



**AUSTRALIAN
CRIMINAL
INTELLIGENCE
COMMISSION**



APRA

Head Agreement

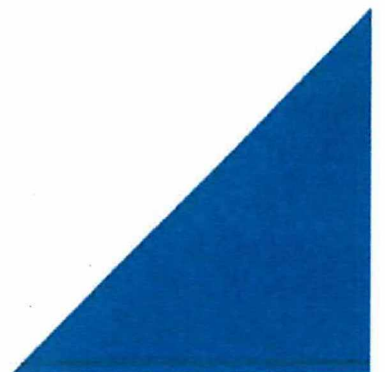
For cooperation and
information sharing

Between the

**Australian Prudential
Regulation Authority**

And the

**Australian Criminal
Intelligence Commission**



Contents

GENERAL PROVISIONS	3
1. Parties	3
2. Commencement	3
3. Duration	3
4. Definitions	3
5. Purpose	4
6. Scope	5
7. Functions of the Parties	5
8. Agreed Principles	5
9. Responsibilities of the Parties	6
10. Work Health and Safety	6
11. Security	6
12. Information Sharing Protocols	6
13. Subsidiary Agreements	7
14. Schedules	8
15. Payments	8
16. Liaison with Other Agencies	8
17. Management and Review	8
18. Dispute Resolution	9
19. Notices	9
20. Variation	9
21. Termination	10
Signatories	10
Schedule 1 – Relationship Managers	11

ACIC Reference: 21/161738

GENERAL PROVISIONS

1. Parties

- 1.1 This Head Agreement is between the following agencies:
- 1.1.1 The Australian Criminal Intelligence Commission (ACIC); and
 - 1.1.2 The Australian Prudential Regulation Authority (APRA).

2. Commencement

- 2.1 This Head Agreement will commence on:
- 2.1.1 the date it is signed by the Parties; or
 - 2.1.2 if signed on separate days, on the date of the last signature.

3. Duration

- 3.1 This Head Agreement remains in effect from the date of signing unless terminated in accordance with paragraph 21.

4. Definitions

- 4.1 In this Head Agreement, except where the contrary intention is expressed, the following definitions are used:

ACC	means Australian Crime Commission, also known as the ACIC ¹
ACC Act	means <i>Australian Crime Commission Act 2002</i> (Cth)
ACC information	has the same meaning as defined in s 4(1) of the ACC Act
ACC Regulations	means the <i>Australian Crime Commission Regulations 2018</i> (Cth)
ACIC	means the Australian Criminal Intelligence Commission
ACIC Board	means the Board of the ACC pursuant to 7B of the ACC Act
ACIC CEO	means the Chief Executive Officer of the ACIC
Agency	means the Australian Prudential Regulation Authority with whom this Head Agreement is made

¹ Subsection 7(1A) of the *Australian Crime Commission Act 2002* (Cth) (ACC Act) and section 8 of the *Australian Crime Commission Regulations 2018* provide that the Australian Crime Commission may also be known as the Australian Criminal Intelligence Commission and by the acronyms ACC and ACIC. In this document the acronym ACIC is used including in place of ACC in terms defined by the Act, as permitted by subsection 4(1A) of the Act.

Head of Agency	means the Chairman of APRA with whom this Head Agreement is made
Head Agreement	means this primary document including any Schedules
Intellectual Property	means all rights in copyright (including moral rights), patents, registered designs, trade secrets, know-how, confidential information, rights in relation to circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
National Policing Information	has the same meaning as defined in s4(1) of the ACC Act
Notice	means written Notice in accordance with paragraph 21 of this Head Agreement
Party or Parties	means a Party or the Parties who are signatories to this Head Agreement
Providing Party	means the Party providing information under this Head Agreement or any Subsidiary Agreement
PSPF	means the Australian Government Protective Security Policy Framework, available at: https://www.protectivesecurity.gov.au/Pages/default.aspx
Receiving Party	means the Party receiving information provided under this Head Agreement or any Subsidiary Agreement
Relationship Manager	is the person appointed in accordance with paragraph 17 and specified in Schedule 1
Schedule	refers to a document, identified as a Schedule, and linked to either: <ul style="list-style-type: none"> • this Head Agreement or • a Subsidiary Agreement.
Subsidiary Agreement	means a subsequent memorandum of understanding between the Parties formed under paragraph 13 which sits under and is subject to the terms of this Head Agreement

5. Purpose

- 5.1 The purpose of this Head Agreement is to provide a framework for cooperation between the Parties in relation to a range of projects and activities relevant to the functions of the parties as set out in paragraph 7.
- 5.2 Specific areas of cooperation, and the activities that will support that cooperation, will be agreed by the Parties from time to time and documented in Subsidiary Agreements to this Head Agreement, made in accordance with paragraph 13.

