



**ASIC**  
Australian Securities &  
Investments Commission



**Australian Government**  
**Department of Employment  
and Workplace Relations**

## **MEMORANDUM OF UNDERSTANDING**

between the

DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS (DEWR)

and the

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

MARCH 2024

## 1. BACKGROUND

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- 1.1 The Department of Employment and Workplace Relations (DEWR) is an executive agency of the Commonwealth that contributes to Australia's economic prosperity and social wellbeing by creating opportunities and driving better outcomes for people, through skills and employment pathways. Among other things, DEWR administers:
- a) the Fair Entitlements Guarantee (**FEG**), a scheme that provides financial assistance for payment of certain unpaid employee entitlements to employees who have lost their jobs due to the insolvency or bankruptcy of their employers.
  - b) the FEG Recovery Program, which aims to improve the return of amounts advanced under the FEG and maintain the integrity of the FEG as a safety net scheme of last resort.
- 1.2 The Australian Securities and Investments Commission (ASIC), a statutory body under the *Australian Securities and Investments Act 2001*, is a regulatory and law enforcement agency charged with, among other things:
- a) monitoring and promoting market integrity and consumer protection in relation to the Australian financial services sector
  - b) the registration and oversight of registered liquidators and administration of the corporate insolvency provisions in the *Corporations Act 2001*
  - c) administration of the National Consumer Credit Protection Act 2009.

## 2. PURPOSE

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- 2.1 This Memorandum of Understanding (MOU) sets out a framework between DEWR and ASIC to facilitate liaison, co-operation, assistance and the exchange of data and information between the parties for the effective and efficient performance of their respective functions.
- 2.2 The parties agree to assist each other with the provision of information and appropriate referral of matters and co-operation related to their respective functions and including, but not limited to, the parties' respective interests in compliance, fraud control, education and enforcement activities, within the framework of this MOU and consistent with all relevant laws.

## 3. SCOPE

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- 3.1 The MOU is not intended to create binding legal, financial or other resource obligations on either party.
- 3.2 The MOU is not intended to be exhaustive in the subject matters within its scope. The parties may enter into any other arrangements for cooperation and collaboration to the full extent permitted by the law.

## 4. COMMON INTERESTS BETWEEN PARTIES

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- 4.1 The parties agree they have mutual and shared interests that could be better served through sharing information, effective liaison, mutual cooperation and assistance. The parties recognise that cooperation at all levels is desirable to assist in, and enhance, the discharge of their respective functions.

- 4.2 Information obtained in the course of administering the FEG will have relevance for the functions of regulatory agencies such as ASIC. Section 45 of the *Fair Entitlements Guarantee Act 2012* recognises this common interest and allows disclosure of certain personal information to facilitate an agency's exercise of powers or performance of functions in relation to the *Corporations Act 2001*, *Bankruptcy Act 1966* or entitlements of current or former employees.
- 4.3 Areas of common interest between the parties include, but are not limited to:
- a) the prevention, detection and response to fraud and non-compliance by directors, registered liquidators and their staff
  - b) the detection, deterrence and disruption of illegal phoenixing
  - c) disqualification of persons from managing corporations in accordance with section 206GAA of the Corporations Act 2001.
- 4.4 The parties may pursue or fund actions in recovery or compliance relating to the same or related matters. Liaison between the parties in relation to these matters will ensure coordinated efforts at a whole of Government level to address improper or illegal behaviour and reduce improper reliance on the FEG to meet employee entitlements obligations.

## **5. MUTUAL ASSISTANCE AND COOPERATION**

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- 5.1 The parties agree to use best endeavours to provide each other with mutual assistance, provision of relevant data and information, and appropriate referrals of matters in areas of mutual interest to assist them to discharge their respective responsibilities.
- 5.2 Subject to each party's obligations at law, the parties will, where appropriate, provide assistance and cooperation in a timely manner in relation to:
- a) provision of data and information
  - b) appropriate referrals of matters
  - c) exchange of technical information and expertise
  - d) best practice regulation of the insolvency industry
  - e) best practice enforcement procedures within the insolvency industry
  - f) cooperative liaison with industry bodies
  - g) participation in joint training programs
  - h) other general matters relating to regulation and enforcement
  - i) ensuring, as far as possible, the parties take advantage of opportunities to harmonise the administration of personal and corporate insolvency legislation
  - j) industry education and consultation
  - k) formation of joint task forces as contemplated in paragraph 5.4 below
  - l) the prevention, detection and response to fraud
  - m) investigation and enforcement of, and monitoring compliance with, applicable laws.

