessary for the Parties to enhance the performance of their respective statutory functions, the Parties intend to share information and intelligence, including that relating to serious and organised crime, relevant to the pursuit of their respective responsibilities set out in [paragraph 5](#) of this MoU, subject to:
  - 7.1.1. ACC caveats and APRA imposed conditions, including those relating to specific sensitivities
  - 7.1.2. access procedures and security vetting requirements imposed by either Party or
  - 7.1.3. requirements of the *Privacy Act 1988* (Cth)<sup>1</sup>, the ACC Act, the ACC Regulations, the *Crimes Act 1914*, *Australian Prudential Regulation Authority Act 1998* and/or other legislative or policy constraints and
  - 7.1.4. paragraphs 7.2, 7.3 and 8 below.
- 7.2. Any information given or furnished by the ACC to APRA under this MoU, in accordance with s 59AA of the ACC Act, for use by nominated APRA officers in the course of their duties only, and subject to any other relevant statutory provisions, and conditions, caveats and handling instructions as may be prescribed by the ACC from time to time. Depending on the nature and source of information provided and any relevant statutory provisions, conditions, caveats and/or handling instructions on-disclosure of that information by APRA may be prohibited, except where APRA is compelled by law to disclose such information. APRA intends abide by relevant statutory provisions and any such conditions, caveats and handling instructions as advised by the ACC from time-to-time.
- 7.3. The ACC will only use information provided by APRA for lawful purposes and subject to the confidentiality provisions in [paragraph 8](#) below.

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<sup>1</sup> Noting that the ACC is an exempt agency under the *Privacy Act 1988*

- 7.4. Where APRA does not have access to, or the capability to, upload information and intelligence onto the Australian Criminal Intelligence Database (ACID) or the Australian Law Enforcement Intelligence Network (ALEIN), the ACC will upload information and intelligence at the Agency's request, where the ACC considers it appropriate to do so.
- 7.5. APRA and the ACC will protect the integrity of information and intelligence shared in accordance with the standards required by the PSPF.
- 7.6. The Parties will endeavour to develop and maintain strong links with State and Territory Police services, other law enforcement and government agencies, to ensure that there is an appropriate sharing of law enforcement intelligence, and to avoid duplication of effort, subject to the terms of this MoU.

## **8. Protection of Information**

- 8.1. All information provided by APRA to the ACC will become ACC information as defined in s 4 of the ACC Act. ACC information is dealt with in accordance with the provisions of the ACC Act including, but not limited to, the secrecy provision in s 51 of the ACC Act.
- 8.2. Where a Party wishes to disclose information received under this MoU to a third party, but is not legally compelled to do so, the Party disclosing the information is expected to consult with the contributing Party to obtain its consent. The Party wishing to disclose the information will not disclose such information if consent is refused. Where consent is obtained from the contributing Party, the disclosing Party will impose on the third party any conditions which have been made by the contributing Party concerning the use of that information. In any event, as far as possible, the Party disclosing the information will impose a condition on the third party that it keep the information confidential, and that it will not further disclose the information without first obtaining consent from the contributing Party.
- 8.3. If any information provided by the Parties in accordance with this MoU is sought or required by a subpoena, notice to produce, request for discovery, court or tribunal process, Freedom of Information request or any other information gathering process initiated by a government or non-government person or body, that Party shall:
- (a) immediately notify the other Party:
    - i) in the case of such an information request being received by APRA, APRA will notify the ACC FOI Co-ordinator nominated in Schedule 1 of this MoU of the request;
    - ii) in the case of such an information request being received by the ACC, the ACC will notify the General Manager, Enforcement in Schedule 1 of this MoU of the request; and
  - (b) use all reasonable steps including, if necessary, making a claim for public interest immunity, relevant common law or statutory privilege or immunity from production, and/or requiring confidentiality undertakings to maintain confidentiality of such information.

## **9. Direct Liaison**

- 9.1. To facilitate and enhance the full and timely sharing of information between the Parties, officers of the ACC and APRA may meet for discussion of relevant intelligence interests.

