

MEMORANDUM OF UNDERSTANDING
between
THE INSPECTOR GENERAL IN BANKRUPTCY
and
Australian Charities and Not-for-profits Commission

MOU no. ITSACNC001

Inspector General's Contact Officer:

Name: [REDACTED]

Position: Assistant Director

Postal address: Level 4, 201 Sussex Street, Sydney 2000

Email address: [REDACTED]

Telephone: 02 8233 7881

Agency Head (or authorised senior officer of Agency)

Name: The Hon. Dr Gary Johns

Position: Commissioner

A reference in this MOU to the Agency Head includes a reference to an authorised senior officer of the Agency

Agency's Contact Officer

Name: [REDACTED]

Position: Senior Manager Compliance

Postal address: GPO Box 5108, Melbourne VIC 3001

Email address: [REDACTED]

Alternate email: compliance@acnc.gov.au

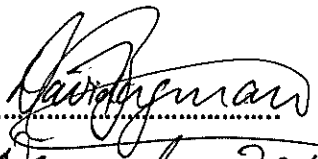
Telephone: 03 8601 9380

Accepted and agreed

Signed on behalf of the Inspector General by:

Name David Bergman


Position National Manager

Signature.....
Date.....*2 December 2019*.....

Signed on behalf of the Agency by:

Name The Hon. Dr Gary Johns

Position Commissioner

Signature.....
Date...02/09/2019.....

1. Parties

This Memorandum of Understanding (MOU) is between:

- the Inspector General in Bankruptcy ('Inspector General'); and
- Australian Charities and Not-for-profits Commission ('Agency')

2. Function of this MOU

Regulation 16.11 of the *Bankruptcy Regulations 1996* provides for the remission of certain fees by the Inspector General, including fees for searching the National Personal Insolvency Index ('NPII'). It is proposed that the Agency will be allocated an account to enable it to conduct searches of the NPII, using the Bankruptcy Register Search (BRS) online facility provided at the website of the Australian Financial Security Authority (AFSA) and that the Inspector General will remit fees associated with those searches, on the basis that the searches performed by the Agency on the NPII are reasonably necessary in the performance of the activities set out in Schedule 1 to this MOU.

This MOU sets out the conditions under which the Inspector General will establish, and maintain, access by the Agency to such an account.

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:

- at any time by mutual agreement; or
- by either party giving the other 60 days' notice in writing, which sets out the reasons for the termination.

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.

5. Access to NPII

The Inspector General has arranged, or will arrange, for the Agency to be allocated the account enabling access to the NPII as specified in Schedule 2.

Access to the NPII through the account specified in Schedule 2 may only be used for the purposes of the activities identified in Schedule 1. The Agency Head is responsible for ensuring that the Agency does not access the NPII through the account in Schedule 2 for other activities.

The Agency Head further agrees that access to the NPII through the account specified in Schedule 2 is at all times subject to and conditional upon compliance with the current version of the Terms and Conditions for Online Services, which are available on AFSA's website (www.afsa.gov.au) or by calling 1300 007 777, and any further guidance or terms and conditions that may be notified to the Agency by AFSA from time to time.

6. Support

The Inspector General will arrange for support to assist the Agency in dealing with enquiries relating to the NPII.

- General enquiries concerning the operation of the NPII can be sent by email to Registry@afsa.gov.au.
- For specific enquiries concerning the Agency's access and this MOU, contact the Inspector General's Contact Officer.

7. Fees

Subject to the conditions in this MOU, the Inspector General will remit all NPII fees in relation to the account specified in Schedule 2. No fees will be charged for the provision of support.

8. Usage Monitoring

The Inspector General may at any time generate reports regarding the use of the Agency's NPII account specified in Schedule 2.

9. Declaration of compliance

The Inspector General may at any time (but not more than once each quarter) provide to the Agency Head a Declaration of Compliance in the form set out in Schedule 3 (or in such other form as the Inspector General notifies the Agency Head) and notify the Agency Head when that Declaration of Compliance falls due.

The Agency Head is to confirm, by completing and returning that Declaration of Compliance, that the Agency has complied with the provisions of this MOU during the period specified in the Declaration.

10. Restrictions on usage, suspension and termination of fee remission arrangement

The Inspector General reserves the right, at any time, to impose restrictions on the use of the account specified in Schedule 2.

The Inspector General reserves the right to suspend or terminate any account subject to fee remission arrangement at any time.

In particular, the Inspector General may impose restrictions or suspend or terminate the account(s) specified in Schedule 2 if, as a result of activities under clauses 8 or 9, or by other means, the Inspector General suspects on reasonable grounds that the Agency's access to the NPII through that account is being used for activities other than those specified in Schedule 1.

11. Variation of this MOU

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

12. Dispute resolution

The parties must attempt to resolve any dispute concerning this MOU by negotiations between the Contact Officers. 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 negotiations between the Contact Officers, that dispute is to be referred upward, through the parties' equivalent management levels until resolved.

13. Notices

A notice under this MOU must be:

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

SCHEDULE 1

The Agency has been allocated an account that is subject to discretionary fee remission by the Inspector General in order to support the Agency in carrying out one or more of the following activities:

- (a) the prevention, detection, investigation, prosecution or punishment of:
 - (i) criminal offences; or
 - (ii) breaches of a law imposing a penalty or sanction; or
- (b) the conduct of surveillance activities, intelligence gathering activities or monitoring activities; or
- (c) the conduct of protective or custodial activities; or
- (d) the enforcement of laws relating to the confiscation of the proceeds of crime; or
- (e) the protection of the public revenue; or
- (f) the preparation for, or conduct of, proceedings before any court or tribunal, or the implementation of court/tribunal orders.

SCHEDULE 2

Account: Australian Charities and Not-for-Profits Commission
(Law Enforcement) **Account Number:** 533344

SCHEDULE 3

Declaration of Compliance

This Declaration of Compliance must be completed by the Agency Head in accordance with clause 9 of the Memorandum of Understanding (MOU).

Completion of this form by the Agency Head formally assures the Inspector General that all terms and conditions, as agreed in the MOU, are being complied with. This includes, but is not limited to, confirmation that the Restrictions on Usage as outlined in clause 10 and schedule 1 are being complied with.

I, [Name of the Agency Head or authorised senior officer] assure the Inspector General that all terms and conditions are being complied with as agreed in the MOU [MOU number] between the Inspector General in Bankruptcy and [Name of Agency].

