

MEMORANDUM OF
UNDERSTANDING
BETWEEN

The Chief Executive, Department of Justice and Attorney General
50 Ann Street Brisbane 4000

AND

The Chief Executive Officer, Residential Tenancies Authority
179 Turbot Street Brisbane 4000

WHEREAS:

1. The *Property Occupations Act 2014 (POA)* and the *Agents Financial Administration Act 2014 (AFAA)* are administered by the Office of Fair Trading.
2. The *Fair Trading Act 1989* incorporating the *Australian Consumer Law (Queensland)* is administered by the Office of Fair Trading on behalf of the Commissioner for Fair Trading as appointed by the Chief Executive.
3. The objects of POA is to provide a system for licensing and regulating persons as property agents or resident letting agents and for registering and regulating persons as real estate salespersons that achieves an appropriate balance between:
 - a. the need to regulate for the protection of consumers; and
 - b. the need to promote freedom of enterprise in the market place; and
 - c. to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property.
4. The objects are achieved by measures including:
 - a. Providing protection for consumers in their dealings with licensees and their employees and a legislative framework within which persons performing activities for licensees may lawfully operate;
5. The main object of AFAA is to protect consumers from financial loss in dealings with agents regulated under an Agents Act.
6. The object is to be achieved mainly by:
 - a. regulating the way agents establish, manage and audit trust accounts; and
 - b. establishing a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents; and
 - c. promoting administrative efficiency for claims made against the claim fund.
7. The principle objective of the *Fair Trading Act 1989* is to improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

8. Fair Trading also participates in the National Indigenous Consumer Strategy which seeks to monitor and improve the following priority areas for Indigenous people:

- a. Trading practices
- b. Housing
- c. Consumer awareness
- d. Contracts.

9. The Residential Tenancies Authority is a statutory authority that administers the *Residential Tenancies and Rooming Accommodation Act 2008 (RTRA)*.

10. The objects of the RTRA is to state the rights and obligations of:

- a. tenants, lessors and agents for residential tenancies; and
- b. residents, providers and agents for rooming accommodation.

11. The objects are achieved by:

- a. *regulating the making, content, operation and ending of residential tenancy agreements and rooming accommodation agreements; and*
- b. *providing for the resolution of disputes about residential tenancy agreements and rooming accommodation agreements; and*
- c. *providing for the authority to receive, hold and pay rental bonds; and*
- d. *providing for compliance with this Act to be monitored and enforced; and*
- e. *providing for the establishment, functions and powers of the authority.*

12. The parties desire to enter into a Memorandum of Understanding (MOU) in relation to the disclosure of information as permitted under the relevant legislation.

IT IS AGREED AS FOLLOWS:

PURPOSE

13. The parties desire to enter into a Memorandum of Understanding (MOU) to further their objectives. This MOU sets out the framework for cooperation between the Parties to facilitate information exchange and general administration and compliance relating to areas of mutual interest.

DEFINITIONS

14. In this MOU, the following definitions apply unless the contrary appears:
- a. 'AFAA' means the *Agents Financial Administration Act 2014*.
 - b. 'Chief Executive DJAG' means the Chief Executive of the Department of Justice and Attorney- General.
 - c. 'Chief Executive RTA' means the Chief Executive Officer of the Residential Tenancies Authority
 - d. 'Confidential information' means information other than information which is included in a generally available publication or which would otherwise normally be available to a member of the public, whether upon payment of a fee or otherwise.
 - e. 'DJAG' means the Department of Justice and Attorney-General.
 - f. 'FTA' means the *Fair Trading Act 1989* including the *Australian Consumer Law(Qld)*
 - g. 'Generally available publication' means a publication that is, or is to be made, generally available to the public, however it is published.
 - h. 'Information' means data, records, knowledge, intelligence, or any other type of information.
 - i. 'OFT' means the Office of Fair Trading.
 - j. 'POA' means the *Property Occupations Act 2014*.
 - k. 'RTA' means the Residential Tenancies Authority.
 - l. 'RTRA' means the *Residential Tenancies and Rooming Act 2008*.

GUIDING PRINCIPLES

15. The Parties each recognise that communication, cooperation, and coordination are desirable and necessary to:
- a. Discharge their respective functions
 - b. Maximise the effective and consistent implementation of their regulatory powers.
 - c. Promote efficient and streamlined resource allocation.

INTERPRETATION

16. In this Memorandum of Understanding:
 - a. headings have been included for ease of reference only and are not to be used to construe or interpret any part of this Memorandum of Understanding;
 - b. a reference to a clause is a reference to a clause of this Memorandum of Understanding;
 - c. the singular includes the plural and the plural includes the singular;
 - d. a reference to a thing is a reference to the whole or any party of it;
 - e. a reference to the word 'including' is deemed to be followed by the words 'but not limited to';
 - f. a reference to a 'Party' includes a reference to that Party's executors, administrators, successors, permitted assigns, officers, employees, servants and agents and any other person claiming under or through the Party.

OPERATION OF THE MEMORANDUM OF UNDERSTANDING

17. This Memorandum of Understanding is not intended to be legally binding.
18. This Memorandum of Understanding is not intended to exclude other processes on which either party may rely for seeking information from the other, such as by way of warrant, summons, information notice or subpoena.
19. This Memorandum of Understanding is not intended to exclude legal processes on which a third party may rely for obtaining information from one or both Parties.
20. The parties acknowledge that the provision of information pursuant to this Memorandum of Understanding may involve information that is confidential and/or subject to privacy laws.

