

BUSINESS
TAX OFFICE MOU
REFERENCE NO. 13.010

MEMORANDUM OF
UNDERSTANDING –
HEAD AGREEMENT

1 DECEMBER 2016
TO
1 DECEMBER 2019



Australian Government
Australian Taxation Office



MEMORANDUM OF UNDERSTANDING

BETWEEN

AUSTRALIAN TAXATION OFFICE

AND

**AUSTRALIAN PRUDENTIAL
REGULATION AUTHORITY**

FOR THE PROVISION OF

Mutual Assistance and Exchange of Information

MEMORANDUM OF UNDERSTANDING BETWEEN THE AUSTRALIAN TAXATION OFFICE (ABN 51 824 753 556) AND THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (ABN 79 635 582 658).

This Memorandum of Understanding is between:

- a) the Australian Prudential Regulation Authority, and
- b) the Commissioner of Taxation.

BACKGROUND AND PURPOSE

- 1.1 This Memorandum of Understanding (MOU) sets out a framework for co-operation between the Australian Prudential Regulation Authority (APRA) and the Australian Taxation Office (ATO) (the Agencies) to facilitate coordination between the Agencies in relation to superannuation matters, including the exchange of unclassified, publicly available, protectively marked¹ or protected information².
- 1.2 Co-operation and exchange of information between APRA and the ATO is described in the two Administrative Arrangements attached to this MOU. To the extent that there is a conflict between the provisions of this MOU and an Annexure, the provisions of this MOU prevail. Matters other than superannuation are to be dealt with on a case by case basis. Areas of relevance to superannuation may be dealt with under this MOU where there is legislative provision for the exchange of information. The purpose of this MOU is to establish a streamlined process that enables the Agencies to assist each other when necessary.

STATUS

- 2.1 This MOU is not intended to create legally binding rights or obligations.
- 2.2 This MOU replaces the previous MOU made between the ATO and APRA on 1 September 2013. The formal review of this document is scheduled for October 2019 incorporating agreed changes reached between both parties before the date of renewal. Updates to organisational and functional changes within both Agencies can be discussed and agreed on an informal basis without the need for a formal renewal of this MOU.

INFORMATION SHARING

- 3.1 Subject to legislative and operational considerations, the Agencies agree that information available to one Agency which is relevant to the responsibilities of the other Agency may be exchanged, in a timely manner, regardless of whether a request has been made by the other Agency.

PROTECTION OF INFORMATION

- 4.1 Where information is exchanged, the Agencies will endeavour to ensure that their officers, employees, agents and subcontractors:
 - (a) use all information, including unclassified, publicly available, protectively marked or protected information shared between them only for the purposes for which it was provided;

¹ Information may be marked with a protective marking such as a Dissemination Limiting Marker (eg for information previously classified as INCONFIDENCE a Dissemination Limiting Marker such as 'Sensitive' is used, as detailed in the Protective Security Policy Framework.

² Section 56 of the *Australian Prudential Regulation Authority Act 1998* defines 'protected information'. See Appendix B of this Administrative Arrangement 1 of this MOU for more detail. Subsection 355-30(1) of Schedule 1 to the *Taxation Administration Act 1953* also defines 'protected information'. See Appendix A of Administrative Arrangement 1 of this MOU for more detail.

- (b) comply with any conditions that the providing Agency imposes in relation to the use and disclosure of the protectively marked or protected information; and
 - (c) take all reasonable measures to ensure that protectively marked or protected information provided by the other Agency in their possession or control is protected against loss and unauthorised access, use, modification or disclosure.
- 4.2 The Agencies will use their best endeavours to preserve the confidentiality of the information exchanged under this MOU. Any confidential information received from either of the Agencies is to be used exclusively for lawful purposes and in compliance with any conditions imposed on the use of the information;
- 4.3 An Agency may disclose information received from the other Agency under this MOU to a third party in the following circumstances:
- where the Agency is legally compelled to do so, for example to a Court or Royal Commission
 - where the Agency receives a legally enforceable demand, for example under Freedom of Information laws and,
 - in other circumstances permitted by law.
- 4.4 When an Agency is legally compelled to disclose information provided under this MOU to a third party, the Agency which is under compulsion is expected to promptly notify the other Agency, indicating what information it is compelled to disclose and the circumstances surrounding its release. The Agencies expect each other to use their best endeavours to preserve the confidentiality of the information to the extent permitted by law, if requested to do so.
- 4.5 Where an Agency wishes to disclose information received under this MOU to a third party, but is not compelled to do so, the Agency is expected to notify the other Agency to obtain its consent. It will not disclose the information if consent is refused. Where consent is obtained, the Agency disclosing the information will impose on the third party any conditions which have been made by the other Agency concerning the use of that information. In any event, as far as possible, the party disclosing the information will impose a condition on the third party that it keep the information confidential, and that it will not further disclose the information without first obtaining consent.
- 4.6 The Agencies recognise that the provision of information may be denied on some grounds, including national security or when disclosure would interfere with an ongoing investigation. Where a request for information is denied, the Agency that made the request expects that it will be provided with the reasons for not providing the information.
- 4.7 The Agencies expect each other to mark all documents provided under this MOU:
- “Confidential - Received under Memorandum of Understanding between APRA and the ATO” (noting that this additional marking will not alter handling requirements specified in the Protective Security Policy Framework for protectively marked information).

