

Memorandum of Understanding – ABR Public and Non Public data

MOU Details			
MOU number:	951.01	Replaces MOU number:	2009.104
Registrar:	The Registrar of the Australian Business Register		
ABR:	The Australian Business Register		
Registrar's Partnership Manager:	Name:	Cheryl Manley	
	Position:	Partnership Manager	
	Postal address:	PO Box 9977, BRISBANE QLD 4001	
	Email address:	cheryl.manley@abr.gov.au	
	Telephone:	(07) 3149 5544	Mobile:
Agency Head:	Commissioner for Fair Trading		
Agency:	Office of Fair Trading		
Agency's Partnership Manager:	Name:	Matthew Smith	
	Position:	Marketplace Analyst Compliance and Planning	
	Postal address:	GPO Box 3111, BRISBANE QLD 4001	
	Email address:	Matthew.Smith@deedi.qld.gov.au	
	Telephone:	(07) 3115 1765	Mobile:
Frequency of meetings:	Annually and as required.		
Relevant privacy laws:	For the Registrar:	The Privacy Act 1988 (Cth)	
	For the Agency Head:	The Information Privacy Act 2009 (Qld)	
Function/s to support:	See Item 2 of Schedule 1		
Supply of ABR data:	See Schedule 3		

Accepted and agreed

Signed by:

Anthony Johnson,
Acting Executive Director (Fair Trading Operations),
Office of Fair Trading

Signature: 

Date: 

Signed by:

Mark Jackson,
Deputy Registrar,
Australian Business Register

Signature: 

Date: 

1. Parties

This Memorandum of Understanding (**MOU**) is between:

- the **Registrar**, and
- the **Agency Head**.

2. Function of this MOU

The ABR contains details about entities who have registered for an Australian Business Number (ABN) under the *A New Tax System (Australian Business Number) Act 1999* (**The ABN Act**). This MOU:

- identifies which details in the ABR are to be supplied by the Registrar to the Agency Head, and
- sets out the conditions under which the Registrar will supply those details to the Agency Head.

Note - The Registrar can make some details in the ABR publicly available (see s26(5) of the ABN Act), but can only disclose other details in given circumstances (see s30(3) of the ABN Act).

3. Commencement and duration of this MOU

This MOU commences on the date it is signed by the last party to sign it, and continues until terminated:

- by the parties at any time by mutual agreement, or
- by either party giving the other not less than 30 days notice.

4. Effect of this MOU

This MOU does not create legally enforceable obligations between the parties, and revokes and replaces the existing arrangements (if any) identified in the MOU details.

Provision and use of ABR data

5. Providing ABR data

The Registrar will arrange for data sets:

- containing those details recorded in the **ABR records**, for those relevant entities, as indicated in Schedule 2,
- to be supplied to the Agency Head by the channel/s, method/s, in the format/s, and at the frequency and time/s as indicated in Schedule 3.

6. Using ABR data

Subject to clause 7, details in ABR records provided to the Agency Head may only be used for the purposes of performing the specific function/s identified in Item 2, of Schedule 1. The Agency Head is responsible for assessing the suitability of those details for those uses.

7. When ABR details may not be used

The Registrar can give the Agency Head a notice under this clause if:

- an ABR record containing a relevant detail has been provided to the Agency Head, and
- the Registrar is later prevented by law from disclosing that detail in that ABR record.

Where the Registrar gives a notice under this clause identifying a relevant detail, the Agency Head must (unless the Agency has separately verified that detail with, or otherwise obtained it from, another source) ensure the Agency promptly:

- deletes that detail from the relevant ABR Record/s contained in the Agency's database/s, and
- ceases making that detail available to any other agency or entity.

8. Agency Head to notify Registrar of changes in circumstances

The Agency Head will immediately notify the Registrar if:

- the Agency ceases to have the status identified in Item 1 of Schedule 1,
- the (position of) Agency Head ceases to have the status identified in Item 1 of Schedule 1, or
- a function identified in Item 2 of Schedule 1 is not, or ceases to be a function of the Agency.