EXCHANGE OF INFORMATION

21. Subject to statutory, security and operational considerations, the Parties agree to exchange at the earliest opportunity, information including confidential information that is, or may be relevant to the other party.
22. Requests for information must be in writing and may be made by post, email, or fax.
23. A request for either Party for the sharing of information is to be sent to such Contact Officers as nominated from time to time by the Parties.
24. All email requests for official information by the RTA to DJAG must be sent to the nominated OFT email contact address.
25. All email requests for official information by DJAG to the RTA must be sent to the nominated RTA email contact address.

SHARING OF TRAINING AND EDUCATION RESOURCES

26. Subject to statutory, security and operational considerations, the Parties agree to exchange or share resources in relation to the development of compliance policy with the intent of assisting each party in the development of the best possible practices.
27. Subject to statutory, security and operational considerations, the Parties agree to exchange or share resources in relation to best practice of communications internally and to external agencies and individuals.
28. Subject to statutory, security and operational considerations, the Parties agree to cooperate in developing joint education, training and development practices in the mutual interests of the parties. To that end the parties agree to the establishment of a training and development liaison committee to hold bi-monthly meetings with a view to sharing training and development resources in a way that is mutually beneficial to the parties. The purpose of the meetings will be to discuss proposed training and education products and potentially develop training and education for staff across both offices on the basis that there may be economies of scale and

reduction in the duplication of costs where both parties are developing education and training on a substantially similar subject matter.

29. Subject to statutory, security and operational considerations, the Parties agree share information in relation to emerging issues in order to promote a coordinated response to those issues.

SECURITY AND CONFIDENTIALITY

30. Any confidential information exchanged between the RTA, DJAG and any other third party will be in accordance with the relevant statutory provisions and each organisation's guidelines.
31. Each party undertakes to maintain security systems and policies, sufficient to ensure its obligations under this Memorandum of Understanding are achieved. In particular, the Parties shall:
- a. ensure appropriate security measures are in place to protect any confidential information from unauthorised access, use, modification or disclosure;
 - b. ensure that any personnel who are authorised to access confidential information are appropriately cleared and trained;
 - c. take reasonable steps to ensure that any personnel who are authorised to access confidential information do not record, disclose, or communicate confidential information except in performance of their official duties or as otherwise agreed between the parties.
32. If either party to this Memorandum of Understanding is in possession of confidential information because it has been disclosed by the other party to this MOU, and that relevant information becomes or appears likely to become the subject of any writ, subpoena, freedom of information action, or any other legal process, then the party under requirement to release the relevant information will, in order that the other might take steps to preserve its rights, immediately advise the other party, and in any event, prior to the release of the information. The parties shall liaise upon the handling of the request and any Legal Proceedings that may emerge.

33. A Party who obtains confidential information under this Memorandum of Understanding must not disclose the information to a third party without the written authorisation of the other Party. The Parties agree that such authorisation will not be unreasonably withheld.

34. In the event of loss or unauthorised disclosure of confidential information, suspected or actual, of confidential information, the Party in receipt of the confidential information ('the Receiver') shall immediately notify the other Party ('the Provider'). The Receiver shall immediately undertake such investigations and enquiries into the loss or disclosure as are reasonable in the circumstances. The Receiver shall keep the Provider informed of the progress and outcome of the investigations and enquiries.

COMPLIANCE AND ENFORCEMENT

35. Primary responsibility for compliance activity under each party's Act/s will be conducted by the relevant party. If a party seeks the other party's officers to participate in joint operations this shall be done by agreement on an operation by operation basis.

MEDIA

36. There will be no joint media releases without the express agreement of both Parties.

DISPUTE RESOLUTION

37. Where there is a disagreement between the parties over an issue covered by this Memorandum of Understanding, or a related issue, both parties will seek to resolve the matter at an operational level through negotiations between the Chief Executive RTA and the Executive Director Fair Trading.

TERM

38. This Memorandum of Understanding shall commence on the date of signing by the parties and continue until it is terminated hereunder.

REVIEW

39. Both parties will jointly review this Memorandum of Understanding at intervals of not more than two (2) years to ensure the overall objectives are being achieved.

VARIATION

40. Where, during currency of this Memorandum of Understanding, either the RTA or DJAG desires the variation of its terms; the other party will participate in negotiations in good faith upon the issue.
41. Amendments to this Memorandum of Understanding may be made at any time with the mutual written agreement of both parties in writing.

TERMINATION

42. Notwithstanding other provisions of this Memorandum of Understanding, either party may by written notice to the other party, terminate this Memorandum of Understanding.
43. Unless otherwise agreed, three months' notice shall be provided to the other party of the intention to terminate this Memorandum of Understanding.

ENTIRE AGREEMENT

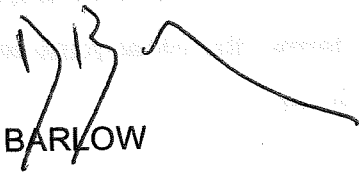
44. This Memorandum of Understanding constitutes the entire agreement of the parties with respect to the subject matter of this Memorandum of Understanding and supersedes all prior agreements, representations, understandings, and negotiations (either written or oral) with respect to such subject matter.

SURVIVORSHIP

45. Clauses relating to security and disclosure of information shall survive the termination or expiry of this Memorandum of Understanding.

IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding on the dates indicated below:


SIGNED:


D BARLOW
CHIEF EXECUTIVE OFFICER
RESIDENTIAL TENANCIES AUTHORITY

DATE:

20 / 12 / 17 .

SIGNED:


B BAUER
EXECUTIVE DIRECTOR FAIR TRADING
DELEGATE OF THE CHIEF EXECUTIVE
DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

DATE:

20 / 12 / 17