CONSULTATION AND LIAISON

- 5.1 Subject to operational considerations, the Agencies will endeavour to support the administration and management of relevant consultative committees (such as multi agency consultative committees) and assist each other as required in the development and implementation of new measures which affect both Agencies.
- 5.2 The Agencies will endeavour to consult each other on proposed policy statements, technical documents, legislative modifications, publications, circulars and press releases which have an impact on, or may be of relevance to either Agency.
- 5.3 It is envisaged that liaison in respect of operational matters will occur on a regular basis informally and via planned liaison meetings where required. Senior Agency representatives may meet to discuss strategic issues. Operational matters may be managed via liaison between the

respective Agency gatekeepers and some matters may be referred to technical forums or liaison meetings.

REFERRAL OF MATTERS

- 6.1 The Agencies understand that some issues may involve questions which fall within the jurisdiction of both Agencies. Before referring a matter to the other Agency, the Agency which raises the issue will endeavour to provide a draft response to its part of the issue and provide it to the other Agency.
- 6.2 The Agencies understand that, with regard to a matter which more appropriately falls within the jurisdiction of the other Agency, the objectives of each Agency will be enhanced if, after consultation, the matter is formally referred and continued by that other Agency.

TRAINING

- 7.1 The Agencies are committed to the development and provision of training to enhance the skills of their staff. Subject to operational considerations, the Agencies will endeavour to assist each other with training where appropriate. Any requests for assistance with training should initially be made through the Contact Officer.

COSTS

- 8.1 Generally, costs associated with information sharing under this MOU or an Administrative Arrangement will be met by the Agency providing the information. Where it appears that substantial costs may be incurred in responding to a request for information, the Agencies may agree a cost sharing arrangement in relation to the provision of that information.
- 8.2 For specific information provided under paragraph 4.6 of Administrative Arrangement 1, the ATO will provide to APRA funding of \$230,000.00 per year for five years (as shown in the table below) commencing in 2013-14 to allow for the upfront build. The payments are provided for the provision of data for four years from 2015-16 to 2018-19

Financial Year	Payment before	Payments	Services Delivery
2013/14	30-Jun-14	\$230,000	Initial build
2014/15	30-Jun-15	\$230,000	Pre-payment for 2015/16 data provision
2015/16	30-Jun-16	\$230,000	Pre-payment for 2016/17 data provision
2016/17	30-Jun-17	\$230,000	Pre-payment for 2017/18 data provision
2017/18	30-Jun-18	\$230,000	Pre-payment for 2018/19 data provision
	Total	\$1,150,000	<i>Payments are exclusive of GST (GST not applicable)</i>

- 8.3 To facilitate this arrangement APRA will issue an invoice to the ATO at the beginning of each financial year for \$230,000.
- 8.4 Where costs or charges between the Agencies are contemplated, there may be a requirement in some circumstances for GST to apply. Where GST is payable the following guidelines are of assistance: Goods and Services Tax:

In this section (Costs), 'Payments' are amounts payable for the supply of goods, services or other things under this MOU (other than by this Section) that are not expressly described as being GST inclusive.

- All Payments are taken to be exclusive of GST.
- If GST is imposed on a supply made under this MOU, the recipient must pay the supplier – in addition to the Payment for that supply, and at the time of making that Payment:
 - an amount calculated by multiplying that Payment by the prevailing applicable GST rate under the *A New Tax System (Goods and Services Tax) Act 1999*, provided that

ADMINISTRATIVE ARRANGEMENT 1 PROVISION OF SUPERANNUATION INFORMATION

1. MEMORANDUM OF UNDERSTANDING

- 1.1. The Australian Taxation Office (ATO) and the Australian Prudential Regulation Authority (APRA) (the Agencies) have signed a Memorandum of Understanding to facilitate coordination between the Agencies in relation to superannuation and related matters, including the exchange of general, protectively marked or protected information. Expressions used in the Memorandum of Understanding have the same meaning in this Administrative Arrangement.