If - due to a change in circumstances or for any other reason - the law no longer allows the Registrar to disclose ABR data or detail/s in it to the Agency Head, the Registrar will not make that disclosure.

9. Agency Head to notify Registrar if required to disclose ABR records

If the Agency Head or the Agency is required by law to disclose, to another person, any ABR record/s provided by the Registrar, the Agency Head will advise the Registrar as soon as practicable so the Registrar can seek a protective order or other relief from that disclosure (if the Registrar wishes to do so).

10. Support

The Registrar will arrange support to assist the Agency Head and the Agency in dealing with client enquiries relating to the ABR. Contact and escalation points for this support are as follows:

- general enquiries concerning the ABR can be sent by email to ABREnquiries@ato.gov.au, and
- for specific enquiries concerning the ABR, contact the Registrar's **Partnership Manager**.

11. Branding requirements

The Agency Head may not use the ABR brand without the express written permission of the Registrar.

12. Fees

No fees are payable by the Agency Head or the Agency for the supply of ABR records, or the provision of support, under this MOU.

Administration

13. Partnership Managers to administer this MOU

The parties' Partnership Managers are to:

- monitor and evaluate the operation and progress of this MOU, and report on that operation and progress to - and as required by - their respective heads,
- meet at the frequency indicated in the MOU Details to administer this MOU and the relationship of the parties (but can hold those meetings by any means, and can attend them through a nominee), and
- co-ordinate the provision of the annual **Statement of Accreditation** referred to in clause 14.

A party's Partnership Manager is the person identified as such in the MOU Details, or such other person as that party otherwise notifies the other party of from time to time.

14. Annual Statement of Accreditation

Within 30 days of each anniversary of the commencement of this MOU, the Registrar is to:

- provide to the Agency Head a Statement of Accreditation in the form set out in Schedule 4 (or in such other form as the Registrar otherwise notifies the Agency Head), and
- notify the Agency Head when that Statement of Accreditation falls due.

The Agency Head is to confirm, by completing and returning that Statement of Accreditation, that the Agency Head has complied with the provisions of this MOU during the relevant annual period.

If a Statement of Accreditation is not returned by its due date, the Registrar will suspend the provision of non-public ABR data under this MOU until it is provided.

Operational provisions

15. Mutual assistance

The parties will be open, honest, co-operative and responsive to each other, respecting each other's functions and roles, and providing each other with positive assistance whenever possible.

16. Use and release of information

Each party must comply with all laws that govern its use and release of information, including under:

- the ABN Act, and
- and **relevant privacy laws** as indicated in the MOU Details.

ABR records provided to the Agency Head under this MOU contain information protected by *section 30 of the ABN Act*, and that section will apply notwithstanding any provisions of this MOU.

Note - Information protected by s30 of the ABN Act can only be disclosed by the Agency to its officers, employees or contractors – or by any of them to others – if its expressly allowed by s30(3) of that Act, otherwise they may commit an offence (punishable by up to 2 years imprisonment) under s30(2) of that Act.

17. Confidentiality

A party may only disclose Confidential Information of the other party if that disclosure doesn't breach any law (including under the relevant privacy laws) and is made:

- in response to requests for information from Parliamentary committees or inquiries, or
- with the prior written approval of the other party (and provided it complies with any terms and conditions imposed as part of that approval by that other party), or
- as required by applicable government direction, policy or law.

Confidential Information of a party means information relating to the business affairs or clients of that party which is confidential in nature and the other knows (or should reasonably know) is confidential, but excluding information which becomes public knowledge other than through the other party's fault or negligence.

Note - The ABN Act prohibits the disclosure of protected information to Ministers and certain elected officials.

