Memorandum of Understanding between the Office of Communications and the Australian eSafety Commissioner

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Background

The Australian eSafety Commissioner (**eSafety**), with an official address at 65 Pirrama Road, Pyrmont NSW 2009, is Australia's independent regulator for online safety, and is tasked with the implementation and enforcement of the Australian *Online Safety Act 2021* (**OSA21**), which includes regulating online services providers, safeguarding Australians at risk from online harms, and promoting safer, more positive online experiences.

The Office of Communications (**Ofcom**), with an official address at Riverside House, 2a Southwark Bridge Rd, London SE1 9HA, is the UK's independent regulator for online safety, and is tasked with the implementation and enforcement of the UK Online Safety Act 2023 (**OSA23**), which includes securing the adequate protection of citizens from harm presented by content on regulated online services, through the appropriate use by online service providers of systems and processes designed to reduce the risk of such harm.

eSafety and Ofcom, (each a **Participant** and together, the **Participants**) are the independent regulators for online safety in their respective jurisdictions. The Participants share a commitment to delivering a safer life online for users, especially children, by establishing effective regulation and holding online service providers to account in their obligations to mitigate harm on their services.

The Participants recognise and acknowledge that their respective functions under the OSA23 and OSA21 regulatory remits (their **statutory online safety functions**) overlap, and that they each manage information and expertise which may be highly relevant to one another's statutory online safety functions.

The Participants intend to cooperate and collaborate in accordance with their respective statutory online safety functions and the objectives set out in this Memorandum of Understanding (**MOU**) to increase expertise in the area of digital regulation and online safety, including through disclosure of information on areas of common interest and matters relating to the enforcement and implementation of their respective online safety regimes (**areas of common interest**). Areas of common interest for the purpose of this MOU are those detailed at Section 2.

Section 1: Objectives

The Participants are committed to working closely together to ensure effective regulatory coordination where their statutory online safety regulatory functions overlap.

The purpose of this MOU is to establish a framework through which the Participants will cooperate and collaborate, including through disclosure of information, to the extent permitted by law and in line with each Participant's statutory online safety functions, in particular in areas related to the areas of common Interest listed in Section 2.

This MOU supports the Participants' implementation, compliance, and enforcement functions under their respective regulatory frameworks. The specific objective of this MOU is to facilitate the disclosure of information, and the sharing of good practices, methodologies, and information about technical systems and tools, with the purpose of supporting the Participants' online safety regulatory activities.

Any co-operation and engagement between the Participants will be subject to the priorities and available resources of each of the Participants, as well as any applicable legal obligations.

Each Participant acknowledges that, notwithstanding any other provision of this MOU, it will only disclose information to the other Participant in accordance with this MOU if permitted under any applicable laws.

Section 2: Areas of Common Interest

The areas of common interest in which the Participants intend to cooperate and collaborate include but are not limited to:

1. Implementation of the Participants' respective regulatory frameworks;
2. Supervision and enforcement of the Participants' respective regulatory frameworks;
3. Promoting awareness of and compliance with online safety obligations;
4. Building research and evidence on matters relevant to online safety to support policy development and enforcement activities; and
5. Promoting and improving digital literacy and online safety education.

Section 3: Areas of Cooperation

The Participants will take a flexible and efficient approach to implementing and operating the arrangements set out in this MOU, to ensure that coordination is manageable and optimised. In this regard, both Participants will act reasonably in the circumstances, including by providing sufficient time and information for requests for support to be responded to fully and effectively and for the relevant staff to be engaged.

Subject to the Participants' legal obligations, including those related to their statutory online safety functions and confidentiality and data protection obligations, and at their discretion, the Participants will cooperate and collaborate through activities including but not limited to:

- Disclosing information for the purpose of facilitating the Participants' statutory online safety functions, including (but not limited to) potential breaches of OSA21 and OSA23;
- Communicating regularly to discuss matters of mutual interest and seek to work together to find appropriate ways to effectively promote online safety. This may involve engagement on the development of potential interventions, the implementation of new or updated programs, application and interpretation of rules and/or guidance as well as participating in multi-agency groups to address common issues and threats;
- Consulting on any issues which might have significant implications for the other Participant;
- Organising or facilitating participation in joint or multilateral workshops and/or research;
- Answering each other's queries;
- Consulting on or providing each other with information or training on specific regulatory areas or sectors;
- Collaborating in the publication of joint statements; and
- Collaborating in supervision and enforcement matters (insofar as the regulatory frameworks permit) where the Participants' statutory online safety functions overlap or engage areas of common interest.