2. PURPOSE

- 2.1 The purpose of this Administrative Arrangement is to set out the superannuation information and related information that may be shared between the Agencies on a regular and ad-hoc basis, and the procedures governing the sharing of that information. Information that may be shared on a regular basis includes information necessary to ensure the integrity of the registers maintained by the Agencies.

3. STATUS AND REVIEW

- 3.1 This Administrative Arrangement is not intended to create legally binding rights or obligations. The operation of this Administrative Arrangement should be reviewed annually to ensure that it meets current operational requirements. The contents of this Administrative Arrangement should be formally reviewed every three years and if necessary, may be amended.

4. PROVISION OF MUTUAL ASSISTANCE

- 4.1 The information to be provided by APRA in its quarterly data alignment process consists of the items below. The ATO will conduct a reconciliation of reporting populations using the information:
- a. Address details
 - b. Australian Business Number (ABN)
 - c. Elected Date
 - d. Entity Name
 - e. Established Date
 - f. Period of most recent return lodged with APRA
 - g. Post address of entity
 - h. Registrable Superannuation Entity (RSE) Registration Number
 - i. Sector Code
 - j. Trustee Details
 - k. Wind up date
 - l. Successor fund, if any
 - m. Wound up description
 - n. KiwiSaver scheme contributions and benefit payments
- 4.2 The information to be provided by the ATO in its weekly advice for new elections, changes of details and changes of regulator consists of:
- a. Australian Business Number (ABN)
 - b. Fund Name
 - c. Superannuation Fund Number (SFN) - not required for new elections
 - d. Established Date
 - e. Type of fund
 - f. Fund Type
 - g. Election Date
 - h. Residency Status Australian indicator

- i. Previous Fund Name (not required for new elections)
 - j. Postal Address
 - k. Email Address for fund
 - l. Business Address
 - m. Contact Person details
 - n. Structure of the Fund
 - o. Number of defined benefits members
 - p. Trustee details
 - q. Lodgement indicator (switchers to APRA only)
 - r. Audit qualified indicator (switchers to APRA only)
 - s. New elections for Approved Deposit Funds (ADFs) and Pooled Superannuation Trusts (PSTs)
 - t. Change of trustee details for APRA regulated funds (funds that are not switching, but just changing trustees)
 - u. Changes to fund type for APRA regulated funds (not switching, just changing fund type)
 - v. Changes to contact and address details for APRA regulated funds (not switching, just updating contact and address details)
- 4.3 Information under paragraphs 4.1 and 4.2 is to be provided in relation to funds that are APRA regulated funds.
- 4.4 The information provided by APRA at www.apra.gov.au/RSE/Pages/default.aspx containing APRA registered superannuation funds and RSE licenced trustees, refreshed weekly, should include:
- a. ABN
 - b. Corporate trustee status
 - c. Registered Fund status
 - d. Entity name
- 4.5 The Contact Officers for the provision of information are detailed in Appendix C of this Administrative Arrangement (paragraph 2).
- 4.6 APRA will endeavour to supply on a quarterly basis:
- SRF 711.0 SuperStream Benchmarking Measures for Contributions Processing.
- 4.6a APRA will endeavour to supply on an annual basis:
- item 1 'member account status', item 1.1 'active member account' and item 4.1.1 'member account with unique TFN' on Reporting Form SRF 610.0 Membership Profile.
- 4.6b APRA will endeavour to supply other relevant information and/or reports derived from APRA's statistical collection as agreed between APRA and the ATO from time to time, where that information is not publicly available.
- 4.7 The ATO will endeavour to:
- a. provide APRA with information regarding any relevant complaints received by the ATO relating to APRA regulated funds not complying with the *Superannuation Industry Supervision Act 1993* (SIS Act).
 - b. advise APRA, as soon as practicable, when the ATO becomes aware of;
 - schemes for the illegal early release of benefits affecting APRA regulated funds.
 - c. supply to APRA:
 - Annually and quarterly – Total number of SMSFs, including establishments and windups, total members, total assets, total liabilities, total net assets, borrowings, total member closing account balances, total reserve accounts, other liabilities, assets segregated into the types collected on the ATO's Self-managed superannuation fund annual return, contributions segregated into the types collected on the ATO's Self-managed superannuation fund annual return, inward and outward transfers, lump sum payments, income stream payments, investment expenses, management and

administration expenses, interest expenses, auditor fees, insurance premiums, other expenses, net investment income.