6. Scope

- 6.1 This Head Agreement, its Subsidiary Agreements and/or Schedules (if any), supersede any previous Head Agreement, Subsidiary Agreements or informal arrangements between the Parties on the same subject matter.
- 6.2 This Head Agreement does not create legally binding obligations on either Party, nor does it override or vary any existing legal obligation on either Party.
- 6.3 Notwithstanding paragraph 6.2, the Parties intend to take all reasonable steps to comply with and give effect to this Head Agreement and any Subsidiary Agreement.

7. Functions of the Parties

- 7.1 The functions of the ACIC are conferred by Commonwealth and State laws and include, but are not limited to:
 - 7.1.1 collecting, correlating, analysing and disseminating, and maintaining a national database of, criminal information and intelligence;
 - 7.1.2 undertaking, when authorised by the Board, intelligence operations and investigations of matters relating to relevant criminal activity, and
 - 7.1.3 providing systems and services relating to National Policing Information.
- 7.2 APRA was established under the *Australian Prudential Regulation Authority Act 1998* and its functions include, but are not limited to:
 - 7.2.1 overseeing Australia's banks, credit unions, building societies, general insurers and reinsurance companies, life insurers, private health insurers, friendly societies and superannuation funds (other than self-managed funds);
 - 7.2.2 acting as the national statistical agency for the Australian Financial sector and playing a role in preserving the integrity of Australia's retirement incomes policy; and
 - 7.2.3 administering the Financial Claims Scheme (FCS) when activated by the Australian Government in the unlikely event an APRA-regulated institution were to fail; and
 - 7.2.4 balancing the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, to promote financial system stability.

8. Agreed Principles

- 8.1 The Parties recognise the mutual benefit that can be obtained through collaboration and intend to use their best endeavours and do all things reasonably necessary to ensure the success of the relationship created by this Head Agreement.
- 8.2 If there is any inconsistency between the provisions of the constituent documents of this Head Agreement, a descending order of precedence will be given to:
 - 8.2.1 the terms of a Subsidiary Agreement;

8.2.2 the Schedules to that Subsidiary Agreement;

8.2.3 the terms of this Head Agreement; and

8.2.4 the Schedules to this Head Agreement.

so that the provision in the higher ranked document will prevail, to the extent of the inconsistency.

9. Responsibilities of the Parties

- 9.1 Without limiting paragraph 6.2, each Party will exercise best endeavours to give effect to this Head Agreement and any Subsidiary Agreement, including in relation to ensuring relevant internal communications address information and security protocols (see paragraphs 11 and 12), per their respective internal policies and applicable whole-of-government requirements. Each Party also agrees to bear its own costs associated with maintaining this Head Agreement and any Subsidiary Agreement, unless otherwise stated in those arrangements.

10. Work Health and Safety

- 10.1 Where relevant, the coverage of Work, Health and Safety conditions, in meeting the requirements of the Work Health and Safety Act 2011 (WHS Act), will be detailed in any applicable Subsidiary Agreement. For example, this would be relevant in the case of a Subsidiary Agreement covering secondment of staff between the Parties.

11. Security

- 11.1 Where a Party specifies any security arrangements connected with any activity under this Head Agreement or any Subsidiary Agreement (including but not limited to physical security procedures and personnel vetting requirements), the Parties:
- 11.1.1 acknowledge their respective policies and procedures in place covering whole-of-government security requirements, such as the PSPF;
 - 11.1.2 will exercise best endeavours to do all things necessary to comply with those arrangements, and if compliance relevant to ACIC and APRA is not reasonably practical, liaise with the requesting Party to agree upon a mutually acceptable alternative.
- 11.2 Specific security requirements will be detailed in subsidiary arrangements as required.

