

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

**AND THE**

**QUEENSLAND OFFICE OF FAIR TRADING,  
DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL**

**1. PURPOSE**

This Memorandum of Understanding ("MOU") sets out a framework for co-operation between the Australian Securities and Investments Commission ("ASIC") and the Queensland Office of Fair Trading, Department of Justice and Attorney-General ("OFT").

ASIC and OFT ("the Agencies") recognise that co-operation between them is desirable to discharge their respective functions and maximise the effectiveness of their respective powers.

The Agencies agree:

- (a) to provide each other with mutual assistance in relation to the exchange of information and the appropriate referral of matters; and
- (b) to cooperate in enforcement activities, and compliance and consumer education initiatives,

within the framework of this MOU and in a manner which is consistent with all relevant legal obligations.

The Agencies do not intend this MOU to create legally binding obligations between them.

## 2. ASIC

- 2.1 ASIC was established under the *Australian Securities Commission Act 1989 (Cth)* and is continued in existence by the *Australian Securities and Investments Commission Act 2001 (Cth)* ("ASIC Act"). ASIC enforces company and financial services laws to protect consumers, investors and creditors. ASIC regulates and informs the public about Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.
- 2.2 Legislation administered by ASIC is listed in Annexure A.
- 2.3 The ASIC Act requires ASIC to:
- (a) uphold the law uniformly, effectively and quickly;
  - (b) promote confident and informed participation by investors and consumers in the financial system;
  - (c) make information about companies and other bodies available to the public; and
  - (d) improve the performance of the financial system and the entities within it.
- 2.4 ASIC must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence or in connection with the performance of its functions or the exercise of its powers or that is protected information.
- 2.5 Under paragraph 127(4)(b) of the ASIC Act, the Chairman of ASIC, or his delegate, is authorised to disclose such information to the government or an agency of a State or Territory where the information will enable or assist the government or agency to perform a function or exercise a power. OFT is such an agency.

## 3. OFT

- 3.1 OFT regulates fair trading and consumer protection issues in the Queensland market place. It conducts a range of activities and services to create the right marketplace environment, and to deliver appropriate compliance and quality communication strategies. Its key functions are:
- (a) maintaining fair trading legislation;
  - (b) ensuring businesses operate responsibly, through checking compliance with fair trading standards and legislation (including consumer product safety and trade measurement);

- (c) providing access to appropriate redress for consumers and regulating improper trader behaviour;
  - (d) providing customer-oriented standards services, such as business name registration, industry licensing and trade measurement;
  - (e) resolving disputes, investigating complaints, and carrying out audits; and
  - (f) providing access to information, advice and education on fair trading matters for business and consumers.
- 3.2 Legislation administered by OFT is listed in Annexure B.

#### **4. LIAISON BETWEEN AGENCIES**

- 4.1 Liaison meetings will be held between the Agencies in accordance with this clause 4 for the purpose of discussing, in a manner which is consistent with all relevant legal obligations, matters which may be of interest to or have an effect on the Agencies.
- 4.2 Liaison meetings between the authorised representatives of the Agencies will be held at least twice each year or as otherwise agreed between the Agencies.
- 4.3 Additional meetings between other authorised officers of the Agencies may be held on an "as needed" basis.

#### **5. EXCHANGE OF INFORMATION**

- 5.1 Each Agency recognises that in the course of performing its functions and exercising its powers, it will come into possession of information which would, if provided to the other Agency, be likely to assist that other Agency in administering or enforcing the particular laws for which it is responsible.
- 5.2 Subject to all relevant legal obligations and operational considerations, each Agency will use reasonable endeavours to notify the other Agency in a timely manner of the existence of any information of a kind referred to in subclause 5.1.
- 5.3 Where an Agency receives notification in accordance with subclause 5.2 and desires access to the information concerned, it will make a request to the other Agency for the information.
- 5.4 Any requests for confidential information of an Agency must be made in accordance with the relevant pro forma set out in Schedule 1 or 2.
- 5.5 Any requests for other information of an Agency must be made in accordance with any requirements notified in writing by the Agency.

