

**MEMORANDUM OF UNDERSTANDING
FOR COOPERATION AND INFORMATION SHARING**

Between

The Australian Charities and Not-for-profits Commission

And

The Department of the Prime Minister and Cabinet

MOU MANAGERS

ACNC MOU Manager: Director Compliance

PM&C MOU Managers: Director Fraud Control and Investigations
Director Compliance Operations Section

1. BACKGROUND

- 1.1 The purpose of this Memorandum of Understanding (MoU) is to express the understanding between the Australian Charities and Not-for-profits Commission (ACNC) and the Department of the Prime Minister and Cabinet (PM&C) about the working relationship between the two agencies.
- 1.2 This MoU will guide collaboration, cooperation and mutual assistance in respect of the statutory functions of each agency. In addition to matters covered by this MoU, ACNC and PM&C acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral or multilateral and include information sharing, staff secondments, mutual training arrangements, joint task forces and service agreements.
- 1.3 This MoU is not intended to create legally binding obligations on either agency.
- 1.4 There are no funding arrangements or costs involved in this MoU.

2. PURPOSE AND AGREED PRINCIPLES

- 2.1 The purpose of this MoU is to provide a framework for cooperation between the ACNC and PM&C in relation to the sharing of information and intelligence and any other matters relevant to this MOU as agreed by the agencies from time to time.
- 2.2 The ACNC and PM&C each recognise that the lawful sharing of information and intelligence assists the other in the performance of its legislative functions.
- 2.2 The ACNC and PM&C will work together to pursue common interests and demonstrate their commitment to a whole of government approach to reducing unnecessary regulatory obligations on the Australian not-for-profit sector, and protecting and promoting confidence in the integrity of the regulatory regime administered by the ACNC and of the policies and programs administered by PM&C.
- 2.3 The ACNC and PM&C recognise the need for the fullest collaboration and cooperation between the two agencies at all levels to discharge their respective functions and to achieve their statutory purposes, to the extent permitted by law.
- 2.4 The ACNC and PM&C acknowledge that timeliness and accountability strengthen the effective discharge of their respective roles and responsibilities.
- 2.5 When a matter is not dealt with explicitly in this MoU, it is expected that the ACNC and PM&C will discuss the matter and resolve it quickly in accordance with the principles established by this MoU.

3. SCOPE

- 3.1 Specific matters requiring greater detail will be included as annexures to this MoU.
- 3.2 This MoU and its annexures are intended to supersede any previous MoUs or arrangements between the agencies on the same subject matter.
- 3.3 Any reference to "MoU" in this document is to be read to include the annexure and schedules attached to this MoU from time to time.

4. THE FUNCTIONS OF THE ACNC

- 4.1 The ACNC is the Australian Government agency responsible for registering charities and monitoring, regulating and enforcing compliance with the *Australian Charities and Not-for-profits Commission Act 2012* (the ACNC Act), the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* and regulations under the ACNC Act (ACNC legislation) to:
- a) maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
 - b) support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
 - c) promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.
- 4.2 ACNC registration is a prerequisite for access to certain Commonwealth tax concessions and may also be a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.

5. THE FUNCTIONS OF PM&C

- 5.1 The Department of the Prime Minister and Cabinet (PM&C) advances the wellbeing of Australians by delivering high-quality support to the Prime Minister and Cabinet. PM&C take a whole-of-nation approach, working closely with communities, stakeholders and across all areas of government and acknowledge the special place of the first peoples of our nation. PM&C lead the APS in rigorous and collaborative policy development, implementation and program delivery throughout its Regional Networks.
- 5.2 The Department has three key purposes:
- a) Supporting the Prime Minister, as the head of the Australian Government, the Cabinet and portfolio ministers;
 - b) Providing advice on major domestic policy, national security and international matters; and
 - c) Improving the lives of Indigenous Australians.
- 5.3 The Governance, Audit and Reporting Branch and the Performance, Compliance and Capability Branch support PM&C program areas and the PM&C Regional Networks on issues relating to non-compliance, fraud, risks to funding, due diligence, and matters of internal serious misconduct. They do so by conducting reviews of serious non-compliance by funded entities and conducting investigations into allegations of fraud or impropriety surrounding PM&C funded programs (see attached **Schedule B**).