18. Privacy complaints

If a party receives a complaint alleging an interference with the privacy of an individual by the other party:

- the party receiving that complaint will immediately notify the other of the nature of that complaint and such details of that complaint as are necessary to minimise any (or further) interference, and
- each party is to keep the other informed as to the progress of that complaint as it relates to the other's actions in connection with that allegation of interference.

Data exchange provisions

19. Responsibilities in relation to data

The information held by a party relating to its clients and other third persons (its data) may not be accurate, up-to-date, complete or error-free. However, each party is responsible for:

- acting in accordance with, and meeting obligations imposed on it by, this MOU and the law,
- amending its data within a reasonable time of it being formally notified by a person of changes to their details or of any inaccuracy, omission, defect or error in that data relating to them,
- taking reasonable measures to check its data is free from malicious computer codes, and
- testing data it receives from the other to check that data is free from malicious computer codes.

20. Third party claims relating to data

If a party receives notice of a claim directed against it by a third person concerning any alleged error, defect, inaccuracy or omission in the data provided to, or received from, the other party under this MOU:

- the party receiving that notice will be responsible for responding to that claim, and is to notify the other party of that claim within 7 days of that receipt,
- each party is to provide the other with all reasonable assistance in relation to that claim, and
- where the claim is the result of that other party's failure to act in accordance with its responsibilities under this MOU or the law, the receiving party may request that other party to reimburse its reasonable costs in responding to and meeting that claim.

21. Data integrity, confidentiality and protection

Each party will, in relation to the data provided to it by the other party under this MOU:

- notify the other party as soon as practicable of any possible error or defect in that data,
- take all reasonable measures to maintain the confidentiality of that data,
- ensure that data is only used for the purposes for which the data was provided and is only accessed by persons who have a legitimate 'need to know' to perform their duties and with the knowledge of applicable secrecy provisions and related penalties,
- ensure:
 - that data is not copied or replicated to any other transportable media other than for the purpose of system back-up, and that such transportable media and system back-ups are stored in a secure environment e.g. a lockable commercial grade cabinet,
 - that discs on or in which that data is provided to it by the other are securely disposed of when no longer required:

Note: Normal Agency data destruction processes include incineration, cutting, shredding, sanding or grounding so that the disc can no longer be read.

- that keys, passwords or other mechanisms provided by the other to decrypt or gain access to those discs or electronic files are stored securely and separately from that data, and,
- ensure that data is protected – against loss, destruction, or unauthorised access, modifications, disclosure, recording or use – by such other security safeguards as are reasonable in the circumstances,
- ensure that data is not transferred, or allowed to be accessed by persons, outside Australia (unless otherwise permitted under this MOU) without the other party's prior approval,
- comply with any reasonable request of the other party to deal with that data in a particular way, and
- notify the other party as soon as practicable of any possible or actual breach of security or confidentiality which may have compromised the confidentiality or integrity of that data.

22. Review of data integrity procedures, systems and safeguards

Each party may review the systems, procedures and security safeguards that the other party has in place for maintaining the confidentiality and integrity of its data, but a party seeking to conduct any such review:

- must give the other party reasonable notice of that review, and first consult with that other party as to the scope and criteria of that review,
- must comply with the other party's reasonable requirements and directions while on its premises, and
- must not remove any material from the other party's premises without its prior written approval.

About this MOU

23. Variation of this MOU

Either party may propose a variation of this MOU by giving the other a notice setting out details of the proposal. Unless otherwise indicated, this MOU can only be varied by agreement of the parties in writing.

Variation Version Control

<i>Version</i>	<i>Date</i>	<i>Author</i>	<i>Change</i>
.01	11/11/11	K.Weeks	Upgrade to Open MOU at Accreditation

24. Dispute resolution

The parties must attempt to resolve any dispute concerning this MOU by negotiations between the Partnership Managers. However, if those negotiations fail to resolve that dispute:

- either party may give the other a notice setting out specific details of that dispute, and reporting the failure of negotiations to resolve it, and
- if that dispute is not resolved through negotiation between the Partnership Managers, that dispute is to be referred upward, through the parties' equivalent management levels until resolved.