12. Information Sharing Protocols

- 12.1 For the purpose of this paragraph 12, the definitions of **Providing Party** and **Receiving Party** apply.
- 12.2 Where information is shared between the Parties under this Head Agreement or any Subsidiary Agreement, the Parties agree:
- 12.2.1 the Providing Party may specify restrictions on the use or further dissemination of that information (whether arising under statute or otherwise);
 - 12.2.2 the Receiving Party will comply with any such restrictions;
 - 12.2.3 the Receiving Party will use it only for purposes connected with its functions or the exercising of its powers; and

- 12.2.4 if a Party becomes aware of any failure to comply with restrictions notified under this paragraph, it will inform the other Party at the earliest opportunity and cooperate fully in relation to minimising any detriment to the affected Party.
- 12.3 The parties acknowledge that information shared under this Head Agreement or any Subsidiary Agreement may be subject to statutory secrecy provisions including section 56 of the *Australian Prudential Regulation Authority Act 1998*. A person who has acquired or had access to protected information or protected documents, as defined under section 56, in the course of his or her employment must not disclose the protected information or protected documents to a third party unless an exception in section 56 applies.
- 12.4 All information received by the Parties under this or any Subsidiary Agreement will be handled, and the integrity of the information maintained, in accordance with the PSPF relating to the specific classification of the information. This paragraph 12.4 will survive the termination of this Head Agreement and any Subsidiary Agreement.
- 12.5 If any Information provided to a Party in accordance with this Head Agreement, or its Subsidiary Agreements is sought or required by a subpoena, notice to produce, request for discovery, court or tribunal process, Freedom of Information (FOI) request or any other information gathering process initiated by a government or non-government person or body, the relevant Party will use its best endeavours to:
- 12.5.1 In relation to FOI requests notify the other Party as soon as practicable of such a request.
- 12.5.2 In consultation with the other Party, and where deemed by the other Party to be appropriate and necessary, use all reasonable steps including making a claim for public interest immunity, relevant common law or statutory privilege or immunity from production, and/or requiring confidentiality undertakings to maintain confidentiality of such information.
- 12.5.3 This paragraph 12.5 will survive the termination of this Head Agreement and any Subsidiary Agreement.
- 12.6 The Parties may agree additional or different protocols on the provision of information for a particular purpose or connected with a particular project in any Subsidiary Agreement. Any additional information sharing protocols set out in a Subsidiary Agreement will:
- 12.6.1 apply only to the project or activity described in that Subsidiary Agreement; and
- 12.6.2 take precedence over anything in this paragraph 12, to the extent of any inconsistency.

13 Subsidiary Agreements

- 13.1 The parties agree that Subsidiary Agreements may be negotiated and agreed from time to time by the Parties to detail specific collaboration activities.
- 13.2 The terms of this Head Agreement will apply to any Subsidiary Agreement created under it, except to the extent that the Subsidiary Agreement specifically amends those terms.
- 13.3 Upon execution by both Parties, each Subsidiary Agreement will form part of this Head Agreement.
- 13.4 A Subsidiary Agreement is taken to have been executed if signed by the ACIC CEO and the Head of Agency, or their authorised representatives. Unless otherwise specified, a Subsidiary Agreement takes effect from the date it is signed, or if signed on separate days, on the date of the last signature.

- 13.5 Where applicable, a Subsidiary Agreement may cover matters such as: legal disclaimers, specific responsibilities of the parties, WHS requirements, intellectual property, payments and other details akin to subsidiary arrangements under this Head Agreement.

14. Schedules

- 14.1 Schedules to this Head Agreement or to a Subsidiary Agreement may be negotiated and added from time to time by the Parties.
- 14.2 Each Schedule will set out information that is necessary or convenient for the effective implementation of provisions of this Head Agreement or the relevant Subsidiary Agreement, as the case may be.
- 14.3 A Schedule is taken to be agreed if it is:
- 14.3.1 signed by the ACIC CEO and the Head of Agency, or their authorised representatives; or
 - 14.3.2 in the case of a Subsidiary Agreement, by a Party's Relationship Manager or their authorised representative.

15. Payments

- 15.1 The Parties agree any payment requirements will be detailed in a Subsidiary Agreement or Schedule as appropriate.

16. Liaison with Other Agencies

- 16.1 Where appropriate, the ACIC may refer some activities to the Agency for attention.
- 16.2 Subject to the requirements of any applicable legislation, where it becomes necessary to liaise, collaborate or share information with, or seek information from, other Commonwealth and State government and law enforcement agencies, including partner agencies in New Zealand, the Agency should be aware the ACIC may undertake those activities in accordance with the various protocols involving the Australian and New Zealand Policing Advisory Agency (ANZPAA) protocols, to which the ACIC is a signatory.
- 16.3 This paragraph 16 remains fully subject to paragraph 12 ('Information sharing').