6. LIAISON

- 6.1 To facilitate and enhance the full and timely sharing of information between the two agencies, officers of PM&C and the ACNC may meet for discussions in relation to specific areas of common interest.
- 6.2 Each agency will appoint liaison contact officers for the purpose of liaison, communication and exchange of information between the agencies under this MoU. Each agency may change its liaison contact officers as necessary, and will advise the

other agency in writing of its initial liaison contact officers and of any changes to these.

- 6.3 The Fraud Control and Investigations Section and Compliance Operations Support Section of PM&C and the Compliance Directorate of the ACNC will be responsible for the day to day operation of this MoU. They will liaise as required to discuss the progress of current matters of common interest; to improve the sharing of information; to attempt to identify opportunities for joint enforcement or other activities where appropriate; and to resolve problems that may arise either in audit, investigation or prosecution of particular matters or other relationships between the two agencies.
- 6.4 The ACNC and PM&C agree that, where appropriate, they will consult with each other in relation to arrangements for consistent guidance, joint publications, resources and joint contact with stakeholder groups. The ACNC and PM&C may issue joint media releases or publications in relation to any joint enforcement or other activities. The agencies will collaborate in drafting proposed joint media releases or other joint publications.

7. INFORMATION AND INTELLIGENCE SHARING

- 7.1 Each agency is subject to statutory obligations that govern the disclosure and use of personal, confidential and protected information.
- 7.2 Subject to compliance with the relevant legislative provisions and legal obligations governing each agency's use and disclosure of personal, confidential and protected information, the ACNC and PM&C agree to exchange personal, confidential and protected information. Information may be provided by one agency in compliance with a request from the other agency. An agency may also provide information to the other agency, even if it has not been first requested, if the information would be likely to assist that other agency perform or exercise the functions and powers.
- 7.3 PM&C and the ACNC may keep each other advised, in a timely manner, of matters relevant to each other's jurisdiction.
- 7.4 Subject to compliance with their respective legislative provisions and legal obligations governing the disclosure of personal, confidential and protected information, PM&C and the ACNC may:
- a) advise each other where either agency becomes aware during the normal course of their duties that there is or may be a matter of relevance to the other agency, such as referrals or complaints, and provide such information considered to be relevant to the other agency;
 - b) request from each other information about a specific entity;
 - c) share information about risks that have been identified with specific entities; and
 - d) share intelligence identifying emerging risks, themes and opportunities where appropriate.
- 7.5 If information provided pursuant to this MoU becomes the subject of a subpoena, freedom of information request, or other legal demand for access, the recipient agency must immediately notify the owner agency, to enable the owner agency to

advise any intended action relating to the release, disclosure, publication or production of such information, and to advise of its views concerning the same.

8. AREAS OF COLLABORATION

Areas of collaboration and disclosure of information (which may be personal, confidential or protected) would include, but not be limited to:

8.1 Information sharing:

- 8.1.1 The ACNC and PM&C will share information to facilitate their mutual commitment to reducing unnecessary regulatory obligations on the Australian not-for-profit sector, and protecting and promoting confidence in the regulatory regime administered by the ACNC and of the policies and programs administered by PM&C.

8.2 Mutual assistance

- 8.2.1 The ACNC and PM&C agree to provide mutual assistance to monitor/enforce compliance with ACNC and PM&C legislation, including information on potential breaches of legislation administered by either agency by entities of interest to either or both.

8.3 Referral of matters

- 8.3.1 The ACNC and PM&C recognise that information or complaints received by one agency may more appropriately fall within the jurisdiction of the other agency.
- 8.3.2 The ACNC and PM&C therefore agree that in these instances, the objectives of each agency will be enhanced if, after consultation, the matter is formally referred to and continued by that other agency. Subject to legislative restrictions on disclosure the referrals should be made as soon as practicable after the information or complaint is identified.
- 8.3.3 The ACNC and PM&C acknowledge that there may be circumstances where matters will also be, subject to legislative restrictions on disclosure, referred to other relevant federal, state and/or territory regulatory agencies. In those circumstances, each agency may consult the other before a referral to a third agency is made.

8.4 Collaboration subject to legislative obligations

- 8.4.1 The ACNC and PM&C agree that any information sharing, mutual assistance or referral of matters undertaken under this clause 8 is subject to the agencies' respective legislative provisions and legal obligations governing the use and disclosure of personal, confidential and protected information.

