



Memorandum of Understanding

between the

Australian Communications and Media Authority

and the

Australian Financial Crimes Exchange

(collectively, **"the parties"**)

1. The parties

- 1.1 The Australian Communications and Media Authority (**ACMA**) is a statutory agency established by section 6 of the *Australian Communications and Media Authority Act 2005*. The ACMA regulates broadcasting services, radiocommunications, telecommunications, unsolicited communications, interactive gambling and certain Internet content in Australia.
- 1.2 The Australian Financial Crimes Exchange (**AFCX**) is an independent organisation formed by the four major banks¹ that operates as a not for profit to assist businesses combat financial-related crimes. The AFCX is the primary channel through which the public and private sector coordinates its intelligence and data-sharing activities for the investigation and prevention of financial and cyber-crime.

2. Purposes

- 2.1 This Memorandum of Understanding (**MOU**) states the mutual understanding of, and principles that underpin, the working relationship between the parties.
- 2.2 The purposes of the MOU are to:
 - 2.2.1 guide and facilitate the parties' collaboration, cooperation and mutual assistance in the performance of the parties' respective functions and responsibilities;
 - 2.2.2 establish a framework to facilitate the exchange of information between the parties while recognising the legal, policy and administrative frameworks for each party to exchange such information; and
 - 2.2.3 provide transparency about the parties' efforts to coordinate activities and minimise duplication in relation to identifying, investigating, preventing and taking action on actual or suspected unlawful activity, including identity theft and fraud.
- 2.3 Both parties recognise the need for, and will use best efforts to give effect to, the purposes through active collaboration and cooperation at all levels while discharging their respective functions and objectives.

3. Scope

- 3.1 The MOU is not intended to, and does not, create any binding legal, financial or other resource or legal obligation on either of the parties.
- 3.2 The MOU is not intended to be exhaustive on the subject matters within its scope. The parties may also enter into any other arrangements for cooperation and collaboration to the extent permitted by the law, as agreed between the parties from time-to-time.

4. Liaison

- 4.1 The parties will hold regular liaison meetings and establish direct lines of communication to give effect to the purposes.
- 4.2 Each of the parties will designate liaison contact officers to facilitate communication and exchange of Information between the parties. Each of the parties may change its liaison contact

¹ Australian and New Zealand Banking Group Limited (ACN 005 357 522), Commonwealth Bank of Australia Limited (ACN 123 123 124), National Australia Bank Limited (ACN 004 044 937) and Westpac Banking Corporation Limited (ACN 007 457 141).

officers at its discretion and will advise the other party before, or as soon as practicable after, any change.

- 4.3 The parties will liaise as necessary to progress matters of mutual interest, to improve the efficiency and effectiveness of Information sharing, and to identify and discuss opportunities for cooperation, including joint initiatives targeted at non-compliance and unlawful activity, education and/or training opportunities.
- 4.4 The parties agree that, where practicable, they will consult with each other on publication and stakeholder communication on any matters involving or relating to the other party, including on media releases, statements and responses to the media, and any other related matters.

5. Confidentiality, use and security of Information

- 5.1 Each party will, respectively, ensure that collection, requests for exchange, and the provision of Information by the parties accord with the exercise of its respective powers, objectives and functions and any compliance with each party's obligations under:
 - 5.1.1 the authorised disclosure provisions under ACMA enabling legislation;
 - 5.1.2 AFCX member agreements and any financial data standards; and
 - 5.1.3 laws applicable to the Information and the subject matter of this MOU, including but not limited to the *Privacy Act 1988 (Cth)*.
- 5.2 Information may be provided by one party (the providing party) to the other (the recipient party) upon request, at the providing party's discretion. A providing party may also give Information to the recipient party without a request if the providing party is reasonably of the view that the Information is likely to assist the recipient party in performing its functions and meeting its objectives.
- 5.3 A recipient party will take all reasonable measures to protect the Information received under this MOU from unauthorised use or disclosure. It will keep the Information secure and confidential in accordance with all applicable statutory obligations and not knowingly do anything, or omit to do anything, with the Information provided to it under this MOU that will cause the providing party to breach its obligations under the *Privacy Act 1988 (Cth)*.
- 5.4 The parties acknowledge that the AFCX provides, pursuant to a services agreement, intelligence and data-sharing services to third parties (**Members**) for the purposes of identifying, investigating, preventing and taking action on actual or suspected fraud related events and/or financial crime (including any reporting required for such identification, investigation or prevention). Unless the ACMA explicitly agrees in writing beforehand, the AFCX shall not share with its Members any Information received from the ACMA under this MOU.
- 5.5 If the recipient party intends to disclose Information received under this MOU to any third-party, it will give the providing party an opportunity to make any submissions on the matter:
 - 5.5.1 in its initial request to the providing party for the Information, where practicable; and
 - 5.5.2 prior to any such disclosure.
- 5.6 If Information provided under this MOU becomes the subject of a subpoena, freedom of information request, or other legal demand for access, the recipient party will, as soon as practicable, notify the providing party to enable the providing party to make any submissions on any intended action relating to the release, disclosure, publication or production of such Information.

