

**MEMORANDUM OF UNDERSTANDING
BETWEEN
DEPARTMENT OF INTERNAL AFFAIRS
AND
COMMERCE COMMISSION**

MEMORANDUM OF UNDERSTANDING (MOU) dated 10/10/2016

between

the Department of Internal Affairs (DIA)

and

the COMMERCE COMMISSION (the Commission)

together, the agencies

PURPOSE OF THIS MEMORANDUM

1. DIA is a government department with a broad range of statutory and regulatory functions. The functions within scope of this MOU are listed in **Schedule 1**. DIA's purpose is to serve and connect people, communities and government to build a safe, prosperous and respected nation. Through its regulatory activity, DIA minimises social, economic, and criminal behaviours and contributes to a safe and prosperous nation. DIA can achieve this by promoting compliance that minimises harm and maximises benefit.
2. The Commission is an independent Crown entity established under the Commerce Act 1986, with statutory functions under that and other statutes, including the Fair Trading Act 1986 (**FTA**) and the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**). The Commission's purpose is to achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders.
3. DIA and the Commission have regulatory responsibilities in respect of some of the same business practices, and both agencies recognise that sometimes these responsibilities may intersect.
4. The purpose of this MOU is to record DIA's and the Commission's shared commitments as to:
 - 4.1 the general principles that will operate between the agencies;
 - 4.2 the cooperation principles that will operate between the agencies;
 - 4.3 the processes and principles that will apply when DIA and/or the Commission are pursuing matters that both agencies have partial or full jurisdiction over.
5. Nothing in this memorandum is intended to limit or affect the independence of each agency or the requirement that each agency must independently perform its statutory functions.

GENERAL PRINCIPLES

6. In pursuing these goals, DIA and the Commission recognise that:
 - 6.1 DIA has primary responsibility for a range of regulatory functions, as set out in Schedule 1 to this MOU, including the Complaints, Investigation and Prosecution function of the Private Security Personnel and Private Investigators Act 2010 (**PSPPI Act**), which regulates the private security sector. The Private Security Personnel Licensing Authority (the Authority)

does not sit within DIA. It is responsible for issuing licences and certificates of approval, disciplining licensees and certificate holders, and keeping the register of licensees and certificate holders under the PSPPI Act.

- 6.2 The Commission has regulatory and enforcement responsibility in respect of misleading and deceptive conduct in relation to goods and services under the FTA, and consumer credit contracts under the CCCFA.
7. DIA and the Commission will cooperate to ensure that all matters of jurisdiction, and any matter in which both agencies are or might be engaged, are efficiently and effectively resolved.

CO-OPERATION PRINCIPLES

8. DIA and the Commission will work together in a spirit of cooperation, including by:
 - 8.1 referring complaints to the other agency where appropriate;
 - 8.2 responding promptly to contact from the other;
 - 8.3 working together, so far as is practicable, to improve the effectiveness and efficiency of our investigations and enforcement in areas of shared jurisdiction, particularly where there is a possibility that DIA and the Commission may undertake joint investigations;
 - 8.4 giving notice to each other at the earliest time possible of any actions or proposed actions of which the other might reasonably expect to be advised, particularly where there is a shared jurisdiction;
 - 8.5 communicating and sharing information and know-how:
 - 8.5.1 to improve the effective delivery of the agencies' respective statutory functions in regard to matters of shared jurisdiction; and
 - 8.5.2 to enable the effective monitoring of overall or systemic problems, issues or trends in the markets that form part of the shared jurisdiction.
 - 8.6 entering into further MOUs, or schedules to this MOU, to record any agreed process or practice for giving effect to these co-operation principles.
9. The agencies will be mindful of their obligations under the Privacy Act 1993, including principle 11(e) of that Act, and other relevant legislation, when seeking to share information. This includes section 111 of the CCCFA and section 6 of the FTA, which provide for the Commission to share certain information to promote compliance with these Acts.
10. Personnel from the agencies will meet as required to give effect to the requirements of this MOU.
11. As a guide, the diagram at **Schedule 2** sets out a high level approach for dealing with complaints which may give rise to breaches under either or both agencies'

jurisdiction. This approach aims to set out how the referral process should work between DIA and the Commission in those circumstances.