- 5.3 On occasion, opportunities may arise for the parties to develop strategies for closer collaboration in areas of common interest, such as illegal phoenix activity, director and liquidator misconduct and illegal schemes. The parties will use their best endeavours to:
- a) collaborate on law reform issues of common concern
  - b) pursue avenues for closer collaboration, such as developing open data standards to facilitate efficient exchange of database information and cooperation in exchange of systems-based intelligence.
- 5.4 From time to time, the parties may agree to conduct their investigations more effectively by establishing a joint task force consisting of staff members from both parties. If both parties agree to take part in the joint task force, an agreed operational plan will be prepared between the parties setting out the objectives, expected duration, funding arrangements, publicity arrangements, accountability, and management of the joint task force.

## **6. REGULATION AND POLICY DEVELOPMENT**

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- 6.1 The parties will use their best endeavours to notify the other party of proposed policy changes, including to legislation, regulatory policy and guidance that are likely to impact on the functions and responsibilities of the other party. The parties will use their best endeavours to provide the opportunity to consult the other party about such changes.
- 6.2 Each party will use their best endeavours to provide advance notice of proposed publication of regulatory guidance or media releases that may be of interest to, or have an impact on, the functions and responsibilities of the other party.
- 6.3 Where appropriate, the parties may consider whether to issue a regulatory or policy document or media release jointly, having regard to the subject matter and policy objectives of each party.

## **7. VOLUNTARY ASSISTANCE**

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- 7.1 Each party recognises that in the course of carrying out its functions and exercising its powers, it will periodically come into possession of data and information that would, if provided to the other party, likely assist that other party in administering or enforcing the particular laws for which that party is responsible.
- 7.2 The parties agree, subject to applicable laws, to use reasonable endeavours to notify the other party on a timely basis of the existence of information that the party holding that information considers may assist the other party to perform its regulatory and enforcement functions, notwithstanding that it may not have received a request from the other party for such information.

## **8. LIAISON**

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- 8.1 To promote cooperation, the parties will meet regularly to discuss operational and policy matters.
- 8.2 The parties agree that liaison will occur on an 'as needed' basis between appropriate staff of the parties.
- 8.3 In order to ensure effective liaison, the parties will designate liaison contact officers to facilitate communication and exchange of information between the agencies. Each party may change its

liaison contact officers at its discretion and will advise the other party as soon as practicable after any change.

## **9. CONFIDENTIALITY AND SECURITY OF INFORMATION**

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- 9.1 Nothing in this MOU derogates from any obligation that either party may have under the *Privacy Act 1988* (Privacy Act) or any other applicable law in relation to privacy, secrecy, confidentiality, or protection of personal information and confidential information.
- 9.2 The parties will take all reasonable steps to comply with any conditions, restrictions or caveats imposed by the other party in respect of the handling or disclosure of information in accordance with the relevant legislation.
- 9.3 In order to facilitate communications, the parties agree that all communication between them should be considered in-confidence unless otherwise stated.
- 9.4 The parties shall, given the exact nature of each item of confidential information and the medium in which it is disclosed, take all reasonable precautions to:
- a) maintain the confidentiality of confidential information
  - b) ensure information received is only used or disclosed if that use or disclosure does not breach any law (including the Privacy Act), and is for the purpose for which it was obtained or as otherwise authorised by the other party
  - c) ensure that the receiving party maintains control of all copies of the confidential information at all times
  - d) ensure all disclosures of the confidential information are on a need-to-know basis and limited to officers of the parties.
- 9.5 Each party will ensure that information obtained from the other party will be protected by such security safeguards as are reasonable in the circumstances in order to prevent misuse, interference, loss, unauthorised access, modification, and disclosure.
- 9.6 A party must notify the other party immediately upon becoming aware of a:
- a) failure to maintain the confidentiality of confidential information
  - b) breach of an obligation under the Privacy Act or other applicable laws in relation to the privacy, secrecy, confidentiality or protection of confidential or personal information.
- 9.7 If a Party receives a complaint alleging an interference with the privacy of an individual arising out of the operation of this MoU:
- a) 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
  - b) 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.
- 9.8 If the Australian Information Commissioner directs a party to take particular action concerning the handling of personal information, the other party will cooperate with any reasonable request or direction of that party to enable the party to comply with the Australian Information Commissioner's direction.

