

Senate Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Human Services Portfolio

Department of Human Services

Additional Estimates 2007-08 – February 2008



Question: HS 86

Outcome 1, Output 1.1

Topic: Centrelink – Fraud - Cash Economy

Hansard Page/Written Question on Notice: Written

SENATOR COONAN asked on 22/02/2008:

Please provide a copy of the joint Memorandum of Understanding between Centrelink, the ATO and Department of Immigration & Citizenship for conducting cash economy investigations including field operations.

Answer:

A copy of the joint Memorandum of Understanding is provided at **Attachment A**.

H586 Attach A.



Australian Government

Australian Taxation Office



Australian Government



Australian Government

Department of Immigration and
Multicultural and Indigenous Affairs



Centrelink
giving you options.

MEMORANDUM OF UNDERSTANDING (MoU)

BETWEEN THE

AUSTRALIAN TAXATION OFFICE (ATO)

**DEPARTMENT of IMMIGRATION and
MULTICULTURAL and INDIGENOUS AFFAIRS
(DIMIA)**

AND

CENTRELINK

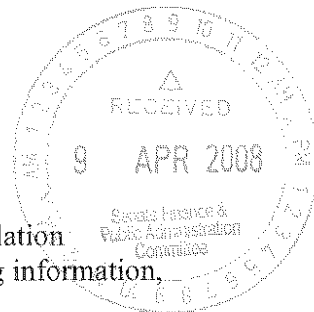
IN RELATION TO

**JOINT COMPLIANCE ACTIVITIES AND OTHER ASPECTS
OF COOPERATION IN CONNECTION WITH THE INTER AGENCY
CASH ECONOMY WORKING GROUP**



1. **PURPOSE AND NATURE OF THE MoU**

- 1.1 This MoU sets out an agreement for mutual cooperation between the ATO, DIMIA and Centrelink (the Agencies) in relation to compliance and associated activities relating to the cash economy.
- 1.2 In coming to this Agreement, the parties agree that its success rests at least as much with each party pursuing its roles in a collaborative and helpful manner, and with frequent and productive communications as it does with the clarity the Agreement brings regarding roles and responsibilities.
- 1.3 The agencies have established an Inter-agency Compliance Steering Group and an Inter-agency Cash Economy Working Group to facilitate a coordinated approach to general compliance activities and, in particular, cash economy compliance activities.
- 1.4 In recognition of:
- the fact that efficient government administration plays an important role in the public's confidence in the level of integrity of the taxation, migration and social security systems;
 - the need to ensure the best use of public resources;
 - the significant relationship that exists between the employment of non-citizens in breach of immigration law (whether unlawful non-citizens or lawful non-citizens working in breach of a condition attached to their visa), tax evasion and welfare fraud associated with the cash economy;
 - a whole of government approach to the coordination of inter-agency initiatives with respect to compliance activities;
 - the difficulty of detecting and targeting undeclared earnings;
 - evidence gathered from previous compliance activities indicating that there are those who:
 - (i) derive income and not declare it to the relevant authorities;
 - (ii) seek to enter and remain in Australia to work in breach of their visa conditions and/or to overstay;
 - (iii) are unlawfully in Australia and deriving income; and
 - (iv) access pensions, allowances and benefits to which they have no entitlement;
 - the desirability of integrating cash economy compliance activities in order to enhance the delivery of services that meet the expectation of Government, other agencies and the community.



the undersigned agree to cooperate, within the provisions of the legislation administered by each agency and other relevant legislation, in sharing information, planning and coordinating compliance activities to achieve outcomes.

- 1.5 Centrelink and DIMIA recognise the ATO's statutory obligations in administering the taxation legislation and will provide support to the extent provided for under the applicable laws to assist the ATO in meeting those obligations.
- 1.6 The ATO and Centrelink recognise DIMIA's statutory obligations in administering the migration legislation and will provide support to the extent provided for under the applicable laws to assist DIMIA in meeting those obligations.
- 1.7 The ATO and DIMIA recognise Centrelink's obligations in administering the Social Security Law and the Family Assistance Law on behalf of FaCS and will provide support to the extent provided for under the applicable laws to assist Centrelink in meeting those obligations.

2. DEFINITIONS and INTERPRETATION

2.1 In this MoU:

"Agency or Agencies" means the ATO and/or Centrelink and/or the Department of Immigration and Multicultural and Indigenous affairs.

"ATO" means the Australian Tax Office.

"Centrelink" means the Commonwealth Service Delivery Agency.

"CEWG" means the Inter Agency Cash Economy Working Group.

