

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

AND

THE PRIVATE HEALTH INSURANCE ADMINISTRATION COUNCIL (PHIAC)

1. Objective

- 1.1 This memorandum of understanding (**MoU**) sets out a framework for cooperation and liaison between ASIC and PHIAC (**the agencies**) to assist them to effectively and efficiently discharge their respective administrative and regulatory functions.
- 1.2 The agencies agree to provide each other with mutual assistance in relation to the exchange of information and referral of matters where appropriate under their relevant legislative frameworks.
- 1.3 The agencies acknowledge the importance of this MoU and confirm their intentions to comply with its terms. This MoU is not intended to create binding legal obligations on either agency. Variations to the MoU will be facilitated through a consultative process between the two agencies from time to time.

2. Responsibilities

- 2.1 ASIC is responsible for the administration and enforcement of the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and other relevant legislation. ASIC regulates and informs the public about Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.
- 2.2 PHIAC is an independent statutory authority which regulates the private health insurance industry. Under section 264-5 of the *Private Health Insurance Act 2007* (**the PHI Act**), PHIAC is required to take all reasonable steps to perform its functions and exercise its powers with a view to achieving an appropriate balance between fostering an efficient and competitive health insurance industry, protecting the interests of consumers and ensuring the prudential safety of individual private health insurers.

3. Mutual Assistance

- 3.1 The agencies recognise that cooperation between them is desirable to assist them to effectively and efficiently discharge their respective administrative and regulatory functions.
- 3.2 The agencies agree to cooperate and provide each other with mutual assistance in relation to the exchange of information in accordance with this MoU and their legislative frameworks.

4. Information Sharing

- 4.1 The agencies recognise that timely and appropriate exchange of information is a crucial element in coordination between the agencies.
- 4.2 Under section 127 of the ASIC Act, ASIC must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence or in connection with the performance of its functions or the exercise of its powers or information that is protected information.
- 4.3 The Chairman of ASIC, or his or her delegate, is authorised to disclose confidential information pursuant to section 127(4) of the ASIC Act to various Commonwealth government bodies where such information will enable or assist the agency to perform or exercise any of its functions or powers.
- 4.4 Under section 323-1 of the PHI Act, PHIAC must take all reasonable measures to protect from unauthorised use or disclosure, information given to it in confidence, or in connection with the performance of its functions or the exercise of its powers, or information that is protected information.
- 4.5 Under sections 323-5 and 323-35 of the PHI Act PHIAC may disclose information to the extent necessary to perform the PHIAC's agency cooperation function set out in section 264-10(6) of the PHI Act.
- 4.6 Subject to all the relevant legal obligations and operational considerations, each agency will use reasonable endeavours to notify the other agency in a timely manner

of the existence of any information which would, if provided to the other agency, be likely to assist that other agency in administering or enforcing the particular laws for which it is responsible.

- 4.7 Where an agency receives notification from the other agency and desires access to the information concerned, it will make a request to the other agency for the information. The information sought must be described with reasonable particularity and the purpose/s for which the information is requested should also be specified. Where the request is made by PHIAC, the request letter should explain how the requested information will enable or assist PHIAC to perform or exercise any of its functions or powers as required by section 127(4)(a) of the ASIC Act. Where the request is made by ASIC, the request letter should explain how the requested information is authorised under the exceptions in sections 323-5 and 323-35 of the PHI Act.
- 4.8 When exchanging confidential information, the agencies acknowledge the confidentiality and secrecy requirements of the legislation under which each agency operates and the legal framework within which they both operate. The agency providing information may specify the level of confidentiality attached to the information it provides to the other.
- 4.9 When an agency receives information from the other agency in accordance with this MoU, it will take all reasonable steps to ensure that such information is only used or disclosed for the purpose for which it was obtained, or as otherwise authorised by the other agency.
- 4.10 Each agency agrees not to disclose any confidential information obtained pursuant to this MoU to a third party unless it has obtained the prior consent of the agency which has provided the confidential information, or the disclosure is required or authorised by or under law.
- 4.11 Where the receiving agency is required or authorised by or under law to disclose confidential information provided pursuant to this MoU it will immediately and prior to any disclosure being made, notify the providing agency of the disclosure requirement and disclose only the confidential information required to comply with the applicable requirement.