- 9.9 Each party must immediately notify the other party if it becomes aware of a possible eligible data breach under the Privacy Act in relation to personal information shared under this MoU.
- 9.10 The parties agree to consult and cooperate in:
- a) carrying out an assessment to determine whether it is an eligible data breach in accordance with the Privacy Act;
  - b) taking all reasonable action to mitigate the risk of serious harm to any of the individuals to whom the personal information relates;
  - c) if assessed to be an eligible data breach, notifying the Australian Information Commissioner and affected individuals in accordance with the Privacy Act; and
  - d) take all other action necessary to comply with the requirements of the Privacy Act.
- 9.11 An employee of the parties authorised to have access to information or intelligence under this MOU may not record, divulge or communicate such information except in the performance of the employee's official duties and for the purposes for which the information was provided.
- 9.12 The parties will not disclose information obtained under this MOU to a third party without the consent of the party that provided the information, unless the disclosure is required by law, a Minister or a House or Committee of Parliament.
- 9.13 If information provided under this MOU becomes the subject of a subpoena, *Freedom of Information Act 1982* request, or other compulsory process or legally enforceable demand, the parties will immediately notify the other in writing, to enable each party to take any action it considers necessary relating to the release, disclosure, publication or production of such information.

## 10. DATA SCHEME

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- 10.1 Both parties acknowledge that they may receive requests under the *Data Availability and Transparency Act 2022* (DAT Act) for information shared under this MoU. In such situations the parties will consult to determine which party will respond to the request.

## 11. FREEDOM OF INFORMATION

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- 11.1 Where a party receives a Freedom of Information (FOI) request for access to a document provided by the other party, the parties will consult on whether it is appropriate to transfer the request in accordance with section 16 of the *Freedom of Information Act 1982*.

## 12. MEDIA

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- 12.1 If a party receives a request from media that relates to information shared by the other party under this MoU, the party will promptly notify the other party's liaison contact officer. The parties agree to work promptly and cooperatively to determine which party is best placed to respond to the media request.
- 12.2 Should either party prepare a response to a media request that relates to, or comments on, the sharing of information under this MOU, the other party has the right to review the response.
- 12.3 The party responsible for responding to the media request will ensure the other party is provided a copy of the response by sending it to the liaison contact officer.

### **13. COMMENCEMENT, REVIEW AND TERMINATION**

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- 13.1 This MOU comes into effect when signed by a duly authorised officer of both parties.
- 13.2 It is important that this MOU remain consistent, relevant and current. The parties will use best endeavours to review this MOU on an 'as needed' basis.
- 13.3 This MOU can only be varied by agreement in writing and signed by a duly authorised officer of the parties.
- 13.4 This MOU may be terminated at any time by either party giving the other party thirty (30) days written notice. The termination will take effect on the expiry of the notice unless otherwise agreed by the parties.
- 13.5 If the MOU is terminated, information exchanged under the MOU and held by either party will be treated as if the MOU were still in force, to the extent permitted by law.
- 13.6 The MOU will remain in force unless terminated under clause 13.4 or otherwise mutually by the parties.

### **14. NOTICES**

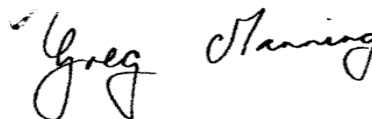
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- 14.1 Any notice in relation to this MOU is to be in writing and delivered to the relevant party's designated liaison contact officer.

## Signatures

Signed for and on behalf of the  
**Department of Employment and  
Workplace Relations**  
by its duly authorised officer

Greg Manning  
Deputy Secretary, Workplace  
Relations Group

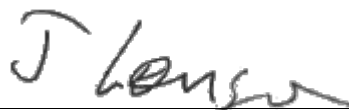


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*Signature of DEWR's authorised  
officer*

Signed for and on behalf of  
**Australian Securities and  
Investments Commission**  
by its duly authorised officer

Joseph Longo  
Chair



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*Signature of ASIC's authorised  
officer*

Dated this **19<sup>th</sup>** day of **March 2024**