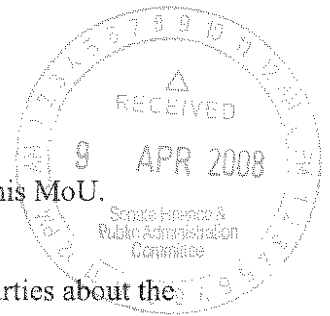
"Contact Officer" means the officer occupying the positions listed in Part 17 of this MoU.

"DIMIA" means the Department of Immigration and Multicultural and Indigenous Affairs.

"FaCS" means the Department of Family and Community Services.

"IACSG" means the Inter Agency Compliance Steering Group.

"Signatories" means the officers occupying the positions that are held by the



signatories to this MoU or officers delegated by the signatories of this MoU.

2.2 This MoU and all attachments represent the understanding of the parties about the Agreement until such time as a new MoU on the same subject matter commences or until such time as this MoU is terminated by one of the parties.

2.3 Where applicable the terms of this MoU take precedence over the contents of any attachments to this MoU.

3. **PRIVACY, CONFIDENTIALITY AND SECRECY**

3.1 The Information Privacy Principles (IPPs) in section 14 of the *Privacy Act 1988* (Cth), set out strict safeguards for any personal information handled by agencies. The IPPs cover the collection, storage, use and disclosure of this information. The parties are obliged to comply with the IPPs and will do so irrespective of any term of this MoU. The understanding recorded by this paragraph will survive after the termination of this MoU.

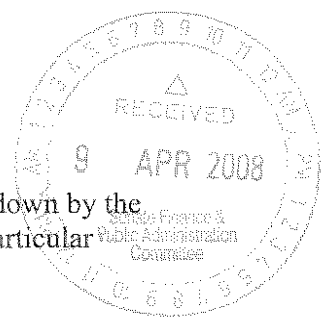
3.2 There are a number of provisions in taxation legislation which protect certain information collected by the parties and this includes information other than personal information. Where such information is to be passed between the parties, the parties will comply with the secrecy legislation irrespective of any contrary provision of this MoU. The understanding recorded by this paragraph will survive after the termination of the MoU.

3.3 The confidentiality of protected information collected by Centrelink employees is governed by specific provisions in the Social Security Law and the Family Assistance Law. Where such information is to be passed between the parties, the parties will comply with the confidentiality provisions irrespective of any contrary provision of this MoU. The understanding recorded by this paragraph will survive after the termination of the MoU.

1.1.1 4. **PROTECTION OF INFORMATION**

4.1 Where information is to be passed between the parties, the parties agree, and will ensure that its officers, employees, agents and subcontractors agree, to:

- use information held or controlled by it or them pursuant to this MoU only for the purposes of fulfilling its or their obligation as intended under this MoU;
- take all reasonable measures to ensure that information in its or their possession or control pursuant to this MoU is protected against loss and unauthorised access, use, modification or disclosure; and



- comply as far as practicable with any policy guidelines laid down by the Commonwealth relating to the handling of information, in particular information classified on security or sensitivity grounds.

4.2 The understanding recorded by this paragraph will survive the termination of the MoU.

5. PHYSICAL SECURITY, ACCESS AND USE OF MATERIAL AND INFORMATION

5.1 Where information is provided to either party under this MoU, the information will only be used by the party and its officers for the purposes of performing their duties. Pursuant to the IPP's and the Commonwealth Protective Security Manual, only officers who have a need, for the purposes of their duties, shall have access to this material or information.

6. RESPONSIBILITIES OF THE ATO

6.1 The ATO has responsibility for collecting, administering and reporting on the range of taxes imposed by the Federal Government.

6.2 The ATO is empowered under tax legislation to disclose to Centrelink information, collected or held by the ATO, for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits.

6.3 Where potential non-compliance with legislation relating to the payment of pensions, allowances or benefits is detected in the course of ATO operations, the ATO will bring the matter to the attention of Centrelink.

6.4 The ATO is empowered under tax legislation to provide DIMIA with information, collected or held by the ATO, for the purpose of assisting in locating persons who are unlawfully in Australia.

6.5 Where information regarding potential non-compliance practices with immigration legislation is detected in the course of ATO operations, the ATO will bring the matter to the attention of DIMIA.

6.6 The ATO accepts responsibility for:

- sharing information in relation to the cash economy with Centrelink and DIMIA within the provisions of the relevant legislation and protocols; and

- liaising with DIMIA and Centrelink on issues of mutual interest in relation to the cash economy.



1.2

1.3 7. RESPONSIBILITIES OF DIMIA

7.1 DIMIA has responsibility for the following outcomes:

- contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people; and
- a society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably.