- d. undertake a data quality assurance process to determine the accuracy and reliability of the data provided to APRA.
- 4.8 The Contact Officers for the provision of information are detailed in Appendix C of this Administrative Arrangement.
- 4.9 Either Agency may request changes to the format and content of the data provided. The Agencies intend to discuss requested changes to be delivered and the timeframe within one week of receiving the request. All proposed changes will be in writing and agreed by both parties before being implemented.

5. INFORMATION SHARING/LIAISON

- 5.1 Information can only be exchanged between the Agencies if the disclosure or production is specifically allowed under a relevant statute. The relevant provisions are outlined in Appendices A and B to this Administrative Arrangement. 'Protected information' and 'protected document' are defined under the *Australian Prudential Regulation Authority Act 1998*, as described at Appendix B of this Administrative Arrangement. Security classified material at the PROTECTED security classification is not to be exchanged between the two Agencies. A definition of 'PROTECTED security classification information' for the purposes of security classification is provided at Appendix A of this Administrative Arrangement.
- 5.2 Requests by APRA to the ATO for information are to be made in accordance with the principles and procedures set out in Appendix A of this Administrative Arrangement. Requests by the ATO to APRA for information are to be made in accordance with the principles and procedures set out in Appendix B this Administrative Arrangement.
- 5.3 The Agencies intend to use their best endeavours to provide relevant information and/or relevant documents in a timely manner in response to requests for protectively marked documents, subject to any legal constraints governing the release of that information or those documents.
- 5.4 Subject to relevance and any applicable provisions relating to the disclosure of information, the ATO intends to share with APRA interpretative advice (however called) given to the superannuation industry and APRA intends to share with the ATO general guidance (however called) given to APRA regulated funds.
- 5.5 Subject to secrecy and disclosure provisions in applicable legislation, the Agencies agree that information relating to superannuation available to one Agency which is relevant to the responsibilities of the other Agency is intended to be shared in a timely manner, including through relevant meetings.

6. TRANSMISSION OF INFORMATION

- 6.1 The information is to be transmitted in a format as agreed by the Agencies in accordance with security requirements appropriate for the security classification of the information transmitted. Where a matter has been referred from an Agency, the accepting Agency should acknowledge the referral of the matter in writing.

7. AD HOC REQUESTS FOR INFORMATION AND REFERRALS

- 7.1 Ad hoc requests for information are to be made by the Agency Representative in writing by post or by electronic means (including e-mail and facsimile) and addressed to the appropriate Contact Officer specified in paragraph 8.2.
- 7.2 Subject to operational considerations, the Agencies agree to provide information in a timely manner.

7.3 Ad hoc requests for information may be required to be in a standard format that has been developed and agreed to by each Agency.

- i. Form of the request: All ATO information which is intended for delivery to APRA should be in the form of an ATO Minute with SES approval for the minute having been obtained by the originating area. The SES approved minute should be sent by electronic means to the ATO gatekeeper who will arrange for an ATO Minute number to be added to allow the minute to be registered as official inter-departmental correspondence. The ATO gatekeeper will track progress of correspondence via the APRA gatekeeper and advise the originating area of APRA's reply.

8. CONTACT OFFICERS

- 8.1 In order to ensure effective liaison, the Agencies should maintain a list of contact officers (Appendix C of this Administrative Arrangement) and provide notification of changes as soon as practicable after a change occurs.
- 8.2 The contact officers of each of the Agencies responsible for the day to day operations of the Administrative Arrangement are:

OFFICE	NAME OF OFFICER	ADDRESS (include postal and e-mail addresses)	PHONE
ATO Assistant Commissioner Superannuation	Currently occupied by: Jason Lucchese	GPO Box 9977 Civic Square ACT 2608 Jason.Lucchese@ato.gov.au	Tel: (02) 621 62471
APRA Manager Super Strategic Intelligence, Data Analytics, APRA And Data Analytics Liaison Officer APRA And Registry Manager, Data Administration team, APRA And Specialist, Superannuation, Advice & Approvals, APRA	Currently occupied by : Maria Fuller Currently occupied by: Omar Dewan Currently occupied by: Padma Srivatsan Currently occupied by: Mark Welling	GPO Box 9836 Sydney NSW 2000 Maria.Fuller@apra.gov.au GPO Box 9836 Sydney NSW 2000 Omar.Dewan@apra.gov.au GPO Box 9836 Sydney NSW 2000 DataAnalytics@apra.gov.au GPO Box 9836 Sydney NSW 2000 Mark.Welling@apra.gov.au	Tel: (02) 9210 3564 Fax (02) 9210 3420 Tel: (02) 9210 3662 Fax (02) 9210 3420 Tel: (02) 9210 3132 Fax:(02) 9210 3420 Tel: (02) 9210 3677 Fax:(02) 9210 3153

APPENDIX A (of Administrative Arrangement 1)

GUIDELINES BETWEEN APRA AND THE ATO FOR THE RELEASE OF PROTECTIVELY MARKED INFORMATION AND PROTECTED INFORMATION

Introduction

1. Taxation laws administered by the Commissioner are subject to taxpayer confidentiality provisions contained in Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). Division 355 of Schedule 1 to the TAA 1953 sets out the circumstances in which protected information may be disclosed to another entity.
2. 'Protected information' is defined under section 355-30 of Schedule 1 to the TAA 1953. Protected information is information that was disclosed or obtained under or for the purposes of taxation law (other than the *Tax Agent Services Act 2009*) that relates to the affairs of an entity and identifies or is reasonably capable of being used to identify the entity.
3. The taxpayer confidentiality provisions apply to taxation laws under the general administration of the Commissioner of Taxation.
4. Subsection 355-25 of Schedule 1 to the TAA 1953 makes it an offence for a taxation officer to make a record of, or disclose protected information to another entity (other than the entity the information is about), unless an exception applies. Similar offence provisions apply to non-taxation officers in relation to protected information.
5. Table 2 in subsection 355-65(3) of Schedule 1 to the TAA 1953 contains specific exceptions about disclosing protected information for other government purposes relating to superannuation or finance. Disclosure to APRA by a taxation officer³ is specifically permitted if the record or disclosure:
 - is made for the purpose of administering the *Financial Institutions Supervisory Levies Collection Act 1998* or the *Superannuation Industry (Supervision) Act 1993* or
 - is of information obtained under or in relation to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and is for the purpose of APRA performing any of its functions or exercising any of its powers.
6. General exceptions to disclosure by a taxation officer for other government purposes relating to superannuation or finance under subsection 355-65(3) of the TAA 1953 are allowed if the record or disclosure:
 - is to a financial sector supervisory agency within the meaning of section 3 of the *Australian Prudential Regulation Authority Act 1998* and the record or disclosure
 - is of information that was obtained under or in relation to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
 - is for the purpose of the Agency performing any of its functions or exercising any of its powers.
 - is to an agency having the function, in Australia or in a foreign country, of supervising or regulating financial institutions or any other agency specified in the *Taxation Administration Regulations 1976* (the Regulations) and the record or disclosure:
 - is of information that was obtained under or in relation to the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* or the *Superannuation Industry (Supervision) Act 1993*; and
 - is for the purpose of performing any of its functions or exercising any of its powers; and
 - is made in accordance with the conditions (if any) imposed by the Regulations.

³ As defined in subsection 355-30(2) and modified by section 355-15 of the TAA 1953. Generally 'taxation officer' refers to the Commissioner of Taxation, a Second Commissioner, or an individual appointed or engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office.

- is to an entity, court or tribunal and the record or disclosure is of information that was obtained under, or for the purposes of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* or the *Superannuation Industry (Supervision) Act 1993* and is for the purpose of all or any of the following:
 - identifying a particular self managed superannuation fund;
 - enabling members of the public to contact persons who perform functions in relation to a particular self managed superannuation fund;
 - enabling the Commissioner to provide an opinion to members of the public as to whether or not a particular self managed fund is a complying superannuation fund in relation to a particular income year for the purposes of Division 2 of Part 5 of the *Superannuation Industry (Supervision) Act 1993*;
 - describing an activity engaged in, or proposed to be engaged in, by the Commissioner in relation to a breach or suspected breach by a person of a provision of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* or the *Superannuation Industry (Supervision) Act 1993*.
7. In relation to ABN data, section 26 of *A New Tax System (Australian Business Number) Act 1999* (ABN Act) provides that certain information in the Australian Business Register may be disclosed. Section 30 of the ABN Act contains confidentiality provisions including exceptions to disclosure.
8. Before any information is disclosed, the ATO must:
- assess whether that information was disclosed to or obtained by the ATO under a legislative regime (e.g. income tax laws, GST laws or so on) and, if so, whether the taxpayer confidentiality provisions apply at first instance to prohibit a disclosure, and if so
 - identify whether an exception may apply to allow the disclosure of that information to APRA, and if so
 - be satisfied that the requisite circumstances for that exception are met – for example that the information is to be used solely, and only to the extent necessary, for the necessary purposes.

