

AustraliaOS Pty Ltd

The Jurisdiction Gap

Addressing two anticipated objections: the sufficiency of the Australia–United States CLOUD Act Agreement, and the absence of a known compelled disclosure. A supplement to submission AOS-AIDC-2026-001 to the Senate inquiry into artificial intelligence and data centres.

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01 Purpose of this supplement

This supplement is made by AustraliaOS Pty Ltd (ABN 69 697 049 291) and is authored by its director, Brunel Al-Bijwaie. It supplements submission AOS-AIDC-2026-001, lodged earlier in this inquiry, and should be read with it.

The original submission established that existing frameworks do not require assessment of jurisdictional exposure, and that the exposure is real, established in primary law, and assessable from public sources. This supplement anticipates the two objections most likely to be raised against that finding by other submitters, and addresses each on the public record. It introduces no new recommendation. Its purpose is to place the rebuttals before the committee so that the finding can be weighed against the objections in a single view.

02 The Australia–United States CLOUD Act Agreement does not narrow the disclosure obligation

The first objection is that the Australia–United States CLOUD Act Agreement, in force since December 2024, already addresses the concern, so no further assessment is required. The objection mistakes what the Agreement does.

Section 2523 of title 18 authorises the United States to enter executive agreements that permit a foreign government to direct certain orders to United States providers, and that permit reciprocal access. That is the function of the Agreement: it administers cross-border access between the two governments.¹ It operates alongside the disclosure authority in section 2713, not in place of it.

The distinction is stated by the United States Department of Justice in its own published account of the statute. The Department's CLOUD Act White Paper records that agreements made under the framework do not alter the underlying legal requirements that United States providers are subject to, and that the extraterritorial reach of disclosure orders rests on established United States law rather than on any agreement.² An executive agreement under section 2523 changes which foreign authorities may direct orders to United States providers and under what conditions. It does not reduce the obligation a United States provider owes to United States legal process under section 2713. A provider subject to that jurisdiction remains compellable on United States process whether or not an agreement with the provider's host country is in force.

The consequence for this inquiry is narrow and verifiable. The Agreement is relevant to

¹18 U.S.C. §2523; Department of Home Affairs, Australia-United States CLOUD Act Agreement. See Appendix A.

²United States Department of Justice, CLOUD Act White Paper (April 2019). See Appendix A.

how the two governments cooperate. It is not a control on the exposure the original submission describes, because it leaves the section 2713 obligation intact. An assessment of jurisdictional exposure is therefore not displaced by the existence of the Agreement; the exposure the assessment measures persists regardless of it.

03 The absence of a known compelled disclosure is not evidence that the exposure is absent

The second objection is that no Australian institution is known to have had its data compelled from a provider under section 2713, so the exposure is theoretical. The objection does not meet the submission's claim, for two reasons.

First, the claim was never that compelled disclosure has occurred or will occur in a particular case. The original submission is explicit that the exposure is structural: it is established in primary law and attaches to a provider's subjection to a foreign jurisdiction, not to any event.³ A structural exposure is a property of the arrangement, present whether or not it is ever exercised, in the same way that an unlocked door is a security exposure whether or not anyone has walked through it. Whether a compulsion event has occurred is a different question from whether the exposure exists, and only the second is what an assessment measures.

Second, the absence of a public record of compelled disclosure is not evidence that none has occurred, because the relevant process is frequently not public. Orders under the Stored Communications Act may be accompanied by non-disclosure provisions, and related compulsion authorities such as the National Security Letter operate under statutory confidentiality.⁴ A provider may be both compelled and barred from disclosing that it was compelled. In that setting, the absence of a known instance carries little weight either way: it is consistent with the exposure never having been exercised, and equally consistent with its having been exercised without becoming public. An argument from the absence of a public event cannot distinguish between the two, and so cannot establish that the exposure is absent.

Taken together, the two points show that "it has not happened" neither answers the submission's claim nor is itself established. The submission addresses a structural exposure that is present in the arrangement; the objection addresses the occurrence of an event that the submission does not assert and that the public record could not confirm or exclude.

³18 U.S.C. §2713; AOS-AIDC-2026-001-v1.1, section 04. See Appendix A.

⁴18 U.S.C. §2705(b); 18 U.S.C. §2709(c). See Appendix A.

04 Conclusion

Neither objection displaces the finding of the original submission. The Agreement administers cross-border access and leaves the disclosure obligation in place. The absence of a known compulsion event is not evidence that the exposure is absent, and may reflect only that such process is not public. The case for a defined, required, and accountable assessment of jurisdictional exposure, set out in the recommendations of the original submission, stands undiminished by either objection.

The author is available to assist the committee in its consideration of these matters.

Appendix A. Sources

1. 18 U.S.C. §2523 (Executive agreements under the CLOUD Act) (2018-03-23). <https://www.law.cornell.edu/uscode/text/18/2523>. Department of Home Affairs, Australia–United States CLOUD Act Agreement page (2024-12-31). <https://www.homeaffairs.gov.au/about-us/our-portfolios/national-security/lawful-access-telecommunications/australia-united-states-cloud-act-agreement>
2. United States Department of Justice, “Promoting Public Safety, Privacy, and the Rule of Law Around the World: The Purpose and Impact of the CLOUD Act” (White Paper, April 2019). <https://www.justice.gov/dag/cloudact>
3. 18 U.S.C. §2713 (CLOUD Act compulsion authority) (2018-03-23). <https://www.law.cornell.edu/uscode/text/18/2713>. AOS-AIDC-2026-001-v1.1, section 04 (“The exposure is real and assessable”).
4. 18 U.S.C. §2705(b) (non-disclosure orders); 18 U.S.C. §2709(c) (National Security Letter confidentiality). <https://www.law.cornell.edu/uscode/text/18/2705>. <https://www.law.cornell.edu/uscode/text/18/2709>

End of supplement.