- 5.6 Subject to all relevant legal obligations and operational considerations, each Agency will use its best endeavours to respond in a timely manner to any request for information pursuant to this MOU.
- 5.7 Each Agency will observe and comply with any express conditions placed upon the disclosure of the information by the other Agency.
- 5.8 Each Agency will take reasonable steps to ensure that any information it obtains pursuant this MOU is only used for the purpose for which it was obtained or as otherwise authorised by the other Agency.
- 5.9 Each Agency agrees not to disclose any confidential information obtained pursuant to this MOU to a third party unless:
- (a) it has obtained the prior written consent of the Agency which has provided the confidential information; or
  - (b) the disclosure is required by law or by order of any authority.
- 5.10 Where an Agency is required to make a disclosure as described in paragraph 5.9(b), that Agency will, prior to disclosure, notify the other Agency in writing of that requirement so as to enable the other Agency to determine what action, if any, it should take.

## **6. COST OF PROVISION OF INFORMATION**

- 6.1 Subject to subclause 6.2, an Agency which receives a request for information pursuant to this MOU shall bear the whole cost incurred by it in locating and providing the information to the other Agency which made the request.
- 6.2 If it appears to the Agency which receives the request that it will incur substantial costs in locating and providing the information to the other Agency which made the request, it may make representations to that effect to the other Agency and the Agencies may negotiate a cost sharing arrangement in relation to the provision of that information.

## **7. INFORMATION IN RESPECT OF WHICH THIS MOU DOES NOT APPLY**

- 7.1 This MOU does not cover access by OFT to the ASIC databases "ASCOT", "DOCIMAGE" and the National Names Index.

## **8. REFERRAL OF MATTERS**

- 8.1 If it becomes apparent to an Agency that a matter before it more appropriately falls within the jurisdiction of the other Agency, the Agency will as soon as practicable, after consulting the other Agency and subject to all relevant legal obligations and operational considerations, refer the matter to the other Agency.
- 8.2 The Agencies acknowledge that there may be circumstances where a matter will also be referred to other relevant Federal, State and/or Territory agencies. In those circumstances, the Agencies will endeavour to consult each other prior to any such referral.

## **9. JOINT TASK FORCE**

- 9.1 The Agencies acknowledge that, subject to all relevant legal obligations and operational considerations, an investigation or litigation may be conducted more effectively by the establishment of a joint task force consisting of members from both Agencies.
- 9.2 Either Agency may request that a joint task force be established. Requests to ASIC for a joint task force should be made to the Queensland Regional Commissioner of ASIC or as otherwise notified by ASIC. Requests to OFT should be made to the Executive Director, Fair Trading Operations or as otherwise notified by OFT.
- 9.3 The Agency making the request must advise the other Agency of:
- (a) the background to the request; and
  - (b) the objectives, estimated duration and expected funding and resource requirements of the proposed joint task force.
- 9.4 The Agency receiving the request will advise as soon as possible as to whether it will accept or refuse the other Agency's request.
- 9.5 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, estimated duration, funding and resource arrangements, publicity arrangements, accountability command, and management of the joint task force.

## **10. MUTUAL ASSISTANCE ON OTHER MATTERS**

- 10.1 The Agencies will also provide each other with mutual assistance in relation to:
- (a) any joint compliance education initiatives (including staff training, staff exchange and joint publications) agreed between the Agencies; and

- (b) any joint consumer education initiatives in relation to electronic commerce or any other matter agreed between the Agencies.

## **11. DISPUTES**

- 11.1 Where there is a dispute arising in relation to any matter set out in this MOU, the Agencies will seek to resolve the dispute by negotiation between the Queensland Regional Commissioner of ASIC and the Queensland Commissioner for Fair Trading.

## **12. REVIEW OF THIS MOU AND AMENDMENTS**

- 12.1 The Agencies will keep the operation of this MOU under continuous review and will consult each other with a view to improving its operation and resolving any matters that may arise.
- 12.2 Within six months of the first anniversary of the date of this MOU, representatives of the Agencies shall review the exchange of information between the Agencies, the costs incurred by each Agency in providing the information, and consider, if appropriate, amendment to this MOU.
- 12.3 This MOU may be amended at any time by agreement of both Agencies in writing.

## **13. TERMINATION**

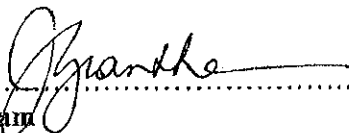
- 13.1 Either Agency may give written notice to the other of its intention to terminate this MOU. The MOU will terminate seven (7) days after the date upon which the notice was received.
- 13.2 If the MOU is terminated by notice pursuant to subclause 13.1, this MOU will continue to apply to all requests for information which were made before the date of notification to terminate the MOU, unless the Agency requesting the information withdraws its request.