25. Notices

A notice under this MOU must be:

- in writing and marked for the attention of the recipient's Partnership Manager,
- sent to the recipient's Partnership Manager's relevant address (as identified in the MOU Details or as the recipient has otherwise notified the sender) by facsimile, email transmission, hand delivery or pre-paid post, (where possible electronic delivery is to be preferred), and
- signed by, or sent from the email address of, the sender's Partnership Manager or other authorised officer.

26. Obligations on termination

This clause and the following clauses survive the termination of this MOU:

- Clause 6 Using ABR data
- Clause 7 When ABR details may not be used
- Clause 16 Use and release of information
- Clause 17 Confidentiality
- Clause 18 Privacy complaints
- Clause 19 Responsibilities in relation to data
- Clause 20 Third party claims relating to data
- Clause 21 Data integrity, confidentiality and protection

Schedule 1

Note - This schedule can only be changed by written agreement of the parties – see clause 23.

Item 1 Status of Agency and Agency Head

The Agency is a body established for a public purpose by or under a law of Queensland, (including a local governing body), and the Agency Head is the head (however described) of the Agency.

Item 2 Purposes

Purpose of disclosure

The Registrar's disclosure of ABR records under this MOU is for the purpose of the Agency Head carrying out functions conferred on the Agency by a law of Queensland – Section 30(3)(c)(vii) & 30(3)(d)(v) of the ABN Act.

Functions to support

The specific function/s that ABR data can be used to support is/are:

- To identify entities within particular industry categories to determine if those entities or any associates of those entities are persons of interest.
- To identify entities in the consumer credit industry to determine if any associates of those entities are persons of interest.
- To identify entities in the introduction agency industry to determine if those entities or associates of entities are persons of interest.
- To identify entities in the consumer credit industry to determine if any associates of those entities are persons of interest.
- To identify entities in the property agents and motor dealer industries to determine if those entities or associates of those entities are persons of interest.
- To identify entities in the property agents and motor dealers industries for the purpose of monitoring and enforcing compliance.
- To identify entities in the second-hand dealer and pawnbroker industries to determine if those entities or associates of those entities are persons of interest.
- To identify entities in the second-hand and pawnbroker industries for the purpose of monitoring and enforcing compliance.
- To identify entities in the security provider industry to determine if those entities or associates of those entities are persons of interest.
- To identify entities in the security provider industry for the purpose of monitoring and enforcing compliance.
- To verify details of business entities that make application for registration of a business name.
- To verify details on the Business Names Register to determine if business entities have complied with their obligation to register a business name and/or to notify the registrar of changes in particulars relating to the registered business:

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- To verify and identify details of relevant entities to ensure the efficient communication and the delivery of business services, including business surveys, to business clients concerning consumer affairs:

Schedule 2

ABR data items available

The data items available are listed below or as otherwise agreed in writing by the parties' Partnership Managers from time to time.

<i>Records</i>	<i>Details</i>	
<i>Public ABR data</i>	Entity legal name	The name of the entity that appears on official documents or legal papers
	ABN	Australian Business Number (ABN). The unique 11-digit identifier issued to entities registered in the ABR
	ABN date of effect	The date from which an ABN becomes active
	ABN cancellation date of effect	If the Registrar has cancelled the entity's registration in the ABR – the date of cancellation
	Business Trading name(s)	Business name registered for the entity under the law of a State or Territory, or if a business name is not registered for the entity – any name by which suppliers or clients know the entity
	GST date of effect	The date of effect of any goods and services tax (GST) registration
	GST cancellation date of effect	The date of effect of any GST cancellation
	DGR status	Deductible gift recipient (DGR) status. Any statement required to be entered on the ABR in relation to the entity's status as a deductible gift recipient
	ACN and ARBN	The entity's Australian Company Number (ACN)/ Australian Registered Body Number (ARBN) (if any)
	Entity type	A description of the entity – for example, partnership, sole trader
	Principal place of business	The State or Territory in which the entity's principal place of business is located, and the postcode relating to the location
	Replacement ABN	If the Registrar has changed the entity's ABN – the date of each change and the entities previous ABN
<i>Non Public ABR data</i>	Service of notice address	The entity's principal postal address for service of notices
	Business address	The entity's principal place of business
	ANZSIC code	Australian and New Zealand Standard Industrial Classification (ANZSIC) code. The primary type of industry the business is working in.
	ANZSIC code description	The description of the ANZSIC code classification
	Email address	The entity's email address
	Associate details	The names of associates – for example, public officers, directors or trustees associated with the entity

