

APPENDIX C

WORKING DRAFT

(17 April 2004)

MEMORANDUM OF UNDERSTANDING BETWEEN THE PACIFIC REGION IDENTITY PROTECTION PROJECT AND [NAME OF AGENCY]

REGARDING THE PACIFIC REGION IDENTITY PROTECTION PROJECT (PRIPP)

Objective and scope

1. This Memorandum of Understanding sets out the arrangements between the Pacific Region Identity Protection Project and [name of agency] regarding access to and use of information on the PRIPP Registers, a regional database of information maintained by the PRIPP.

Definitions

2. In this Agreement:

PRIPP means the agency responsible for the collection, analysis and dissemination to participating agencies.

The “**Registers**” are the distinct lists of information collated by PRIPP.

Agency means the [name of agency] that is party to this MOU.

Disclosure includes any means by which information is given, provided or disseminated.

MOU means this Memorandum of Understanding.

Information means information collected by the PRIPP from the participating agencies and includes but is not limited to information and documentation obtained from immigration, police, customs and other relevant sources [**Schedule One for exhaustive list**].

Use in relation to information, does not include mere disclosure of the information, but does include the inclusion of the information in a publication.

The Pacific Region Identity Protection Project (PRIPP)

3. The “Registers” is a database maintained by the PRIPP consisting of the collection and correlation of information and intelligence relating to:
 - i. fraudulent identities used to commit offences or seek a benefit;

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- ii. names of persons who have suffered loss through the unauthorised use of their identity by others;
 - iii. Lost/stolen documents of identity;
 - iv. Documents of identity issued by authorities including security features – for reference;
 - v. Known identity fraud offenders; and
 - vi. A Pacific Fraud Centre (PFC)
4. Information and intelligence is provided to the database. That information is accessed by the participating agencies listed in **[Schedule Two]**.
5. The PRIPP may add agencies as seen fit to participate in the project so long as they fall within the classes of participating agencies listed in **[Schedule Two]**. In performing this function the PRIPP undertakes to notify participating agencies on any proposal for access to the “Registers” to be granted to a new agency.
6. The purpose of the PRIPP is to:
- i. assist in protecting genuine identities;
 - ii. assist investigators to reduce the incidence of identity fraud and theft; assist victims of identify fraud and theft; identify fraudulent and stolen identities;
 - iii. facilitate cooperation and coordinate the exchange of identity fraud information and intelligence between agencies for the purposes of law enforcement, protection of the public revenue and assist in forming relevant administrative decisions, and
 - iv. use identity fraud information and intelligence as an impetus for investigations, recovery of losses due to fraud, and intelligence analysis.
7. The term ‘intelligence’ includes information that has been collected, correlated or analysed.
8. For the purposes of the PRIPP the definition of a ‘fraudulent identity’ is an identity that has had at least two of the following four identity characteristics fraudulently created:
- i. Given name(s)
 - ii. Surname or family name
 - iii. Date of birth
 - iv. Address

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AND

this identity must appear on a proof of identity type document irrespective of whether that document is fraudulently manufactured or legitimately issued.

9. The PRIPP will not accept:
 - i. basic aliases such as minor alterations in the spelling of genuine identities;
 - ii. submissions on identities that have lawfully changed their name;
 - iii. details of deceased persons where relatives or associates of the deceased person have failed to notify an agency of the death of that person and continue to receive some type of benefit.

The PRIPP will accept details of deceased persons where two of the four identity categories have been transformed onto proof of identity type documents for the purposes of deceit.

10. For the purposes of the PRIPP the definition of a 'stolen identity' is where the offender(s) have appropriated sufficient identity details of a live person (the victim) and either used those identity details on fraudulently manufactured proof of identity documents or used the details to legitimately obtain proof of identity documents or has gone to some other affirmative steps to use the victim's identity details to commit offences or obtain a benefit.

Provision of Information and Intelligence to the PRIPP by the [participating Agency]

11. The Agency agrees to disclose information to the PRIPP for inclusion in the project. In doing so, the Agency warrants that it has legal authority to provide the information and that it complies with all relevant legislation, guidelines and procedures concerning information privacy and protection, including the agency's governing legislation (if any) and the application of privacy legislation.
12. The Agency will take all appropriate steps to ensure that information provided to the PRIPP is accurate, complete and contemporary.
13. Where the Agency concludes that information provided to or otherwise on the "Registers" is inaccurate, it must advise the PRIPP as soon as possible so that the information can be amended or deleted. The PRIPP shall notify all participating agencies of any such amendments or deletions. Upon receipt of such notice, the Agency undertakes to make the amendments or deletions required as soon as practicable.
14. The information provided by victims of identity theft must not be used by the Agency beyond the purpose for which the information was collected and provided to the PRIPP. Any further use or disclosure of this information may be considered a breach of privacy and will be considered a breach of this MOU.

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15. By entering into this MOU, the Agency acknowledges that the information it provides to the PRIPP may be accessed by any of the agencies that fall within any class detailed in Schedule Two.