Such support may be requested and provided in connection with the exercise of a specific statutory online safety function or more generally.

The Participants will comply with the general laws they are subject to, including but not limited to:

- local data protection laws;
- laws requiring the maintenance of any prescribed documentation and policies; and
- any governance requirements, in particular relating to security and retention.

Information Sharing

One of the purposes of the MOU is to enable the Participants to disclose relevant information, whilst meeting each Participant's statutory obligations with respect to confidential information under the relevant legal frameworks.

This MOU should not be interpreted as imposing a requirement on either Participant to disclose information in circumstances where doing so would breach their statutory obligations. In particular, the Participants will ensure that any disclosure of personal data pursuant to these arrangements fully complies with the UK General Data Protection Regulation (**UK GDPR**), the Data Protection Act

2018 (**DPA18**), and the Australian *Privacy Act 1988* (**PA88**). It will be for each Participant to determine for themselves that any proposed disclosure is compliant with the law.

Section 4: Legal Bases for Disclosing Information

The statutory functions of each Participant govern the legal framework, and legal basis, for disclosing information to the other Participant. The Participants acknowledge that there may be a range of statutory restrictions on each Participant's ability to disclose information under this MOU.

This MOU is not intended to provide an exhaustive list of the statutory gateways for disclosing information between the Participants, but sets out general principles that may be relevant to how the Participants interpret their statutory powers to disclose information with each other in line with their shared goals, the process for disclosing information, and the potential restrictions on their ability to disclose information.

Information Disclosed by Ofcom to eSafety

Section 114 of OSA23 gives Ofcom the power to co-operate with an overseas regulator, including by disclosing information held by Ofcom in connection with any of its online safety regulatory functions to that regulator, for the purpose of:

- facilitating the exercise by the overseas regulator of any of that regulator's online regulatory functions, or
- criminal investigations or proceedings relating to a matter to which the overseas regulator's online regulatory functions relate.

Section 114(7) states that 'online safety information' means information held by Ofcom in connection with any of Ofcom's online safety functions.

The Online Safety (List of Overseas Regulators) Regulations 2024 made by the Secretary of State specifies eSafety as an overseas regulator for the purposes of section 114.

Ofcom may also disclose information with respect to a particular business pursuant to section 393(2)(a) of the UK Communications Act 2003 (**CA**) if doing so facilitates Ofcom carrying out any of its regulatory functions.

Information Disclosed by eSafety to Ofcom

Section 232(1)(h) of the OSA21 gives the eSafety Commissioner the power to disclose information to foreign authorities responsible for regulating or enforcing laws relating to the capacity of individuals to use online services in a safe manner and/or material that is accessible to end-users of these services, provided the Commissioner is satisfied that the information will enable or assist the authority to perform or exercise any of the authority's functions or powers.

Section 5: Confidentiality, Use of Information and Data Breach Reporting

The Participants will mutually decide on appropriate security measures to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.

Confidentiality

Where confidential material is disclosed between the Participants, it will be marked with the appropriate security classification.

The Participants are required to treat as confidential any information in any form shared by the other Participant pursuant to this MOU, including information given orally, in accordance with any law that may be applicable to such information.

The Participants acknowledge that Ofcom is bound by a number of statutory confidentiality requirements that may limit its ability to disclose information to eSafety, including section 393 CA and section 116 OSA23, that respectively prohibit the disclosure of confidential information received in the exercise of its functions (whether or not marked as sensitive) and the disclosure of information received from or relating to intelligence services. In particular, the Participants acknowledge that disclosure in breach of section 393 CA is a criminal offence.

The Participants acknowledge that eSafety is bound by PA88, the Australian *Crimes Act 1914,* the Australian *Freedom of Information Act 1982* (**FOI82**) and the Commonwealth Protective Security Policy Framework that place restrictions on the type of information that may be shared and the manner by which this sharing can take place.