7.2 Under the *Migration Act 1958* non-citizens who do not accept and abide by entry, stay and departure arrangements are subject to the enforcement of immigration law, which may include prosecution, visa cancellation, detention and removal from Australia.

7.3 DIMIA is empowered under Section 488 of the *Migration Act 1958* to provide information from its movements records relating to an individual's movements into and out of Australia to the ATO and Centrelink for the purposes of law enforcement. Other information held by DIMIA is not subject to Section 488 and is subject only to *Privacy Act 1988* provisions.

7.4 Where potential non-compliance with legislation relating to taxation matters is detected in the course of DIMIA operations, DIMIA will bring the matter to the attention of the ATO.

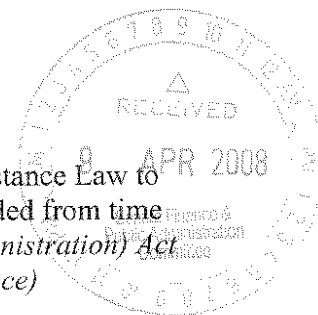
7.5 Where potential non-compliance with legislation relating to the payment of pensions, allowances or benefits is detected in the course of DIMIA operations, DIMIA will bring the matter to the attention of Centrelink.

7.6 DIMIA accepts responsibility for:

- sharing information in relation to the cash economy with Centrelink and ATO within the provisions of the relevant legislation and protocols; and
- liaising with the ATO and Centrelink on issues of mutual interest in relation to the cash economy.

1.4 8. RESPONSIBILITIES OF CENTRELINK

8.1 Centrelink has responsibility for the administration of the Social Security Law and the Family Assistance Law on behalf of FaCS.



- 8.2 Centrelink is empowered under Social Security Law and Family Assistance Law to disclose to the ATO information as set out in the instrument, as amended from time to time, issued pursuant to section 208(b) of the *Social Security (Administration) Act 1999* and section 168(1)(b) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- 8.3 Where potential non-compliance with taxation legislation is detected in the course of Centrelink's activities, Centrelink will bring the matter to the attention of the ATO in accordance with this instrument.
- 8.4 Centrelink is empowered under Social Security Law and Family Assistance Law to disclose to DIMIA information as set out in the instrument, as amended from time to time, issued pursuant to section 208(b) of the *Social Security (Administration) Act 1999* or section 168(1)(b) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- 8.5 Where potential non-compliance with immigration legislation is detected in the course of Centrelink's activities, Centrelink will bring the matter to the attention of DIMIA in accordance with this instrument.
- 8.6 Centrelink accepts responsibility for:
- sharing information in relation to the cash economy with the ATO and DIMIA within the provisions of the relevant legislation and protocols; and
 - liaising with ATO and DIMIA on issues of mutual interest in relation to the cash economy.

9. PLANNING AND COORDINATING CASH ECONOMY COMPLIANCE STRATEGIES

- 9.1 By virtue of this MoU, the Agencies are committed to working together to jointly develop plans and coordinate compliance activities when mutual interest exists in relation to the cash economy.
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- 9.2 These activities may include, but are not limited to:
- joint project work;
 - joint field operations;
 - industry risk analysis;
 - audit;
 - intelligence and information sharing;
 - prosecution; and
 - client education.



- 9.3 The Agencies are committed to aligning cash economy compliance and investigation activities where appropriate.

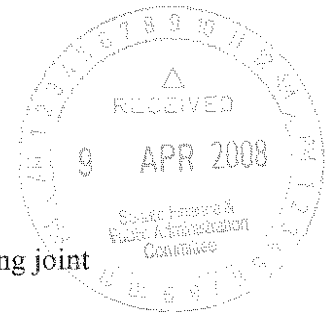
1.4.1 10. ADMINISTRATIVE ARRANGEMENTS

- 10.1 The Agencies agree that oversight of this MoU will form part of the activities of the CEWG and the IACSG.
- 10.2 The IACSG comprises senior executives of the ATO, DIMIA, Centrelink and FaCS who meet at a national level and is responsible for setting the strategic directions for the broader compliance agenda as it impacts on the Agencies, including issues associated with the cash economy covered by this MoU.
- 10.3 The CEWG is a national working group responsible for developing and coordinating inter-agency cash economy activities between the Agencies. The CEWG will report regularly to the IACSG on Cash Economy activities and issues.
- 10.4 The Agencies are committed to a coordinated approach to compliance activities associated with the cash economy. This will be facilitated by the CEWG, which will provide national coordination of inter agency cash economy compliance activities. The CEWG will also develop an ongoing workplan to address areas of common concern and developing joint approaches to address these.
- 10.5 The CEWG will meet every three months, or more frequently as required.
- 10.6 The IACSG and the CEWG will be supplemented by regular liaison meetings between staff of the Agencies to be held as agreed from time to time. Liaison meetings will generally be held every 3 months or more frequently as agreed.
- 10.7 Inter-agency liaison meetings will be responsible for planning, coordinating and executing inter-agency cash economy activities and will be oversighted by the CEWG.