12. This memorandum will be made available on both agencies' websites.

SHARED JURISDICTION

13. Both parties recognise that, in particular, co-operation between them is desirable to assist in their roles and responsibilities where there is intersecting jurisdiction. This cooperation includes, but is not limited to the laws governing repossession, as set out in **Schedule 3** to this MOU.
14. When dealing with any matters that involve intersecting jurisdiction, DIA and the Commission will adhere to the Cooperation principles set out above.

MAINTAINING CONFIDENTIALITY

15. Without prejudice to or limitation of any applicable legal principles, each agency will observe the strictest confidence in relation to information supplied under this MOU, or derived from or based on any such information, and any personal information (**Protected Information**). Neither agency will use or disclose Protected Information unless the use or disclosure is required by law, authorised by the other, or is otherwise required to fulfil that agency's statutory functions.
16. In particular, for the avoidance of doubt, disclosure by one party to the other of any personal information under this MOU will be managed consistently with the Privacy Act 1993.

COMMENCEMENT, AMENDMENT AND TERMINATION

17. This Memorandum will come into effect when signed by both agencies and will remain in effect until terminated by either agency (by giving 30 days' written notice) or by mutual consent.
18. All confidentiality commitments between the agencies will remain in effect despite any termination of the MOU.
19. The MOU may be amended by mutual written consent of the authorised representatives of the agencies.
20. The authorised representatives are specified in **Schedule 4**. Either party may substitute an alternative person by notice in writing to the other party.

EXECUTED



Raj Krishnan
Acting General Manager Regulatory
Services
Department of Internal Affairs



