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**Australian Federal Police
and
the eSafety Commissioner**

Memorandum of Understanding

2020-2025

THIS DOCUMENTS HAS BEEN DE-CLASSIFIED AND
PUBLISHED PURSUANT TO THE

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

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Australian Federal Police and the eSafety Commissioner on Cooperation and Information Exchange

1. Parties

1.1 The parties to this Memorandum of Understanding (MOU) are the:

- Australian Federal Police (AFP); and
- The eSafety Commissioner (eSafety).

2. Purpose

2.1 The spirit of this MOU is one of goodwill and is intended to facilitate positive outcomes for Australian children who are vulnerable to a range of online harms.

2.2 This MOU will provide a means for the parties to collaborate and coordinate activities including reports of information, education and prevention programs in relation to child protection relevant to the remit of each Party.

2.3 This MOU will provide a means to delineate respective education roles to avoid duplication and to leverage existing eSafety resources so that education and prevention initiatives are better co-ordinated.

2.4 The parties agree that the AFP's education and prevention focus is limited to matters that reach a law enforcement threshold of OCSE such as online grooming, image-based abuse and sexual extortion, CSAM and self-produced child abuse content. eSafety's education focus is broader in that it is intended to promote online safety for all Australians by raising awareness and empowering Australians, families and communities with the skills and resources needed to have safer online experiences.

2.5 Both parties commit to working collaboratively where prevention, deterrence and education functions of the parties intersect. This may include collaboration through co-creation and co-design, to ensure consistency of message and most effective citizen impact. Materials developed through this process may be co-branded.

2.6 This MOU is not intended to create legally binding obligations upon, or to establish a legal relationship between the parties.

2.7 Neither party shall be required to discharge these responsibilities in the event of any major or unforeseen demands on their resources.

3. Interpretation

3.1 Unless a contrary intention is stated, the acronyms and terms used in this MOU have the following meanings:

AFP Act	The Australian Federal Police Act 1979 (Cth)
AVM	Abhorrent violent material is recorded or streamed audio, video or audio-visual material depicting a terrorist act involving serious physical harm or death, the murder or attempted murder, torture, rape and/or the kidnapping of another person involving violence. It is material produced by

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	a perpetrator or an accomplice – it does not include bystander coverage.
BSA	<i>Broadcasting Services Act 1992 (Cth)</i>
EOS Act	<i>Enhancing Online Safety Act 2015 (Cth)</i>
INHOPE	International Association of Internet Hotlines
Legal Proceeding	Any legal proceeding, including criminal prosecution, coronial enquiry, civil proceedings, disciplinary proceedings, alternative dispute resolution or mediation in connection with this MOU.

4. Background

- 4.1 This MOU supersedes the MOU between the AFP and the Australian Communications and Media Authority on notifying content, finalised 18 January 2013.
- 4.2 The parties agree to work collaboratively on a range of Commonwealth matters relating to child protection, including the reporting of online child exploitation matters and the prevention of technology enabled crimes through education and prevention programs.
- 4.3 The parties recognise their respective roles under the AFP Act, *Criminal Code Act 1995 (Cth)* and the promotional, coordination, research, regulatory and enforcement responsibilities under the *Enhancing Online Safety Act 2015 (Cth)* (EOS Act) and *Broadcasting Services Act 1992(Cth)* (BSA).
- 4.4 As such, the parties agree to regular consultation and proactive engagement with primary points of contact on all Commonwealth matters relating to each party's remit and operational requirements. This will include routine meetings related to communication and operational activity on a regular basis or as needed. The intention of these regular meetings is to achieve a better coordination and alignment of messaging and to reduce duplication.
- 4.5 This MOU should be read in conjunction with any Letters of Exchange (LOE) entered between both parties.
- 4.6 This MOU should also be read in conjunction with the relevant provisions of the BSA and the EOS Act. It is also subject to the requirements of the:
- *Telecommunications Act 1997;*
 - *Privacy Act 1988;*
 - *Australian Federal Police Act 1979;*
 - *Criminal Code Act 1995;* and
 - *Crimes Act 1914.*

5. Role of the parties

- 5.1 The AFP, as Australia's national law enforcement agency, discharges its responsibilities in accordance with the *Australian Federal Police Act 1979 (Cth)*, including providing police services in relation to:

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- investigating offences under the general criminal law of the Commonwealth;
 - the laws and property of the Commonwealth;
 - Australia and its territories, and overseas; and
 - assisting or cooperating with an Australian or foreign law enforcement agency, intelligence or security agency or regulatory agency.
- 5.2 The AFP-led Australian Centre to Counter Child Exploitation (ACCCE) brings together capabilities from across the public and private sectors, to drive a collaborative national response to counter the exploitation of children in Australia.
- 5.3 In driving a national response to counter the exploitation of children, the role of the ACCCE is to:
- enhance collaboration and create and leverage new synergies by bringing together and combining the resources of government and Commonwealth agencies, law enforcement (specifically the AFP and State and Territory police), non-government organisations, and other partners;
 - coordinate Australia's law enforcement efforts to prevent and disrupt the online sexual exploitation of children, including coordinate crime prevention efforts with community policing education in schools;
 - support the investigative role of the AFP and State and Territory police;
 - receive incoming requests for information and reports of child exploitation, triage and value-add to the information contained in reports, and refer them for investigation to the relevant investigative authority (includes the AFP, Joint Anti Child Exploitation Teams (JACETs), or relevant State and Territory police);
 - develop national standards and capabilities for specialist and investigative practices, and the training and wellbeing of members;
 - coordinate and develop targeted technology solutions to enable the most effective real-time sharing of information and victim identification capabilities; and
 - be a hub of knowledge, expertise, intelligence, resources and tools to support Australian law enforcement and partners.
- 5.4 AFP functions specific to this MOU includes the:
- AFP Child Protection Operations portfolio including:
 - Joint Anti Child Exploitation Teams (JACETs) in each State and Territory; and
 - the ACCCE including the Child Protection Triage Unit and the Prevention and Engagement Teams that deliver AFP-led online child safety initiatives countering OCSE including prevention, awareness and education programs; and
 - National Operations State Service Centre (NOSSC) for the purpose of receiving referrals under the *Criminal Code Amendments (Sharing of Abhorrent Violent Material) Act 2019* of Abhorrent Violent Material (AVM).