Form of the Request

9. Requests by APRA for protectively marked (Dissemination Limiting Marker) information should be made in writing by the relevant APRA Contact Officer to the relevant ATO Contact Officer.
10. 'PROTECTED' Security Classification information is not to be shared between the two Agencies. The ATO and APRA may use this classification of information in the normal course of business activities. 'Protected Information' has a different meaning in the *Australian Prudential Regulation Authority Act 1998*, (APRA Act) which is described at Appendix B of this Administrative Arrangement. A PROTECTED security classification, as used by the ATO would apply when compromise of the information could cause damage to the Australian Government, commercial entities, or members of the public. It is to be used only sparingly in specific circumstances, for instance, when compromise of the information could:
- *endanger individuals or private entities*
 - *work substantially against national finances or economic and commercial interests*
 - *substantially undermine the financial viability of major organisations*
 - *impede the investigation or facilitate the commission of serious crime, or*
 - *seriously impede the development or operation of major Government policies.*
11. Dissemination Limiting Marker protective markings are used by the ATO and APRA when compromise of the information could cause limited damage to affected parties. The majority of taxpayer / client data and 'protected information' as defined in the APRA Act falls within the 'Sensitive' Dissemination Limiting Marker and must be kept secure. Dissemination Limiting Marker protective markings are used as follows:

- **For Official Use Only** – used for information where compromise may cause limited damage to national security, Australian Government agencies, commercial entities or members of the public
 - **Sensitive** – used for information where secrecy provisions of enactments may apply or disclosure may be limited or prohibited under legislation
 - **Sensitive: Personal** – used for personal ‘sensitive information’ as defined only in section 6 of the Privacy Act 1988
 - **Sensitive: Legal** – used for information that may be subject to legal professional privilege
 - **Sensitive: Cabinet** – used for Cabinet information and must also carry at least a **PROTECTED** security classification
12. In order to satisfy the ATO (or an Authorised Officer⁴) that the information can be disclosed to APRA, APRA should specify in its request the kind of information sought, how APRA will use that information, and purpose of that use.
13. Requests for information under this Appendix may be required to be in a standard format that has been developed and agreed to by each Agency.

⁴ See Appendix C of Administrative Arrangement 1

14. APPENDIX B (of Administrative Arrangement 1)

GUIDELINES BETWEEN APRA AND THE ATO FOR THE RELEASE OF PROTECTIVELY MARKED INFORMATION AND PROTECTED INFORMATION

Introduction

1. Subsection 56(2) of the *Australian Prudential Regulation Authority Act 1998* (the APRA Act) imposes a strict obligation on an 'APRA officer'⁵ to maintain the confidentiality of 'protected information' and 'protected documents', that is, information and documents relating to bodies regulated by APRA. Breach of this secrecy provision is a criminal offence, carrying a penalty of imprisonment for 2 years.

2. **Protected – as defined for the purposes of the Australian Prudential Regulation Authority Act 1998 - Section 56**

officer means:

- (a) an APRA member or
- (b) an APRA staff member or
- (c) any other person who, because of his or her employment, or in the course of that employment:
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents;

other than an employee of the body to which the information or document relates.

3. **protected document** means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and containing information relating to the affairs of:

- (a) a body regulated by APRA; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA; or
- (ca) a registered entity; or
- (cb) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a registered entity; or
- (cc) a person who has been, is, or proposes to be, a customer of a registered entity; other than:
- (d) a document containing information that has already been lawfully made available to the public from other sources; or
- (e) a document given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation; or
- (f) a document given or produced under, or for the purposes of, a provision of the *First Home Saver Accounts Act 2008*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

⁵ Broadly defined to include not only APRA members and staff members, but also any other person who, because of, or in the course of, their employment, acquires 'protected information' or has had access to a 'protected document'.