Schedule 3

Supply of ABR data

The channel, method, format and frequency of supply of data will be in accordance with:

- selections indicated in the following table, or
- as otherwise agreed in writing by the parties' Partnership Managers from time to time.

<i>Supply channel</i>	<i>Method</i>	<i>Format</i>	<i>Frequency</i>
<i>Data disc</i> <input checked="" type="checkbox"/>	<p>Supplied on data disc.</p> <ul style="list-style-type: none"> ▪ Delivered by secure courier service to the Partnership Manager or other nominated contact, and ▪ A passphrase supplied to extract the encrypted files – delivered by email upon advice from the Partnership Manager that the disc has been received. 	<p>Data sets supplied as compressed tab delimited files.</p> <ul style="list-style-type: none"> ▪ Classified at the in-confidence level, ▪ Encrypted with self extracting encryption. ▪ Filtered as requested by the Partnership Manager in accordance with the filters offered at the time of the data set being produced. 	<p>Produced at the selected frequency</p> <p><input type="checkbox"/> Monthly</p> <p><input checked="" type="checkbox"/> Quarterly</p> <p><input type="checkbox"/> 6 monthly</p> <p><input type="checkbox"/> Annually, or</p> <p><input type="checkbox"/> Ad hoc (as requested by the Agency's Partnership Manager)</p> <ul style="list-style-type: none"> ▪ Sent no later than 10 working days from the agreed schedule or requested date. ▪ The Registrar's Partnership Manager will notify the Agency's Partnership Manager if there is likely to be a delay in delivery.
<i>Bulk data exchange</i> <input type="checkbox"/>	<p>Supplied via secure online mailbox or secure online transfer protocol.</p> <p>www.datatransfer.ato.gov.au</p>	<p>Data sets supplied as compressed tab delimited files.</p> <ul style="list-style-type: none"> ▪ Classified at the in-confidence level, ▪ Filtered as requested by the Partnership Manager in accordance with the filters offered at the time of the data set being produced. 	<p>Produced at the selected frequency</p> <p><input type="checkbox"/> Monthly,</p> <p><input type="checkbox"/> Quarterly,</p> <p><input type="checkbox"/> 6 monthly,</p> <p><input type="checkbox"/> Annually, or</p> <p><input type="checkbox"/> Ad hoc (as requested by the Agency's Partnership Manager).</p> <ul style="list-style-type: none"> ▪ Uploaded no later than 10 working days from the agreed schedule or requested date. ▪ The Registrar's Partnership Manager will notify the Agency's Partnership Manager if there is likely to be a delay in delivery.