17. Management and Review

- 17.1 The relationship between the Parties governed by this Head Agreement will be managed by the Relationship Managers set out in Schedule 1.
- 17.2 The Relationship Managers will be responsible for day to day liaison between the Parties in relation to all areas of cooperation under this Head Agreement.
- 17.3 The Parties may nominate an alternate point of contact for the day to day management of any Subsidiary Agreement. Any alternate point of contact should be detailed in the relevant Subsidiary Agreement or otherwise agreed by the Parties in writing.

- 17.4 Where a Party issues a formal Notice under any Subsidiary Agreement to an alternate point of contact, that Party must also send a copy of that Notice to the Relationship Manager of the other Party.
- 17.5 Any Party proposing a change to this Head Agreement, any Subsidiary Agreement or any Schedule will provide details of the proposed amendments for prompt consideration by the other Party.

18. Dispute Resolution

- 18.1 The Parties agree that any dispute should be resolved in the spirit of good faith and open communication between the Relationship Managers or alternate points of contact in the first instance.
- 18.2 If they are unable to resolve the dispute within 30 days, the dispute will be referred to the ACIC CEO and Head of Agency (or one of their nominated direct reports).
- 18.3 Despite the existence of a dispute, each Party will continue to act in accordance with this Head Agreement in accordance with the principles set out in paragraph 8 of this Head Agreement unless requested not to do so by the other Party by Notice.

19. Notices

- 19.1 A Notice given by a Party, or Relationship Manager in connection with this Head Agreement or any Subsidiary Agreement:
- 19.1.1 subject to paragraph 19.2, must be in writing and signed by that Party or Relationship Manager and
 - 19.1.2 must be sent to the other Party's Relationship Manager (or such alternate point of contact as may be advised in writing in accordance with paragraph 17.4), marked for their attention, by:
 - (a) hand delivery;
 - (b) ordinary or registered pre-paid post;
 - (c) email transmission.
- 19.2 Any Notice purporting to terminate this Head Agreement must be signed by the CEO (in the case of termination by the ACIC) or the Head of Agency (in the case of termination by the Agency), as required by paragraph 21.1.
- 19.3 If a Notice is sent under paragraph 19.1.2 other than by hand delivery, the Party giving the Notice should seek confirmation of receipt to ensure delivery.

20. Variation

- 20.1 This Head Agreement and any Subsidiary Agreement may be varied at any time by written agreement between the Parties.
- 20.2 Unless otherwise stated, variations will take effect upon execution by both Parties following written confirmation and agreement by both Relationship Managers and approval by the signatory, or authorised delegate.

21. Termination

- 21.1 This Head Agreement will remain in effect from the date of signing unless terminated by either party giving 60 days written Notice, signed by the ACIC CEO or the Head of Agency.
- 21.2 The Parties agree that should this Head Agreement be terminated in accordance with paragraph 21.1 and not replaced with an equivalent Head Agreement, any Subsidiary Agreement formed under it will also terminate.
- 21.3 Should this Head Agreement, and any Subsidiary Agreement formed under it, be terminated in accordance with paragraphs 21.1 and 21.2, the Parties agree to fulfil their obligations under paragraph 12 and otherwise cooperate fully with any disengagement process that may be required to give full effect to the termination.

Signatories

Wayne Byres

Chairman

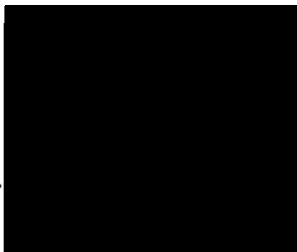
Signed for and on behalf of
the Australian Prudential Regulation
Authority:

Michael Phelan APM

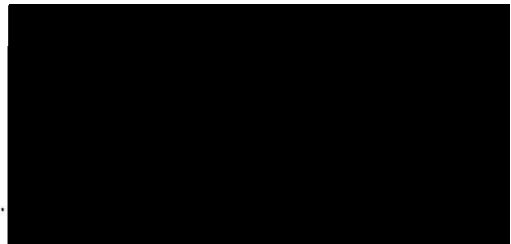
Chief Executive Officer

Signed for and on behalf of
Australian Criminal Intelligence Commission:

Signed: ...



Signed:



Date: 15/3/2022

Date: 28/3/2022