4. **protected information** means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and relating to the affairs of:
- (a) body regulated by APRA; or
 - (b) body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA; or
 - (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA; or
 - (ca) registered entity; or
 - (cb) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a registered entity; or
 - (cc) a person who has been, is, or proposes to be, a customer of a registered entity; other than:
 - (d) information that has already been lawfully made available to the public from other sources; or
 - (e) information given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation; or
 - (f) information given or produced under, or for the purposes of, a provision of the *First Home Saver Accounts Act 2008*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.
5. The Dissemination Limiting Marker 'Sensitive' is applied to 'protected documents' and 'protected information' as defined in the APRA Act and must be kept secure.
6. Information or documents disclosed or produced under or for the purposes of a provision of the SIS Act administered by the ATO are not protected.
7. APRA may disclose protected information or documents to the ATO (but note that information given to the ATO can only relate to superannuation or a retirement savings account (RSA) not to an authorised deposit-taking institution (ADI) or insurance company) without infringing subsection 56(2) provided the officer making the disclosure is satisfied that the information or document will assist the ATO to perform its functions or exercise its powers in relation to superannuation regulation: see paragraph 56(5)(a) of the APRA Act and regulation 5 of the *Australian Prudential Regulation Authority Regulations 1998*. Subsection 56(5AA) of the APRA Act permits an officer of the ATO to disclose protected information or produce a protected document for the same purposes for which it was originally disclosed or produced by APRA.
8. Section 284 of the SIS Act and section 114 of the *Retirement Savings Accounts Act 1997* (RSA Act) provide that APRA may give a copy of the report, or part of the report, prepared on completion or termination of an investigation of a superannuation entity or RSA provider to amongst others a prescribed agency, if the report relates to a contravention of a law of the Commonwealth, of a State or of a Territory. Under regulation 13.21 of the *Superannuation Industry (Supervision) Regulations 1994* and regulation 6.18 of the *Retirement Savings Accounts Regulations 1997*, the ATO is a prescribed agency for the purposes of section 284 of the SIS Act and section 114 of the RSA Act respectively.
9. APRA also has statutory responsibilities under the APRA Act and SIS Act to provide protected information to the ATO about the compliance status of superannuation entities. Such disclosure is permitted by subsection 56(3) of the APRA Act as the disclosure is for the purposes of a "prudential regulation framework law" as defined in subsection 3(1) and Section 56(5)(a) of the APRA Act.

Form of the Request

10. Requests by the ATO for protected information or protected documents relevant to the performance of the ATO's functions and powers relating to superannuation should be made in writing by the relevant ATO Contact Officer to the relevant APRA Contact Officer.
11. Requests for information in relation to superannuation entities and RSA providers should indicate that the disclosure will assist the ATO in the exercise of its functions and powers in relation to superannuation regulation and specify the particular purpose for which the information is required. The request should also include an undertaking that the information will not be disclosed except for the purposes for which APRA disclosed it: see subsection 56(5AA) of the APRA Act.
12. Requests for information under this Appendix may be required to be in a standard format that has been developed and agreed to by each Agency.

APPENDIX C (of Administrative Arrangement 1)

AUTHORISED OFFICERS

OFFICERS AUTHORISED TO REQUEST ACCESS TO PROTECTIVELY MARKED INFORMATION OR PROTECTED INFORMATION OR PROTECTED DOCUMENTS:

ATO: All officers at or above the level of Australian Public Service Level 6 with the appropriate level security clearance to handle material of this classification.

APRA: All officers at or above Level 4, with the appropriate level security clearance to handle material of this classification.

ATO OFFICERS AUTHORISED TO RECEIVE PROTECTED INFORMATION OR PROTECTED DOCUMENTS FROM APRA:

All officers at or above the level of Australian Public Service Level 6 with the appropriate level security clearance to handle material of this classification.

OFFICERS AUTHORISED TO RELEASE PROTECTIVELY MARKED INFORMATION OR PROTECTED INFORMATION OR PROTECTED DOCUMENTS:

ATO: All officers at or above the level of Australian Public Service Level 6 with the appropriate level security clearance to handle material of this classification.

APRA: All officers at or above Level 4 with the appropriate level security clearance to handle material of this classification.

