

Date: 2 March 2023

Memorandum of Understanding

between:

The Information Commissioner

for

The United Kingdom of Great Britain & Northern Ireland

and

The Australian Communications and Media Authority

on

Cooperation in the Regulation of
Unsolicited Communications

1. INTRODUCTION

1.1 This Memorandum of Understanding ("**MoU**") establishes a framework for cooperation between

- (I) The Information Commissioner (the "**Commissioner**") and
- (II) The Australian Communications and Media Authority (the "**ACMA**")

(collectively the "**Participants**")

1.2 The MoU sets out the framework with regard to strategic engagement, mutual assistance, the exchange of information and the facilitation of investigations and proceedings concerning Covered Violations.

1.3 This MoU is a voluntary agreement. It does not create rights or legally binding obligations under international or domestic laws. It is for each Participant to determine if any proposed request for assistance or exchange of information is compliant with the law applicable to them.

2. ROLE AND FUNCTION OF THE INFORMATION COMMISSIONER

2.1 The Commissioner is a corporation sole appointed under the Data Protection Act 2018 (the "**DPA**") to act as the UK's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.

2.2 The Commissioner is empowered to take a range of regulatory action for breaches of the following legislation (as amended from time to time):

- (a) Data Protection Act 2018 ("**DPA**");
- (b) UK GDPR;
- (c) Privacy and Electronic Communications (EC Directive) Regulations 2003 ("**PECR**");
- (d) Freedom of Information Act 2000 ("**FOIA**");
- (e) Environmental Information Regulations 2004 ("**EIR**");
- (f) Environmental Protection Public Sector Information Regulations 2009 ("**INSPIRE Regulations**");
- (g) Investigatory Powers Act 2016;

- (h) Re-use of Public Sector Information Regulations 2015;
- (i) Enterprise Act 2002;
- (j) Security of Network and Information Systems Directive (“NIS Directive”); and
- (k) Electronic Identification, Authentication and Trust Services Regulation (“eIDAS”).

2.3 The Commissioner has a broad range of statutory duties, including monitoring and enforcement of data protection laws, and promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the other enforcement regimes.

2.4 The Commissioner’s regulatory and enforcement powers include:

- (a) conducting assessments of compliance with the DPA, UK GDPR, PECR, eIDAS, the NIS Directive, FOIA and EIR;
- (b) issuing information notices requiring individuals, controllers, or processors to provide information in relation to an investigation;
- (c) issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
- (d) administering fines by way of penalty notices in the circumstances set out in section 152 of the DPA;
- (e) administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner);
- (f) issuing decision notices detailing the outcome of an investigation under FOIA or EIR;
- (g) certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA or EIR; and
- (h) prosecuting criminal offences before Courts.

Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, also

provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which fall within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

3. ROLE AND FUNCTION OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

3.1 The ACMA is a statutory agency established by section 6 of the *Australian Communications and Media Authority Act 2005* ("the ACMA Act"). The ACMA regulates broadcasting and datacasting services, radiocommunications, telecommunications, unsolicited communications and certain internet content in Australia.

3.2 The ACMA is responsible for the regulation and enforcement of, among other things:

- (a) commercial electronic messages under the *Spam Act 2003* ("the Spam Act");
- (b) telemarketing within the meaning of, and in accordance with, the *Do Not Call Register Act 2006* ("the DNCR Act"); and
- (c) industry standards, that apply to participants in the telemarketing and fax marketing industries, in force under the *Telecommunications Act 1997*.

3.3 The ACMA is authorised to:

- (a) disclose information to an institution of the government of a foreign state in specified circumstances and under certain conditions under the ACMA Act; and
- (b) liaise with regulatory bodies overseas about co-operative arrangements for the prohibition or regulation of unsolicited commercial electronic messages, address harvesting software, unsolicited telemarketing calls and unsolicited telemarketing faxes under the DNCR Act and the Spam Act.