## **14. EXECUTION**

- 14.1 This MOU becomes effective when signed by the Queensland Regional Commissioner of ASIC and the Queensland Commissioner for Fair Trading.



.....  
**Maree Blake**  
Queensland Regional Commissioner  
Australian Securities and Investments Commission



.....  
**Julie Grantham**  
Queensland Commissioner for Fair Trading and  
Director-General, Department of Justice and Attorney-General

Date of last signature:

.....  
18<sup>th</sup> March 2009  
.....

## **ANNEXURE A**

### **Legislation (wholly or partly) administered by ASIC:**

*Australian Securities and Investments Commission Act 2001*  
*Corporations Act 2001*

*Insurance Contracts Act 1984*

*Life Insurance Act 1995*

*Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*

*Retirement Savings Accounts Act 1997*

*Superannuation Industry (Supervision) Act 1993*

*Superannuation (Resolution of Complaints) Act 1993*



## ANNEXURE

### Legislation (wholly or partly) administered by OFT:

*All Saints Church Lands Act 1924*  
*All Saints Church Lands Act 1960*  
*Anglican Church of Australia Act 1895*  
*Anglican Church of Australia Act 1977*  
*Anglican Church of Australia Constitution Act 1961*  
*Anglican Church of Australia (Diocese of Brisbane) Property Act 1889*  
*Ann Street Presbyterian Church Act 1889*  
*Associations Incorporation Act 1981*  
*Bills of Sale and Other Instruments Act 1955*  
*Bishopsbourne Estate and See Endowment Trusts Act 1898*  
*Boonah Show Ground Act 1914*  
*Business Names Act 1962*  
*Charitable Funds Act 1958*  
*Chinese Temple Society Act 1964*  
*Churches of Christ, Scientist, Incorporation Act 1964*  
*Classification of Computer Games and Images Act 1995*  
*Classification of Films Act 1991*  
*Classification of Publications Act 1991*  
*Collections Act 1966*  
*Consumer Credit Code*  
*Consumer Credit (Queensland) Act 1994*  
*Cooperatives Act 1997*  
*Credit Act 1987*  
*Credit (Rural Finance) Act 1996*  
*Disposal of Uncollected Goods Act 1967*  
*Factors Act 1892*  
*Fair Trading Act 1989*  
*Funeral Benefit Business Act 1982*  
*Guides Queensland Act 1970*  
*Hire-purchase Act 1959*  
*Introduction Agents Act 2001*  
*Invasion of Privacy Act 1971*  
*Land Sales Act 1984*  
*Liens on Crops of Sugar Cane Act 1931*  
*Manufactured Homes (Residential Parks) Act 2003*  
*Mercantile Act 1867*  
*Motor Vehicles and Boats Securities Act 1986*  
*Partnership Act 1891*  
*Presbyterian Church of Australia Act 1900*  
*Presbyterian Church of Australia Act 1971*  
*Property Agents and Motor Dealers Act 2000*  
*Queensland Congregational Union Act 1967*  
*Queensland Temperance League Lands Act 1985*  
*Residential Services (Accreditation) Act 2002*  
*Retirement Villages Act 1999*  
*Returned & Services League of Australia (Queensland Branch) Act 1956*  
*Returned Servicemen's Badges Act 1956*  
*Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945*  
*Roman Catholic Church (Incorporation of Church Entities) Act 1994*  
*Roman Catholic Church Lands Act 1985*  
*Roman Catholic Church (Northern Lands) Vesting Act 1941*

*Roman Catholic Relief Act 1830*  
*Sale of Goods Act 1896*  
*Sale of Goods (Vienna Convention) Act 1986*  
*Salvation Army (Queensland) Property Trust Act 1930*  
*Scout Association of Australia Queensland Branch Act 1975*  
*Sea-Carriage Documents Act 1996*  
*Second-hand Dealers and Pawnbrokers Act 2003*  
*Security Providers Act 1993*  
*Storage Liens Act 1973*  
*Tourism Services Act 2003*  
*Trade Measurement Act 1990*  
*Trade Measurement Administration Act 1990*  
*Travel Agents Act 1988*  
*United Grand Lodge of Ancient Free and Accepted Masons of Queensland Trustees Act 1942*  
*Uniting Church in Australia Act 1977*  
*Wesleyan Methodists, Independents, and Baptists Churches Act 1838*