Brent Alderton
Chief Executive
Commerce Commission

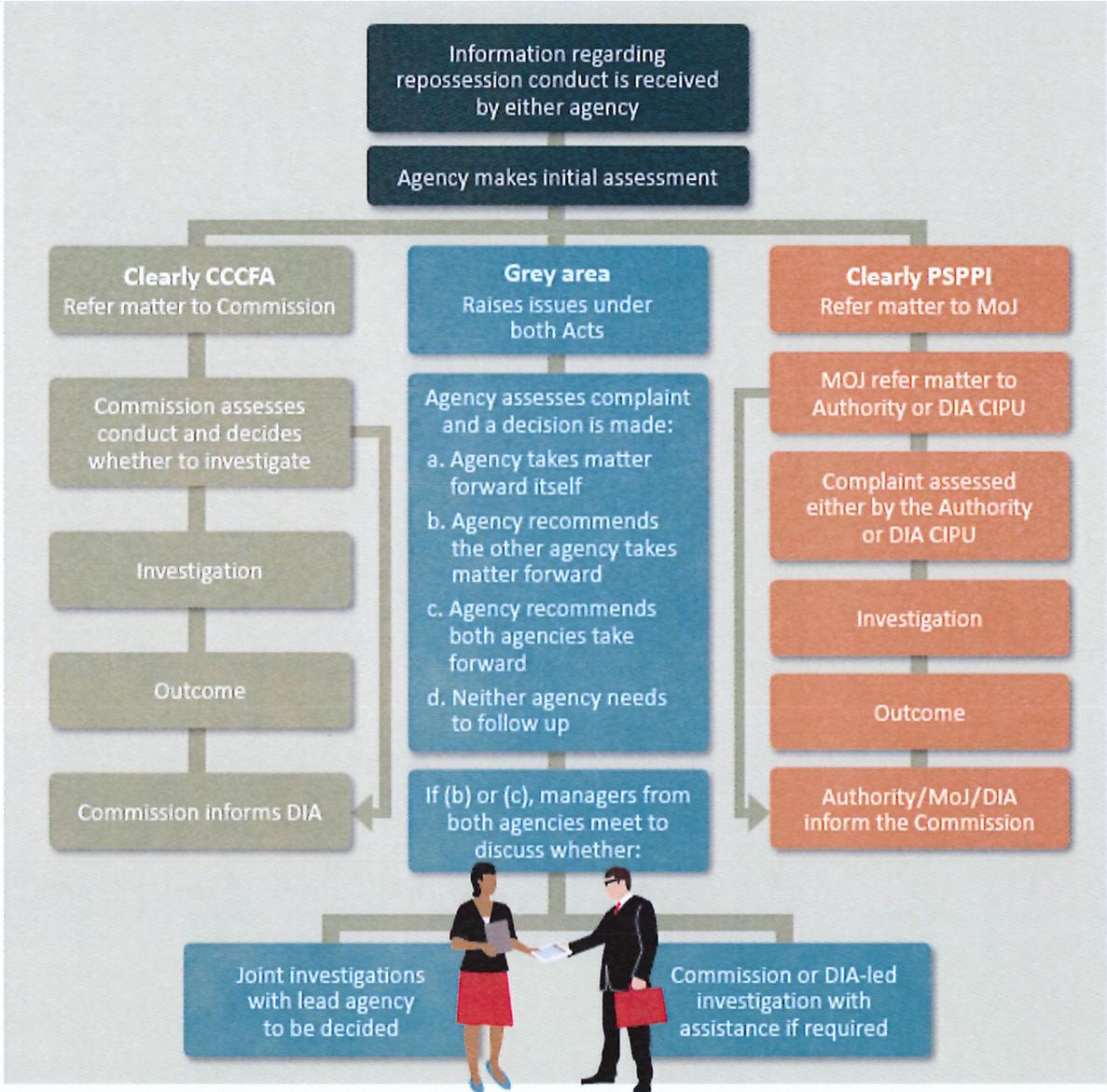
Schedule 1: List of in scope DIA regulatory responsibilities

Private Security Personnel and Private Investigators Act 2010
Gambling Act 2003
Unsolicited Electronic Messages Act 2007
Anti-Money Laundering and Countering Financing of Terrorism Act 2009
Charities Act 2005

Schedule 2: Diagram of high level approach for dealing with repossession conduct identified by either agency

High level process for agencies dealing with repossession conduct

<p>Commerce Commission (Commission) Credit Contracts and Consumer Finance Act (CCCFA) 2003</p>	<p>Ministry of Justice (MoJ) Private Security Personnel Licensing Authority (Authority) DIA Complaints, Investigation and Prosecution Unit (DIA CIPU) Private Security Personnel and Private Investigators Act (PSPPI) 2010</p>
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Schedule 3: Intersecting jurisdiction between PSPPI Act and CCCFA in relation to repossession

Offences under both CCCFA and PSPPI Act

1. There are two main kinds of conduct which may give rise to breaches under the PSPPI Act and the CCCFA:
 - 1.1 A creditor or creditor's agent exercising any rights in relation to repossessing consumer goods without a licence (**licence**) or certificate of approval (**certificate**) under the PSPPI Act.
 - 1.2 A creditor or creditor's agent not producing the required documentation when exercising any rights in relation to repossessing consumer goods.

Repossessing without a licence or certificate

CCCFA

2. Under sections 83T(3) and 103 of the CCCFA, it is an offence if a repossession agent or employee exercises any repossession rights in relation to consumer goods unless they are both:
 - 2.1 specifically authorised to do so by the creditor, and
 - 2.2 in the case of a repossession agent, licensed, or in the case of a repossession employee, certified.
3. Anyone who breaches this section commits an offence and is liable to fine of up to \$200,000 for an individual and up to \$600,000 for a company.