## **10. Annexures and Schedules**

- 10.1. Annexures and/or Schedules to this MoU may be negotiated and added from time to time by the Parties. Annexures and/or Schedules will form part of this MoU when agreed in accordance with this paragraph.
- 10.2. Each Annexure or Schedule relates to specific, mutually agreed priorities and issues of relevance to the Parties. Annexures or Schedules may also include guidelines for the effective management of these issues and priorities. Annexures may include Schedules that outline these guidelines.
- 10.3. An Annexure is taken to be made under this MoU if it is signed by the ACC CEO and the Head of Agency, or their authorised representatives. An Annexure takes effect from the date it is signed, or if signed on separate days, on the date of the last signature, unless otherwise specified.

### **Precedence**

- 10.4. If there is any inconsistency between the provisions of the MoU or its constituent documents, a descending order of precedence will be given to:
  - 10.4.1. the terms of this Head Agreement
  - 10.4.2. the terms of an Annexure and
  - 10.4.3. the Schedulesso that the provision in the higher ranked document will prevail, to the extent of the inconsistency.

## **11. Liaison With Other Agencies**

- 11.1. Subject to paragraph 8.3 and in accordance with the ACC Act, it is noted that in performance of the ACC's functions outlined in [paragraph 5](#), there will, from time to time, be the need for the ACC to share information and intelligence or undertake activities with appropriate agencies. It is also noted that the ACC may determine that it is more appropriate for some of this activity to be referred to the APRA for attention.

## **12. Management of the MoU**

### **12.1. Oversight of MoU and National Management of Operational Issues**

- 12.1.1. The Joint Management Team (JMT) is responsible for overseeing the operation of this MoU. The JMT will be comprised of senior management representatives from the Parties.
- 12.1.2. The ACC National Manager, nominated in Schedule 1 or his or her delegate will represent the ACC on the JMT.
- 12.1.3. The General Manager, Enforcement, or Senior Manager, Enforcement will represent APRA on the JMT.

### **12.2. National Management of Strategic Issues**

- 12.2.1. In addition to appropriate local level meetings there will be regular meetings held between the Parties at a national level.

### **13. Resolution Process**

- 13.1. Any differences between the Parties as to what is intended under this MoU shall be discussed in a spirit of fair and open communication between the representatives on the JMT, or if they are unable to resolve the difference within 30 days, by referral to the ACC CEO and Head of APRA.
- 13.2. Despite the existence of a difference of opinion, the terms of the MoU shall continue to apply.

### **14. Notices**

- 14.1. A notice given by a Party in connection with this Head Agreement:
  - 14.1.1. must be in writing and signed by that Party and
  - 14.1.2. must be sent to the other Party, marked for the attention of its Relationship Manager, nominated in [Schedule 1](#), by:
    - (a) hand delivery
    - (b) ordinary or registered pre-paid post or
    - (c) by facsimile or email transmission.

### **15. Variation and Review**

- 15.1. This MoU, and any Annexure or Schedule forming part of this MoU may be varied at any time by written agreement between the Parties. With the exception of a new Schedule, variations to existing agreed Schedules do not require delegate signatory approval. Such an amendment will be deemed approved when it is received in writing from one Party to the other and mutually agreed by the same medium. Notice of such an amendment will be made according to paragraph 15 of this MoU.
- 15.2. The Parties will conduct reviews of this MoU, with the first occurring within two (2) years of its commencement, and with subsequent formal reviews occurring within two (2) years of the previous review.
- 15.3. Either Party may initiate a review of the operation of this MoU by giving the other Party written Notice that an operational review should occur, subject to that operational review not being initiated:
  - 15.3.1. within the six months after a formal review occurs or
  - 15.3.2. within the six months before the next formal review is due.

**16. Commencement and Termination**

- 16.1. This MoU will commence on:
  - 16.1.1. the date it is signed by the Parties or
  - 16.1.2. if signed on separate days, on the date of the last signature.
- 16.2. This MoU will remain in force from the date of signing unless terminated by either party on 30 days written notice, signed by the ACC CEO or the Head of APRA.

**17. Signatories**

**Wayne Byres**

Chairman  
Signed for and on behalf of  
the Australian Prudential Regulation  
Authority:

**Chris Dawson APM**

Chief Executive Officer  
Signed for and on behalf of  
Australian Crime Commission:

Date: ..... 27 January 2015

Date: ..... 11 February 2015