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Supply channel	Method	Format	Frequency
ABR Agency services File download <input type="checkbox"/>	Data sets containing updates relating to records as nominated by the Agency. <ul style="list-style-type: none"> Via internet across HTTP through the ABR's Agency services website: www.agency.abr.gov.au During encrypted and authenticated sessions. 	Data sets supplied in downloadable files. <ul style="list-style-type: none"> Classified at the in-confidence level In XML format according to the agreed ABR schema. 	Files produced at the selected frequency: <ul style="list-style-type: none"> <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly (Subject to system availability).
ABR Agency services Search screens <input type="checkbox"/>	A data set for the entity selected: <ul style="list-style-type: none"> Via internet across HTTP through the ABR's Agency services website: www.agency.abr.gov.au During encrypted and authenticated sessions. 	Data records in a structured view: <ul style="list-style-type: none"> Using a search screen interface Classified at the in-confidence level. 	Available on demand (subject to system availability).
ABR Web Services <input type="checkbox"/>	Data sets: <ul style="list-style-type: none"> Using encrypted and authenticated machine to machine transactions Via secure encrypted dedicated connection, or Via internet across HTTP using a secure authentication method. 	Data sets or records: <ul style="list-style-type: none"> Classified at the in-confidence level In XML format according to the agreed ABR schema. 	Available on demand (subject to system availability).

Schedule 4

Annual Statement of Accreditation

This Statement of Accreditation must be completed annually by the Agency Head in accordance with Clause 14 of the Memorandum of Understanding (MOU).

Completion of this form by the Agency Head formally assures the Registrar that all terms and conditions, as agreed in the MOU, are being complied with. Particular emphasis should be paid to key items outlined below.

Access to ABR records and services will be terminated if assurance cannot be provided.

<i>MOU Clause</i>	<i>Category</i>
6	Using ABR data
7	When ABR details may not be used
8	Agency Head to notify Registrar of changes in circumstances
9	Agency Head to notify Registrar if required to disclose ABR records
16	Use and release of information
17	Confidentiality
18	Privacy complaints
19	Responsibilities in relation to data
20	Third party claims relating to data
21	Data integrity, confidentiality and protection

I, Anthony Johnson, assure the Registrar that all terms and conditions are being complied with, as agreed in MOU number 951.01 between the Registrar of the ABR and Office of Fair Trading.

Signed by:

Anthony Johnson,
Acting Executive Director (Fair Trading Operations),
Office of Fair Trading

Signature: 

Date: 



Australian Government
Australian Business Register

PO Box 9977 BRISBANE QLD 4001

13 JAN 2012

BY: _____

Mr Matthew Smith
Marketplace Analyst Compliance and Planning
Office of Fair Trading
GPO Box 3111
BRISBANE QLD 4001

12 January 2012

Your Australian Business Register partnership documents are now complete

Dear Matthew

I'm pleased to advise that your memorandum of understanding with the Australian Business Register (ABR) is now complete.

As these documents contain important information about your use of ABR data, please store them for easy reference.

We look forward to continuing to work with you on new ways to make it easier for business to interact with government.

For information or assistance, please contact me on (07) 3149 5544.

Yours sincerely,

Cheryl Manley
Partnership Manager
Australian Business Register

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ABR Agency services Search screens <input type="checkbox"/>	A data set for the entity selected: <ul style="list-style-type: none"> Via internet across HTTP through the ABR's Agency services website: www.agency.abr.gov.au During encrypted and authenticated sessions. 	Data records in a structured view: <ul style="list-style-type: none"> Using a search screen interface Classified at the in-confidence level. 	Available on demand (subject to system availability).
ABR Web Services <input type="checkbox"/>	Data sets: <ul style="list-style-type: none"> Using encrypted and authenticated machine to machine transactions Via secure encrypted dedicated connection, or Via internet across HTTP using a secure authentication method. 	Data sets or records: <ul style="list-style-type: none"> Classified at the in-confidence level In XML format according to the agreed ABR schema. 	Available on demand (subject to system availability).

Schedule 4

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6	Using ABR data
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Signed by:

Anthony Johnson,
Acting Executive Director (Fair Trading Operations),
Office of Fair Trading

Signature: _____

Date: _____



Australian Government
Australian Business Register

PO Box 9977 BRISBANE QLD 4001

13 JAN 2012

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BY: _____

Mr Matthew Smith
Marketplace Analyst Compliance and Planning
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