5. Mutual Assistance on Other Matters

- 5.1 The agencies agree to pursue issues of cooperation in staff training, staff exchange, joint publications or education initiatives, where appropriate.

6. Referral of Matters

- 6.1 The agencies recognise that once a complaint is received or an initial investigation has been conducted by an agency, it may become apparent that the matter more appropriately falls within the jurisdiction of the other agency.
- 6.2 Both agencies therefore agree that the objectives of each agency will be enhanced if after consultation, the matter is formally referred to and continued by the other agency. The referrals should be made as soon as practicable after the alleged principal contravention has been identified.

7. Cost of Provision of Information and Support Services

- 7.1 In general, the agency which receives a request for information shall bear the cost incurred by it in locating and providing the information to the agency which has requested the information.
- 7.2 If it appears to the providing agency that it will incur substantial costs in providing the information, it may discuss this with the other agency and the agencies may negotiate a cost-sharing arrangement in relation to the provision of that information.

8 Administrative Arrangements

- 8.1 The agencies will provide a contact point to which initial request for information or assistance under this MoU should be directed. A contact point may nominate another person within the agency to whom all further correspondence should be directed. The officers responsible for the administration of the MoU are:
- the person holding the position of Senior Executive Leader, Strategy and Policy of ASIC; and
 - the person holding the position of Director of Industry Policy and Enforcement at PHIAC.

8.2 The MoU may be amended by written agreement between the Chairman of ASIC and the Chief Executive Officer of PHIAC. Both agencies will notify the other of any changes to their legislation which may impact on the arrangement established by the MoU. Any consequential changes necessary to the MoU will be subject to consultation.

9 Review of this MoU

9.1 This MoU will be formally reviewed 24 months after having come into force.

9.2 Each agency will keep the operation of this MoU under continuous review and will consult with the other from time to time, with the view to improving its operations and resolving any matters that may have arisen. The agencies agree that the MoU may be amended at any time by written agreement.

10 Disputes

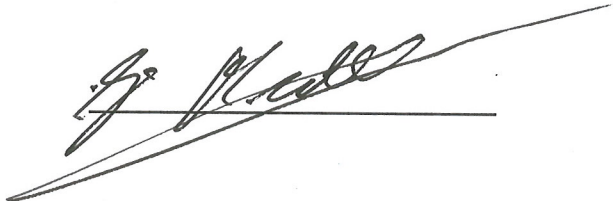
10.1 Any dispute about the interpretation or application of this MoU will be resolved through consultation between the agencies and will not be referred to any tribunal or third party for settlement.

11. Termination

11.1 An agency will give written notice to the other of its intention to terminate this MoU. Accordingly this MoU will terminate seven days after the date upon which the notice is received.

SIGNED on behalf of

THE AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION by



Chairman

In the presence of



Name and title of Witness

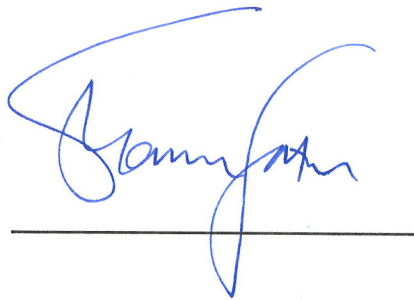
HILDA MILLER
EA, OFFICE OF THE CHAIRMAN.

Dated

14-OCTOBER-2011

SIGNED on behalf of

THE PRIVATE HEALTH INSURANCE
ADMINISTRATION COUNCIL by



Chief Executive Officer

In the presence of



Name and title of witness

FIONA BOWDEN
LEGAL OFFICER.

Dated 18 OCTOBER 2011.