Submission of information

16. Prior to submitting information relating to fraudulent identities the Agency shall make such inquiries as are necessary to be satisfied on the balance of probabilities that the information being submitted satisfies the definition of 'fraudulent identity' as set out in Clause 8 of this MOU.

Access to and use of information on the PRIPP

17. Only the members of the staff of the Agency and of the PRIPP who are performing investigative, intelligence collection or analysis or related functions and who require access to the "Registers" in order to perform their duties effectively, may access and use information and intelligence on the "Registers". An employee of the Agency or the PRIPP may not access, record, divulge or communicate such information and or intelligence except in the performance of their duties and then only for the purposes set out in Clause 6 of this MOU.
18. Employees of the Agency shall strictly observe all caveats and restrictions relevant to particular classes of information. Failure to so comply will invoke the sanctions listed in Clause 20 in this MOU.
19. If the Agency does not have "Registers" access, it will receive information and intelligence by regular dissemination from the PRIPP.
20. The PRIPP may grant, restrict or terminate access to the "Registers" as seen fit from time to time. **(Need to include list or types of sanctions in line with security ratings eg confidential)**

Request for information from third parties

21. Where another law enforcement agency makes a formal request for information to:
- i. The PRIPP with respect to information and or intelligence provided by the Agency to the "Registers", or
 - ii. the Agency with respect to information provided by the PRIPP to the Agency,

the PRIPP and the Agency agree that prior to the third party's request for information being processed, the request shall be in writing and will be brought to the attention of the organisation which originally provided the information to seek approval for its disclosure to the third party.

22. If information provided pursuant to this MOU becomes the subject of a subpoena or other legal demand for disclosure, the organisation which received the information must immediately notify the organisation which provided the information, to enable the latter organisation to advise of any intended action relating to the release, disclosure, publication or production of such information.

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Ownership of information

23. The organisation which provides the information, or a document containing the information, is to be regarded as the owner of the information or the document.

Use of information at own risk

24. The PRIPP and the Agency acknowledge that any information and/or intelligence provided under this MOU is compiled from a variety of sources, which may not necessarily be reliable, particularly in relation to criminal intelligence. Accordingly, neither the PRIPP nor the Agency warrant or represent in any way that the information or intelligence is free from errors or omissions. Whilst every care will be exercised in the provision of the information and intelligence, neither agency is liable to the other for any consequences arising from such errors or omissions, including any loss that may be incurred as a result of reliance on the accuracy or completeness of the information.
25. The Agency acknowledges that it will not take any legislative or administrative action, or any other type of affirmative action, based solely on the information provided by the PRIPP.
26. In all instances, prior to taking any type of affirmative, legislative or administrative action, the Agency must undertake sufficient inquiries or an investigation to substantiate the information.

Complaints

27. Any complaints about actions of officers of the PRIPP may be investigated by **[This will be determined once the structure has been confirmed]**.
28. Any complaint received by the Agency that relates to the “Registers” should be processed **[in the prescribed manner – once the structure has been confirmed]**.
29. In addressing complaints, the PRIPP shall work in accordance with its internal procedures for dealing with complaints and consult where necessary.

Disputes

30. If there is any disagreement over any matter related to issues covered in this MOU, the agencies will seek to resolve them **[in the prescribed manner – once the structure has been confirmed]**.

Negation of binding obligations

30. Nothing in this MOU:
- i. establishes binding obligations on either the **[agency]** or the PRIPP;
 - ii. alters the existing legal rights and obligations of either the Agency or the PRIPP in relation to the protection, use and disclosure of information;
 - iii. restricts the exercise of the legislative or the operational responsibilities of either the **[agency]** or the PRIPP; or

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- iv. affects the exercise of the agency and PRIPP discretion as to whether or what matters the agency investigates.

Variations

31. Any variations or amendments to this MOU must be agreed in writing between the PRIPP and the Agency.

Review and liaison

32. Communication on any aspect of the administration of this MOU will be between the [title of position] of the Agency and the PRIPP.

Timeframe

33. This MOU will take effect from the time the MOU is signed by both parties. This MOU shall remain in force until terminated in writing by either or both parties.

Disposal of information on termination of the MOU

34. On the termination of the MOU, the PRIPP will retain the data on the “Registers”. This data will remain on the “Registers” and will only be accessed by participating agencies.

Dissemination of MOU

35. This MOU is to be circulated to relevant members of the staff of the Agency and the PRIPP to ensure that the relevant officers of the participating agencies are aware of its contents and their responsibilities under it.

Precedence of documents

36. Where the Agency has an existing Memorandum of Understanding or other agreement with the PRIPP relating to the exchange or disclosure of information, the terms of this MOU shall take precedence in the event of any conflict or inconsistency between the terms of the two agreements.

Dated this _____ **day of** _____ **20..**

Signed by

Name
Pacific Region Identity Protection Project

Date:

Agency

Date:

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Schedule One Type of information

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Schedule Two

Classes of Participating Agencies