4. DEFINITIONS

For the purpose of this MoU,

- 4.1 "Relevant Law" means the laws and regulations identified in Annex 1 of this MoU, including where they are updated or amended from time-to-time, and such other laws or regulations as the Participants may from time to time jointly decide in writing to be a Relevant Law for the purposes of this MoU.
- 4.2 "Covered Violation" means practices that would, based on available information, violate, or likely violate the Relevant Laws of one Participant's country and that are substantially similar to practices prohibited by any provision of the Relevant Law of the other Participant's country.
- 4.3 "Person" means an individual, a natural person, a body corporate, an unincorporated association, a partnership, a statutory authority, or instrumentality of a government, existing under the laws of Australia or the laws of the United Kingdom.
- 4.4 "Request" means a request for assistance under this MoU.
- 4.5 "Requested Participant" means the Participant from which assistance is sought under this MoU, or which has provided such assistance.
- 4.6 "Requesting Participant" means the Participant seeking assistance under this MoU, or which has received such assistance.

5. OBJECTIVES AND SCOPE OF CO-OPERATION

- 5.1 The Participants recognise the importance of developing a global and coordinated approach to address unsolicited commercial electronic messaging, unsolicited telemarketing, scam telephone calls and scam short message services (SMS)
- 5.2 The Participants acknowledge that they have similar functions and duties concerning the regulation of unsolicited communications in their respective countries.
- 5.3 The Participants highlight the unique geographical, cultural, and economic links between their countries, and the importance of consulting on, and taking account of, their respective regulatory activity to better protect the citizens of the United Kingdom and Australia and support businesses in compliance with applicable laws.

- 5.4 This MoU reaffirms the intent of the Participants to deepen their existing relationship and to promote exchanges to assist each other in the regulation of applicable laws.
- 5.5 This MoU sets out the broad principles of strategic engagement and collaboration between the Participants and the framework governing the sharing of relevant information and intelligence between them.
- 5.6 The Participants acknowledge that it is in their common interest to collaborate in accordance with this MoU, to:
- (a) help the Participants to deliver the regulatory cooperation necessary to protect the fundamental rights of citizens of the United Kingdom and Australia respectively, in accordance with the applicable laws of the Participants' jurisdictions;
 - (b) promote the Participants strategic engagement on matters of mutual interest;
 - (c) cooperate on enforcement of their respective applicable laws;
 - (d) keep each other informed of developments in their respective countries having a bearing on this MoU; and
 - (e) recognise opportunities for parallel or joint investigations or enforcement actions by the Participants.
- 5.7 For this purpose, the Participants may jointly identify one or more areas or initiatives for cooperation, including:
- (a) sharing of experiences and exchange of best practices on unsolicited communications compliance and enforcement, education, and training programmes;
 - (b) implementation of joint research projects;
 - (c) exchange of information (excluding personal data) involving potential or on-going investigations of organisations in the respective jurisdictions in relation to a contravention of applicable laws;
 - (d) explore the feasibility of staff exchanges;
 - (e) joint investigations into cross border Covered Violations involving organisations in both jurisdictions (excluding sharing of personal data);
 - (f) participate in regular teleconferences to discuss ongoing and future opportunities for cooperation; and

(g) any other areas of cooperation as mutually decided by the Participants.

5.8 The Participants will use their best efforts to comply with the terms of this MoU.

6. NO SHARING OF PERSONAL DATA

6.1 The Participants do not intend that this MoU will cover any sharing of personal data by the Participants.

6.2 If the Participants wish to share personal data, for example in relation to any cross border joint investigations involving organisations in both jurisdictions, each Participant will consider compliance with its own applicable data protection laws, which may require the Participants to enter into a written agreement or further arrangements governing the sharing of such personal data.

7. LIMITATIONS OF ASSISTANCE

7.1 The Participants confirm that nothing in this MoU should be interpreted as imposing a requirement on the Participants to co-operate with each other. There is no requirement to co-operate in circumstances which would place either Participant in breach of their legal responsibilities.