AGENCY CONTACTS

1. The Agency contact for consultation on all matters relating to corporate management standards for the MOU, including the provision of gatekeeper and liaison functions shall be:

- a) For the ATO:
- Superannuation
 - Industry and Government Engagement
 - Amungula Building
 - Narellan Street
 - CANBERRA CITY ACT 2601

The person who currently occupies this position is:

Phillip John
(02) 6216 1673
superaprainbox@ato.gov.au
Phillip.John@ato.gov.au (Secondary)

- b) For APRA:
- Superannuation Specialist
 - Advice & Approvals
 - APRA
 - 1 Martin Place
 - Sydney, NSW 2000

The person who currently occupies this position is:

Mark Welling
(02) 9210 3677
mark.welling@apra.gov.au

2. The Agency contacts for consultation on matters relating to the provision of information are:

a) For the ATO: Superannuation
Industry and Government Engagement
Amungula Building
Narellan Street
CANBERRA CITY ACT 2601

The person who currently occupies this position is:

Phillip John
(02) 6216 1673
superaprainbox@ato.gov.au
Phillip.John@ato.gov.au (Secondary)

b) For APRA: Manager Super Strategic Intelligence
1 Martin Place
Sydney NSW 2000

The person who currently occupies this position is:

Maria Fuller
(02) 9210 3564
Maria.Fuller@apra.gov.au
DataAnalytics@apra.gov.au

3. The Agency contact for consultation on matters relating to section 8 of the MOU (Costs):

a) For the ATO: ATO Finance
PO Box 9977
Civic Square ACT 2608

The person who currently occupies this position is:

Eloise Bonelli
(02) 6216 1084
SuperFinanceTeam@ato.gov.au
Eloise.Bonelli@ato.gov.au (secondary)

b) For APRA: Executive General Manager -
Corporate Services Division
APRA
GPO Box 9836
Sydney NSW 2001

The person who currently occupies this position is:

Steve Matthews
Ph: (02) 9210 3191
Fax: (02) 9210 3020
Steve.Matthews@apra.gov.au

ADMINISTRATIVE ARRANGEMENT 2

Meetings

1. MEMORANDUM OF UNDERSTANDING

- 1.1 The Australian Taxation Office (ATO) and the Australian Prudential Regulation Authority (APRA) (the Agencies) have signed a Memorandum of Understanding (MOU) to facilitate coordination between the Agencies in relation to superannuation matters, including the exchange of protectively marked or protected information. Expressions used in the MOU are to have the same meaning in this Administrative Arrangement.

2. PURPOSE

- 2.1 This Administrative Arrangement details the understanding of the ATO and the APRA (the Agencies) to hold meetings as detailed below.

3. MEETINGS THAT THE ATO AND APRA ATTEND

ATO and APRA Senior Executive Strategy meeting

- 3.1. The senior executive members of each Agency intend to participate in a high level strategy meeting on an annual basis, or if the need arises on a more regular basis. This meeting will also include any matters relevant to the operational relationship between the two Agencies.
- 3.2. The MOU, this Administrative Arrangement, and each Administrative Arrangement between the Agencies, is to be reviewed annually by this meeting to ensure the MOU or Administrative Arrangement meets operational requirements existing at the time.
- 3.3. The Agency contact for matters relating to the Meeting shall be:
- a) For the ATO: Director
Industry and Government Engagement
Superannuation
Australian Taxation Office

The person who currently occupies this position is:

Sarah Kimmorley
(02) 6216 3259
superaprainbox@ato.gov.au
Sarah.Kimmorley@ato.gov.au (Secondary)

- b) For APRA: Head of Superannuation Team
Advice and Approvals
APRA
GPO Box 9836
Sydney NSW 2001

The person who currently occupies this position is:

John Dow
(02) 9210 3218
John.Dow@apra.gov.au

ATO Superannuation Industry Stewardship Group

- 3.4. The Agencies intend to participate in the Superannuation Industry Stewardship Group (SISG) and the Superannuation Industry Relationship Network as required.
- 3.5. Items for discussion at the SISG meeting are:

- discuss high level significant matters where the outcomes are considered to be in the national interest
- provide opportunities to discuss the strategic direction of the superannuation system – specifically opportunities for improvements to the administration of the superannuation systems
- provide input and bring ideas to the table to support a whole of Government approach.

3.6. The Agency contacts for matters relating to the SISG shall be:

a) For the ATO:

Industry and Government Engagement
Superannuation
PO Box 9977
CANBERRA ACT 2608

The person who currently occupies this position is:

Tammie Turner
(02) 6216 2256
superconsultation@ato.gov.au
Tammie.Turner@ato.gov.au (Secondary)

b) For APRA:

Head of Superannuation Team
Advice and Approvals
APRA
GPO Box 9836
Sydney NSW 2001

The person who currently occupies this position is:

John Dow
(02) 9210 3218
John.Dow@apra.gov.au