Use of Information

Where information is disclosed to a Participant pursuant to this MOU, the receiving Participant will not use the information for a purpose other than the purpose for which it was disclosed except with the originating Participant's consent (which may be general or specific) or in accordance with an order of a court or tribunal, or any other legal obligation.

Disclosure to Third Parties

Where material obtained from, or disclosed by, the originating Participant is wrongfully disclosed by the Participant holding the information, that Participant will bring this to the attention of the originating Participant without delay. This is in addition to obligations to report a personal data breach under the UK GDPR, DPA18 and or PA88 where personal data is contained in the information disclosed.

Where Ofcom receives a request for information under data protection legislation, the UK Freedom of Information Act 2000 (**FOIA**), Environmental Information Regulations 2004 (**EIR**) or eSafety receives a request for information under FOI82, and where the information being sought under that request includes information obtained from, or disclosed by, the other Participant, the receiving Participant will comply with its obligations under the relevant legislation and any applicable guidance. In these circumstances, the receiving Participant will consult the other Participant before making a decision about the disclosure of information obtained from or disclosed by the other

Participant. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the receiving Participant, either (for Ofcom) as data controller in respect of that data or the public authority that holds the information under FOIA, EIR and (for eSafety) as an agency under FOI82 (depending on the nature of the information being sought).

Section 6: Legal Effect

This MOU is not intended to create and does not create any legally binding rights, obligations, or liabilities between the parties.

This MOU supersedes all prior arrangements, representations, understandings, and negotiations (either written or oral) between the Participants with respect to the subject matter of this MOU.

The arrangements set out in this document are without prejudice to statutory obligations of the Participants.

Section 7: Duration

This MOU will commence on the date it is signed by the last of the Participants and will continue until it is terminated in accordance with section 9.

Section 8: Review and Variation

The Participants will monitor the operation of this MOU and will review it biennially.

This MOU may be varied at any time. Should either Participant seek to vary this MOU, the Participants will negotiate in good faith. Variations may be negotiated by Key Contacts (see section 11) but must be mutually decided in writing and signed by persons holding or occupying a position equivalent or senior to the person who originally signed this MOU for each respective Participant to be valid, and will take effect from the date of signature of the last Participant to sign.

Section 9: Termination

Either Participant may terminate this MOU without reason by giving the other Participant four weeks' notice in writing, signed by a person holding or occupying a permanent position equivalent or senior to that of the person who originally signed this MOU on behalf of the Participant.

Section 10: Dispute resolution

Any disputes about the interpretation or application of this MOU will be resolved by consultations between the Participants, and will not be referred to any national or international tribunal or third party for settlement.

Section 11: Costs

This MOU does not have any financial implications for either Participant, nor is it intended to constitute a basis for any funding of one Participant by the other and vice versa. Each Participant is expected to bear its own costs incurred in relation to this MOU.

Section 12: Key Contacts

The Participants have each nominated a role within their organisation to serve as that Participant's point of contact for the administrative purposes of this MOU (**Key Contact**).

Subject to the other sections of this MOU, the Key Contacts will have the primary responsibility of coordinating cooperative arrangements between the Participants under this MOU and will be the primary point of contact for any notices or other administrative communication in relation to this MOU. Any notices under this MOU will be addressed to the Key Contact of the relevant Participant.

The details for the Key Contacts for each Participant are as set out below. A participant may change their Key Contact details at any time by giving written notice to the other Participant's Key Contact. Each Participant will inform the other promptly of any chances to their nominated Key Contact.

Director of International

Ofcom

Address: 2a Southwark Bridge Road, London, SE1 9HA, United Kingdom

Executive Manager of Strategy, Engagement and Research

eSafety

Address: 65 Pirrama Road, Pyrmont NSW 2009, Australia

Signatories

Signed for and on behalf of Ofcom by:



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Dame Melanie Dawes
Chief Executive Officer, Ofcom
Date: 17 November 2026

Signed for and on behalf of eSafety by:



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Julie Inman Grant PSM
eSafety Commissioner

Date: 1 November 2026