1.4.2 11. REPORTING

- 11.1 The agencies will report on inter-agency cash economy activities to their respective Ministers bi-annually, generally in each September and March.
- 11.2 Each Agency will be responsible for the submission of the report to their Minister, however, the content of the report will be agreed by the Agencies prior to

submission.



- 11.3 The CEWG will provide a report to each sitting of the IACSG detailing joint activities undertaken as part of this MoU for the preceding period.

1.4.3 12. PROCEDURAL GUIDELINES

- 12.1 The agencies agree to develop procedural guidelines and protocols to support this MoU.

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- 12.2 These procedures are at Attachment A and may be amended at any time in accordance with the provisions of Part 16.

1.4.4 13. OUTCOMES

- 13.1 Outcomes for the ATO will be measured by:

- the extent to which the ATO has assisted Centrelink in meeting its savings targets;
- increases in taxation revenue as a result of inter agency activities;
- resources used to achieve these outcomes; and
- the number of joint field operations involving DIMIA and/or Centrelink.

- 13.2 Outcomes for DIMIA will be measured by:

- the number of non-citizens in breach of immigration law (whether unlawful non-citizens or lawful non-citizens working in breach of a condition attached to their visa) identified as a result of joint activities;
- the number of people engaged in immigration fraud; and
- the number of employers sanctioned for employing illegal workers.

- 13.3 Outcomes for Centrelink will be measured by:

- program savings identified from joint compliance activity;
- the number of referrals to the DPP;
- the number of joint projects involving the ATO and/or DIMIA; and
- the number of joint field operations involving the ATO and/or DIMIA.

1.4.5 14. PERIOD OF AGREEMENT

- 14.1 This MoU will come into effect on 1 July 2003 and will remain in force until

terminated by any of the parties or until such time as a new MoU on the same subject matter commences.



1.4.6 15. DISPUTE RESOLUTION

15.1 Where a dispute arises in relation to this Agreement, responsibility for resolution will be with the designated Agency contact officer of the relevant Agency(s) as set out in below.

15.2 If resolution of a dispute cannot be reached by the designated contact officers within a reasonable time frame, the dispute will be referred to the persons occupying the positions that are held by the signatories of this MoU for resolution.

15.3 A notice to be given in relation to this MoU must be in writing and addressed to the contact officers. The notice must be given in writing by post or by electronic means.

1.4.7 16. REVIEW, AMENDMENT and TERMINATION OF THE MoU

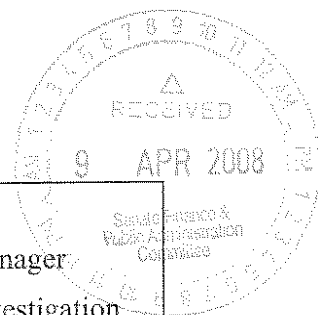
16.1 Any party may initiate a review of the operations of this MoU by giving written notice to the other parties. Persons specified by the signatories of each Agency would jointly undertake such a review.

16.2 This MoU may be amended at any time with the agreement of the signatories.

16.3 Notwithstanding any provisions of this Agreement, any party may unilaterally terminate all or part of the commitments it has given under this MoU if operational or other requirements of the Agency require this, by giving written notice to the other parties (written notice includes advice by electronic mail) to this effect.

1.4.8 17. CONTACT OFFICERS

ATO	DIMIA	Centrelink
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Mick Rolls Director Cash Economy Projects (02) 9354 3918	Greg Phillipson Director Onshore Compliance (02) 6264 3553	Guy Lewis Business Manager Complex Investigation & Prosecution Support (02) 6208 8787
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SIGNED

(Signed)

Rob Walsh
Assistant Commissioner
Small Business
Australian Taxation Office

Date 18 July 2003

(Signed)

Janette Haughton
A/g Assistant Secretary
Onshore Compliance and
Integrity Support Branch
Department of Immigration
and Multicultural and
Indigenous Affairs

Date 1 July 2003

(Signed)

Phil Richardson
National Manager
Detection & Review Team
Centrelink

Date 1 July 2003