9. ANNEXURES

- 9.1 Annexures to this MoU may be negotiated and added from time to time. These annexures form part of this MoU when agreed in accordance with paragraph 9.3.

- 9.2 Each annexure will relate to specific, mutually agreed priorities and issues. Annexures will include guidelines for the effective management of these issues and priorities.
- 9.3 An annexure is taken to be agreed under this MoU if it is signed by the Commissioner of the ACNC and the Secretary of PM&C or their respective authorised representative. An annexure takes effect from the date it is signed unless otherwise specified.

10. REVIEW AND TERMINATION OF THIS MOU

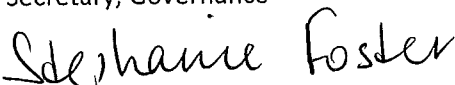
- 10.1 This MoU will be reviewed within three (3) years of the date of signing. Either agency may request a variation of this MoU from time to time.
- 10.2 The ACNC and PM&C may not vary this MoU, except by agreement in writing signed by the Commissioner of the ACNC and the Secretary of PM&C or their respective authorised representative. All variations to the MoU are to be recorded in the Change Control Register at Schedule B.
- 10.3 If there is a disagreement over any matter related to issues covered in this MoU, the agencies will seek to resolve them at the operational level. Should this negotiation fail, the matter is to be referred to the Commissioner of the ACNC and the Secretary of PM&C.
- 10.4 Either agency may terminate this MoU by giving 30 days' written notice to the other agency. The termination will take effect on the expiry of the notice unless otherwise agreed by the agencies.
- 10.5 This MoU shall take effect on and from the date when it is signed by both the Commissioner of the ACNC and the Secretary of PM&C or their respective authorised representative.

Signing Page

Signed for and on behalf of the Department of the Prime Minister & Cabinet by:

Name: Stephanie Foster

Role: Deputy Secretary, Governance

Signature: 

Date: 16 March 2018

Signed for and on behalf of the Australian Charities and Not-for-profits Commission by:

Name: The Hon. Dr Gary Johns

Role: Commissioner

Signature: 

Date: 17 January 2018

ATTACHMENTS

Schedule A: Schedule of legislation

Schedule B: Program funding administered by PM&C

Schedule B: Change Control Register

SCHEDULE A**SCHEDULE OF LEGISLATION****PM&C legislation**

(Note the following legislation relates specifically to Indigenous Affairs Funding only)

Aboriginal Affairs (Arrangements with the States) Act 1973

Aboriginal and Torres Strait Islander Act 2005

Aboriginal and Torres Strait Islander Commission Amendment Act 2005

Aboriginal and Torres Strait Islander Peoples Recognition Act 2013

Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975

Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

Aboriginal Land Rights and Other Legislation Amendment Act 2013, Part 2 of Schedule 1

Aboriginal Land Rights (Northern Territory) Act 1976

Aboriginal Land Rights (Northern Territory) Amendment Act 2006

Classification (Publications, Films and Computer Games) Act 1995, Part 10

Corporations (Aboriginal and Torres Strait Islander) Act 2006

Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006

Higher Education Support Act 2003

Hindmarsh Island Bridge Act 1997

Indigenous Education (Targeted Assistance) Act 2000

Low Aromatic Fuels Act 2013

Native Title Act 1993, Divisions 6 and 7 of Part 2, and Part 11

Petermann Aboriginal Land Trust (Boundaries) Act 1985

Stronger Futures in the Northern Territory Act 2012

Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012

ACNC legislation:

- *Australian Charities and Not-for-profits Commission Act 2012*
- *Australian Charities and Not-for-profits (Consequential and Transitional) Act 2012*
- Subordinate legislation to the ACNC Act

SCHEDULE B**PROGRAM FUNDING ADMINISTERED BY PM&C****Indigenous Advancement Strategy (IAS)**

The IAS is the strategy through which the Australian Government funds and delivers a range of Programs specifically for Indigenous Australians. The IAS is made up of five Programs:

- Jobs, Land and Economy
- Children and Schooling
- Safety and Wellbeing
- Culture and Capability
- Remote Australia Strategies.

Office for Women

The Office for Women works across government to deliver policies and Programs to advance gender equality and improve the lives of Australian women.

The Office for Women administers the Women's Leadership and Development Strategy (WLDS). The WLDS provides funding and support to organisations aimed at improving gender equality and support for women's economic empowerment and opportunity, safety and leadership.