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5.5 eSafety is Australia's first regulatory body created to promote online safety for all Australians and to address harmful online content and behaviours. In addition to its online safety regulatory role, eSafety was established to lead online safety education and prevention, to coordinate online safety efforts nationally, and to help keep Australians safer online. The functions of eSafety are set out in section 15 of the EOS Act.

5.6 Key functions of eSafety under section 15 of the EOS Act and relevant to this MOU include to:

- promote online safety for all Australians
- coordinate activities of Commonwealth Departments, authorities and agencies relating to online safety for children
- collect, analyse and disseminate information relating to online safety for all Australians
- support, encourage, conduct, accredit and evaluate educational, promotional and community awareness programs that are relevant to online safety for Australians
- support, encourage, conduct and evaluate research about online safety for Australians, and
- make, on behalf of the Commonwealth, grants of financial assistance in relation to online safety for Australians.

5.7 Key regulatory powers under the EOS Act and relevant to this MOU are to:

- investigate online content complaints under Schedules 5 and 7 to the BSA
- investigate cyberbullying complaints targeting an Australian child under Part 3 of the EOS Act
- administer a civil penalties scheme relating to the non-consensual sharing of intimate images under Part 5A of the EOS Act
- issue abhorrent violent material notices under the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019*, and
- take action, to reduce Australian internet users' exposure to material that promotes, instructs or incites in matters of terrorist acts or violent crimes.

6. Information Disclosure and Exchange

6.1 The parties will exchange information relevant to this MOU and subject to applicable Commonwealth or State/Territory legislation.

6.2 More detailed arrangements for information exchange are outlined in LOEs issued pursuant to this MOU.

6.3 Personnel of either party authorised to have access to information under the MOU may not record, divulge or communicate such information except in the performance of their official duties and for the purposes for which the information was provided.

6.4 When a party becomes aware that information related to this MOU is subject to any Legal Proceedings, including a subpoena request, the party will immediately notify the other party of the request for disclosure or access.

6.5 The party will liaise on the handling of the request and any Legal Proceedings that may emerge.

6.6 The obligation of the party under the clause survive the expiry or termination of this MOU.

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7. Letters of Exchange

- 7.1 LOE may set out procedures, programs or any other matters mutually determined by the parties to be appropriately addressed under a LOE.
- 7.2 Additional LOE may be established under this MOU by authorised representatives of the parties, including those listed in Clause 10.3 of this MOU.
- 7.3 Additional LOE may replace an existing LOE or address additional matters mutually determined by the parties to be appropriate. If a LOE is replacing an existing LOE it must expressly state this.

8. Legal and financial liabilities

- 8.1 This MOU does not establish any legal liabilities between the parties. Any legal liability arising from action under this MOU will be dealt with according to law, legislation and/or other instruments intending to establish a legal relationship.
- 8.2 The parties will liaise with each other over any legal liabilities or other legal issues arising from action under this MOU.

9. Resolution of differences

- 9.1 Any differences arising from the interpretation or implementation of this MOU should be resolved by consultation or by any other means mutually determined by the parties acting in good faith.

10. Variation and review

- 10.1 It is important that this MOU and its LOE remain consistent, relevant and current. The parties will review this MOU on a four year basis. This MOU may be reviewed earlier if there is substantive policy and legislative reform.
- 10.2 Should either party seek to vary the MOU, the parties will negotiate in good faith.
- 10.3 This MOU may be varied at any time by agreement in writing and signed by persons holding the offices of the original signatories or by:

Commander ACCCE, Child Protection Operations and Human Trafficking
Commander Jamie Strauss

s47E(c) [@afp.gov.au](mailto:s47E(c)@afp.gov.au) (cc:s47E(d)[@afp.gov.au](mailto:s47E(d)@afp.gov.au))

eSafety Commissioner Executive Manager, Legal Policy, Communications and Research

Maria Vassiliadis

s47E(c) [@esafety.gov.au](mailto:s47E(c)@esafety.gov.au) (cc:s47E(d)[@esafety.gov.au](mailto:s47E(d)@esafety.gov.au))

11. Duration

- 11.1 The MOU will commence on the date the last signature is affixed, and operate for five years unless sooner terminated in accordance with clause 12 of this MOU.

12. Termination

- 12.1 Either parties may terminate this MOU by giving the other party one month [30 days] notice in writing outlining the reasons for termination of the agreement.

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12.2 In the event that a party gives notice of termination, this MOU shall continue to have effect with respect of all referrals and/or information sharing which occurred before the date of the notice of termination.

SIGNED for and on behalf of the
Australian Federal Police by
Reece P Kershaw APM
AFP Commissioner


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14/9/20
Date:

SIGNED for and on behalf of
eSafety Commissioner by
Julie Inman Grant
eSafety Commissioner


.....
18/9/20
Date:

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