7.2 It is further acknowledged that a Participant may require that any cooperation is subject to certain limitations or conditions being agreed between the Participants. For example, to avoid breaching applicable legal requirements. Any such limitations or conditions will be agreed between the Participants on a case-by-case basis. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or the ACMA

7.3 The Requested Participant may exercise its discretion to decline a Request for assistance or limit its cooperation on the grounds that giving effect to the Request would:

- (a) be contrary to the national or public interest or the law of the country of the Requested Participant;
- (b) go beyond the statutory powers of the Requested Participant;

- (c) relate to the administration of a law, regulation or requirement that does not exist, and has no parallel, within the jurisdiction of the Requested Participant;
- (d) put the Requested Participant in breach, or at risk of being in breach, of a legal or equitable duty owed to any Person, particularly relating to confidentiality, privacy, and procedural fairness;
- (e) expose the Requested Participant to the threat of legal proceedings, however unjustified those proceedings may be;
- (f) be contrary to, or incompatible with, the Requested Participant's aims or its policies or internal guidelines, whether such aims, policies or internal guidelines are set out in writing; or
- (g) in the Requested Participant's opinion, unreasonably divert its resources from other, priority matters.

7.4 The Participants agree to use best efforts to seek and provide cooperation focusing on those Covered Violations that are most serious in nature, such as those that cause or are likely to cause injury or harm to a significant number of Persons, and those otherwise causing substantial injury or harm.

7.5 Where the Requested Participant denies or opposes a Request for assistance, it will provide reasons for the denial or opposition as soon as practicably possible. The Participants may consult on other possible means of dealing with the Request

8. EXCHANGE OF INFORMATION - CONFIDENTIALITY, PRIVACY AND SECURITY

8.1 Appropriate security measures will be agreed to protect information that is shared between the Participants. Such measures will, amongst other things, require the Requesting Participant to consider the sensitivity of the information; any classification that is applied by the Requested Participant; and any other factors relevant to protecting the security of the information.

8.2 Where confidential material is shared between the Participants it will be marked with the appropriate security classification by the Requested Participant.

8.3 Depending on the nature of the information to be shared, the sharing of information by ACMA may be subject to Part 7A of the ACMA Act.

- 8.4 Subject to this section, and any applicable law, each Participant agrees to treat the shared information, the existence of the action or investigation to which the information relates, and any Requests made pursuant to this MoU, as confidential and will not further disclose or use the shared information for purposes other than those for which it was originally shared, without the prior written consent of the Requested Participant.
- 8.5 If the Requesting Participant wishes to use the information provided for any purpose other than those stated in the Request:
- (a) the Requesting Participant must ask the Requested Participant for its consent to use the information or documents for another purpose; and
 - (b) the Requested Participant must, within 28 days of receipt of such Request, indicate in writing, or verbally followed by written confirmation, whether it consents to such use.
- 8.6 The Requested Participant may agree to the use of such information, subject to any conditions as specified in writing.
- 8.7 Where a Requesting Participant receives information from a Requested Participant, the Requesting Participant will consult with the Requested Participant and obtain their consent before passing that information to a third party or using the information in an enforcement proceeding or court case, save where the Requesting Participant is prevented from consulting with the Requested Participant or seeking its consent, by applicable laws or regulations.
- 8.8 In the event of any unauthorised access or disclosure of the information, the Participants are to take all reasonable steps to remedy the unauthorised access or disclosure and to prevent a recurrence of the event and are to promptly notify the other Participant of the occurrence.
- 8.9 Subject to clause 9.6, the Participants are expected to oppose, to the fullest extent possible consistent with their country's laws, regulations and policies, any application by a third party for disclosure of confidential information or confidential materials received from a Requested Participant, unless the Requested Participant consents to its release. The Participant that receives such an application is expected to notify forthwith the Participant that provided it with the confidential information.

9. RETENTION OF INFORMATION

- 9.1 Participants do not intend to retain materials obtained through this MoU for longer than is reasonably required to fulfil the purpose for which they were shared or than is required by the Requested Participants country's laws.