- 5.7 If Information provided under this MOU becomes the subject of any inadvertent or unauthorised disclosure or a breach of the terms in this MOU, the recipient party will as soon as practicable (and in any case within 24 hours of becoming aware of the disclosure or breach) notify the providing party of the details, in addition to any legal obligations the recipient party may have in relation to the matter. Without limiting any other obligation under this MOU, the recipient party will also:
- 5.7.1 take immediate action to establish and implement appropriate steps to remedy the inadvertent or unauthorised disclosure, and prevent any further disclosure of the Information;
 - 5.7.2 notify the providing party of the proposed remediation steps in relation to the disclosure or breach as soon as reasonably practicable;
 - 5.7.3 give the providing party estimated timeframes and reasonable updates regarding the implementation of those steps to ensure remediation of the disclosure or breach as soon as practicably possible;
 - 5.7.4 to the extent that it is permitted to do so, give to the providing party a copy of any request or demand received from a Government agency relevant to the disclosure or breach; and
 - 5.7.5 without limiting either party's obligations under the *Privacy Act 1988 (Cth)*, the recipient party will consult with the providing party in preparing any statement of notification required to be given to a third party in accordance with the *Privacy Act 1988 (Cth)*.
- 5.8 Any Intelligence provided to the ACMA by the AFCX under this MOU will be subject to the parties executing a binding confidentiality deed and will, unless otherwise agreed in writing between the parties, only be used by the ACMA for the purposes of an exercise of the ACMA's powers and functions, including in relation to investigation or enforcement action, that could reasonably lead to preventing suspected fraud or fraud-related events. Nothing in this clause prevents the AFCX from providing other Information to the ACMA for the purposes of the ACMA identifying, investigating, preventing and taking action in relation to actual or suspected breaches of the Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020, including any reporting required for such identification, investigation or prevention.
- 5.9 Without limiting any of the ACMA's obligations in paragraph 5.8 the ACMA must:
- 5.9.1 not use, or allow the Intelligence to be used, for any purpose other than that specified in paragraph 5.8;
 - 5.9.2 not transfer or disclose Intelligence that is provided to the ACMA under this MOU to a person outside of Australia, unless with prior written authorisation from the AFCX;
 - 5.9.3 not use, access, sell, commercially exploit, let for hire, assign rights in or otherwise disclose the Intelligence other than in accordance with this MOU;
 - 5.9.4 ensure that the Intelligence is only disclosed to the ACMA officers who need to know such Intelligence to the extent necessary for them to perform their duties for the ACMA; and
 - 5.9.5 ensure that its officers are aware of its obligations under this MOU and that they do not use, allow access to, or provide Intelligence to any person for any purpose other than as set out in this paragraph 5.9.

6. Areas of collaboration

- 6.1 The areas of collaboration and exchange under this MOU include, but are not limited to Information concerning:
- 6.1.1 the ACMA's powers and functions under the *Broadcasting Services Act 1992*, the *Radiocommunications Act 1992*, the *Telecommunications Act 1997*, *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Spam Act 2003*, the *Do Not Call Register Act 2006*, and the *Interactive Gambling Act 2001*, as well as associated regulations, standards and codes of practice; and
 - 6.1.2 AFCX's responsibilities for intelligence and data-sharing activities, including for the purposes of investigation, prevention and acting in relation to actual or suspected fraud-related events and/or financial and cybercrime.
- 6.2 The areas of priority concern for exchange of Information include:
- 6.2.1 potential serious or systemic non-compliance with the regulatory functions of the ACMA;
 - 6.2.2 non-compliance with the *Telecommunications (Mobile Number Pre-porting Additional Identification Verification) Industry Standard 2020*;
 - 6.2.3 occurrence of actual or suspected fraud, including fraudulent sim swaps;
 - 6.2.4 telephone numbers that are associated with actual or suspected fraud-related events and/or financial or cybercrime;
 - 6.2.5 outcomes of compliance matters or investigations undertaken by the ACMA in relation to actual or suspected breaches of the *Telecommunications (Mobile Number Pre-porting Additional Identity Verification) Industry Standard 2020*; and
 - 6.2.6 any other matters identified for priority attention from time-to-time by agreement.
- 6.3 The parties may facilitate their collaboration through any appropriate arrangements, including:
- 6.3.1 the provision of information, including Information and Intelligence;
 - 6.3.2 provision of joint training, or an invitation to participate in training conducted or facilitated by a party that may be relevant to the other party.

7. Commencement, review and termination

- 7.1 The MOU will take effect when signed by both the Chair of the ACMA and the Managing Director of the AFCX, on the date it is signed by the party last to sign (**Effective Date**).
- 7.2 The MOU will be reviewed by the end of the third year after its Effective Date. However, either party may in writing to the other request a variation of the MOU at any time. A variation is made when agreed in writing by both parties. All variations will be recorded in the change register at Schedule A to the MOU.
- 7.3 If there is a disagreement over any matter within the scope of this MOU, the parties will seek to resolve them at an officer level. Any disagreement or matter not so resolved will be referred to the Chair of the ACMA and the Managing Director of the AFCX for resolution.

- 7.4 A party may terminate this MOU by its Chair or Managing Director giving 30 days written notice to the other party. The termination will take effect on the expiry of the notice unless otherwise arranged by the parties.
- 7.5 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.
- 7.6 The MOU will remain in force unless terminated under clause 7.4 or otherwise mutually by the parties.

8. Definitions

'Information' means all information regardless of its material form, relating to or developed in connection with:

- (a) the business, technology, financial or other affairs of the providing party or any related body corporate, customer or member of the providing party;
- (b) the Intelligence; and/or
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is marked "confidential" or is otherwise indicated to be subject to an obligation of confidence, owned or used by or licensed to the providing party or a related body corporate of the providing party.

'Intelligence' means such information or an opinion (including information or an opinion forming part of a database):

- (a) whether true or not and whether in a material form or not about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (or such other meaning that may be given to the term in the *Privacy Act 1988* (Cth));
- (b) provided to the AFCX by one or more of its Members pursuant to a services agreement between the AFCX and the relevant party; or
- (c) that the AFCX specifies, upon provision of that Information to ACMA, can only be used for specified purpose.