PSPPI Act

4. Under section 23(1)(da) of the PSPPI Act, a repossession agent must be licenced. A repossession agent who is not licenced and who exercises any repossession rights in relation to repossessing consumer goods commits an offence under section 23(2), and is liable on conviction to a fine of up to \$40,000 for an individual and up to \$60,000 for a company.
5. Under section 44(1)(da) of the PSPPI Act, a repossession employee must hold a certificate of approval. If a repossession employee is employed or engaged or holds themselves out as repossession employee, and does not hold a certificate of approval, they commit an offence under section 44(2) of the PSPPI Act and are liable on conviction to a fine of up to \$20,000.¹

¹ However, if an individual represents that they are a repossession agent or a repossession employee and that they hold a licence or certificate of approval, but do not in fact hold such a licence or certificate of approval, that person could also be in breach of section 13(f) or 13(b) of the FTA. Also, we note section 110 of the PSPPI Act which makes it an offence for a person to mislead someone to believe that the person is a repossession agent by putting on any dress or insignia that would indicate they are a repossession agent or some other class of private security personnel.

6. If any person employs, engages or permits an individual who does not hold a certificate of approval to act as a repossession employee, they commit an offence under section 45(1A) and are liable on conviction to a fine of up to \$20,000.

Documentation offences

CCCFA

7. Under section 83O of the CCCFA, a repossession agent or employee who is exercising rights to enter premises to repossess consumer goods, must present a set of specified documents, which includes a copy of their licence or certificate of approval issued under the PSPPI Act. These documents must be produced on first entering the premises to anyone who is present, or at a subsequent time if requested.
8. If a lender or repossession agent completely fails to produce the documents specified in section 83O, this is an offence and they are liable to a fine of \$200,000 and if a company, up to \$600,000 under section 103 of the CCCFA.
9. If a lender or repossession agent fails to produce one of the specified documents (including a copy of the lender's or lender's agent's licence or certificate of approval under the PSPPI Act) this is an infringement offence under section 102A of the CCCF Act. In this situation the Commission may issue an infringement notice, which incurs a fine of \$1,000 under the Credit Contracts and Consumer Finance (Infringement Offences) Regulations 2015, promulgated under section 105F.
10. Alternatively, the Commission can choose to prosecute a lender for committing an infringement offence, such as that of failing to produce a document under section 83O. If convicted of an infringement offence, an individual is liable for a fine of up to \$10,000 or up to \$30,000 for a company, under section 102A(8) of the CCCFA.

PSPPI Act

11. Under section 65(1) of the PSPPI Act, a licensee, including a repossession agent, must present their licence on demand to specified individuals, including any person with whom the licensee is dealing when carrying on any classes of business to which the licence relates. Knowingly failing to produce their licence is an offence and, if convicted, the individual is liable to a fine of \$2,000.
12. Under section 66(1) of the PSPPI Act, a repossession employee must present their certificate of approval on demand to specified individuals including any person with whom they dealing when performing his or her duties as a responsible employee.
13. Knowingly failing to produce their certificate of approval to an individual identified in s 66(1) is in breach of s 66 and is liable to a fine of up to \$2,000.

Misconduct offences

14. There are a number of offences under the CCCFA which, depending on the nature and scale of the offence, may amount to misconduct or gross negligence as defined in section 4 of the PSPPI Act. Under sections 80(1) and 83 of the PSPPI Act, the Authority may cancel a repossession agent's licence or certificate if they have been guilty of misconduct or gross negligence in the course of the business to which the licence or certificate relates.

Schedule 4: Authorised representatives of each agency for amendments

The position titles of those authorised to agree variations to this Memorandum are:

For the Commerce Commission	General Manager, Competition Branch
For the Department of Internal Affairs	General Manager Regulatory Services

The position titles of those nominated for the operation of this Memorandum are:

For the Commerce Commission	Head of Investigations, Competition Branch
For the Department of Internal Affairs	Manager Regulatory Investigations, Regulatory Services