## SCHEDULE 1

### Pro forma for Requesting Confidential Information from ASIC

[On letterhead of OFT]

Queensland Regional Commissioner  
Australian Securities and Investments Commission  
GPO Box 9827  
BRISBANE QLD 4001

Dear Madam

#### Request for Confidential Information

I am an officer of the Office of Fair Trading, Department of Justice and Attorney-General ("OFT") which is an agency within the meaning of paragraph 127(4)(b) of the *Australian Securities and Investments Commission Act 2001 (Cth)* ("ASIC Act").

On behalf of OFT, I request that the Australian Securities and Investments Commission ("ASIC") disclose the information described in Schedule A to this letter (the "Information") to me in accordance with paragraph 127(4)(b) of the ASIC Act.

I am of the view that the disclosure of the Information will enable or assist OFT to perform the function or exercise the power described in Schedule B to this letter. OFT proposes to use the Information for the purpose described in Schedule C to this letter.

On behalf of OFT, I undertake that if the Information is disclosed in accordance with this request, it will only be used for the purpose described in Schedule C and will not be used for any other purpose and will not be disclosed voluntarily outside of OFT without ASIC's prior written consent.

I believe that the following person/s may be directly adversely affected by the proposed disclosure of the Information: [*set out relevant names and addresses and in respect of each person named, state whether OFT would be concerned if ASIC consulted that person about releasing the Information for the purpose described*].

[*If applicable, include the following sentence:*

The following [*person/s has/have given his/her/their*] written consent to the proposed disclosure of the Information for the purpose described in Schedule C to this letter ([*copy/copies*] attached).]

Could you please contact me on [*telephone number*] to advise whether the Information may be disclosed and, if appropriate, to make arrangements for the disclosure of the Information.

Yours faithfully

[*Name of officer*]  
[*Designation of officer*]

**SCHEDULE A**

*[Describe the Information requested with as much particularity as possible.]*

**SCHEDULE B**

*[State the relevant statutory function or power (e.g. sections of the relevant Act) and provide a short description of the function or power.]*

**SCHEDULE C**

*[Describe the purpose for which the Information is proposed to be used (e.g. investigation of the affairs of X Pty Ltd).]*

## SCHEDULE 2

### Pro forma for Requesting Confidential Information from OFT

[On letterhead of ASIC]

Commissioner for Fair Trading  
Office of Fair Trading  
Department of Justice and Attorney-General  
GPO Box 3111  
BRISBANE QLD 4001

Dear Madam

#### Request for Confidential Information

I am an officer of the Australian Securities and Investments Commission ("ASIC").

On behalf of ASIC, I request that the Office of Fair Trading, Department of Justice and Attorney-General ("OFT") disclose the information described in Schedule A to this letter ("the Information") to me.

I am of the view that the disclosure of the Information will enable or assist ASIC to perform the function or exercise the power described in Schedule B to this letter. ASIC proposes to use the Information for the purpose described in Schedule C to this letter.

On behalf of ASIC, I undertake that if the Information is disclosed in accordance with this request, it will only be used for the purpose described in Schedule C and will not be used for any other purpose and will not be disclosed voluntarily outside of ASIC without OFT's prior written consent.

I believe that the following person/s may be directly adversely affected by the proposed disclosure of the Information: *[set out relevant names and addresses and in respect of each person named, state whether ASIC would be concerned if OFT consulted that person about releasing the Information for the purpose described.]*

*[If applicable, include the following sentence:*

The following *[person/s has/have given his/her/their]* written consent to the proposed disclosure of the Information for the purpose described in Schedule C to this letter (*[copy/copies]* attached).]

Could you please contact me on *[telephone number]* to advise whether the Information may be disclosed and if appropriate, to make arrangements for the disclosure of the Information.

Yours faithfully

*[Name of officer]*  
*[Designation of officer]*

**SCHEDULE A**

*[Describe the Information requested with as much particularity as possible.]*

**SCHEDULE B**

*[State the relevant statutory function or power (e.g. sections of the relevant Act) and provide a short description of the function or power.]*

**SCHEDULE C**

*[Describe the purpose for which the Information is proposed to be used (e.g. investigation of the affairs of X Pty Ltd).]*