9.2 The Participants recognise that to fulfil the purpose for which the materials were shared, the Participants typically need to retain the shared materials until the conclusion of the pertinent investigation for which the materials were requested and any related proceedings.

10. REVIEW OF THE MoU

10.1 The UK Information Commissioner and the Australian Communications and Media Authority will monitor the operation of this MoU and review it biennially, or sooner if either Participant so requests.

10.2 Any issues arising in relation to this MoU will be notified to the principal point of contact for each Participant.

10.3 Any amendments to this MoU must be made in writing and signed by each Participant.

11. DISPUTE SETTLEMENT

11.1 The Participants will settle any disputes or disagreement relating to or arising from this MoU amicably through consultations and negotiations in good faith without reference to any international court, tribunal, or other forum.

12. CONTACT POINTS AND MUTUAL ASSISTANCE

12.1 All communications and Requests between the Participants should be made between

- (a) The designated principal points of contact as nominated in writing by each Participant, which may be amended by written notice from either Participant from time-to-time; or
- (b) an officer of a Participant authorised to perform the usual duties of a principal point of contact during an absence from duty; or
- (c) any officer of a Participant nominated by a principal point of contact to communicate on their behalf for the purposes of this MoU.

12.2 Notice of these designated contact points and any subsequent changes is to be sent to the ICO in care of the Head of the International Regulatory Cooperation Department (or equivalent position) and to the ACMA in care of the Manager, Unsolicited Communications Compliance (or equivalent position).

12.3 Each Participant may, at its discretion, refer the other Participant to another body in its jurisdiction where that body is likely to have information or be able to assist the other Participant in respect of a Request for information or

documents. Each Participant reserves the right to decide whether to provide the requested assistance.

12.4 The principal points of contact will maintain an open dialogue between each other to facilitate the MoU remaining effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

13. ENTRY INTO EFFECT AND TERMINATION

13.1 This MoU will come into effect upon its signature by the Participants and remain in effect unless terminated by either Participant upon 30 days written notice to the other Participant.

13.2 On discontinuation of this MoU, the Participants are expected to maintain the confidentiality of any information communicated to them by the other Participant under this MoU, and return or destroy, consistent with any methods prescribed by the other Participant, information obtained from the other Participant consistent with this MoU and as required by the Requesting Participant's country's laws.

Signatories:

**For the Information Commissioner
for the United Kingdom of Great
Britain and Northern Ireland**



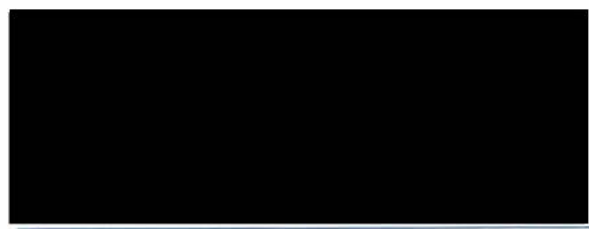
Name: John Edwards

Title: Information Commissioner, UK
Information Commissioner's Office

Place: London, UK

Date: 2 March 2023

**For the Australian Communications
and Media Authority**



Name: Nerida O'Loughlin

Title: Chair and Agency Head of the
Australian Communications and Media
Authority (ACMA)

Place: London, UK

Date: 2 March 2023

Annex 1
Relevant Laws

- I. Australian Communications and Media Authority
 - i. Do Not Call Register Act 2006*
 - ii. Spam Act 2003*
 - iii. Telecommunications Act 1997*
 - iv. Industry Standards made under Part 6 of the Telecommunications Act 1997.*
 - v. Spam Regulations 2021*
 - vi. Do Not Call Register Regulations 2017.*

- II. The Information Commissioner
 - i. Data Protection Act, 2018*
 - ii. Privacy and Electronic Communications (EC Directive) Regulations 2003*
 - iii. UK GDPR*