



The Instruments That Exist

REFERENCE	AOS-AMU-2026-001
VERSION	1.1
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CLASSIFICATION	Released
DIRECTOR	Brunei Al-Bijwaie

Version 1.1, 15 August 2026. This assessment examines three memoranda of understanding published by the Australian Government. It rests entirely on those instruments' own text, together with two company statements which are labelled as secondary wherever they are used. **Clause citations give the clause number the instrument itself uses.**

Version note

This is vi.1, published 15 August 2026. It is a correction to vi.0 of 15 August 2026. **One sentence changes. No finding moves, no count moves, and nothing else in vi.0 is withdrawn or qualified.**

Where	What changed	Why
Section 1, the paragraph on earlier work	The sentence “They are cited for one proposition: that this is a question Commonwealth material has not put” is replaced. It now cites the two earlier assessments for their own findings about the instruments and question set each examined, and for nothing wider	AOS-CMP-2026-001 finds that two named instruments — the Foreign Ownership, Control or Influence Risk Assessment Guidance and the Hosting Certification Framework, both administered by the Department of Home Affairs — do not test whether a certified provider can be lawfully compelled by a foreign government. It makes no claim about Commonwealth material at large, and this document was not entitled to cite it for one

How it was found. In the course of verifying an unrelated claim about the Information Security Manual, AOS-CMP-2026-001 was read again against the documents citing it. **The defect exists independently of that work.**

What no check caught, recorded because it bears on how much the checks are worth. The corrected sentence does not quote AOS-CMP-2026-001. **It is a citation whose scope exceeded its source, and no check in this practice reads a citing sentence against what the cited document holds.** The full account is in `CORRECTIONS-REGISTER.md`.

vi.0 remains published at its own address with its own hash, and both versions resolve.

1. Scope

This assessment examines what three published memoranda of understanding say, and do not say, about the law of the jurisdiction in which the other party is incorporated.

The three are:

- The **Memorandum of understanding between the Australian Government and Anthropic on collaboration on AI opportunities**, published by the **Department of Industry, Science and Resources** on **1 April 2026**, as full text on the Department's website.
- The **Memorandum of understanding between the Australian Government and Microsoft on collaboration on AI opportunities**, same department, published **23 April 2026**, also as full text.
- The **Memorandum of Understanding on Digital Resilience to Support the Security of Australia**, between the Commonwealth as represented by the **Department of Home Affairs** and **Microsoft Corporation**, published by that Department as a five-page PDF on its Digital Resilience Agreements page. **That page states its own purpose:**

"The memoranda of understanding published here outline areas of collaboration that support secure and reliable digital infrastructure, emerging technologies and critical services."

Department of Home Affairs, Digital Resilience Agreements.

Three things are stated here, before the finding, because a reader who meets the finding without them will supply an enforceability that none of these instruments claims.

First: all three disclaim binding force, and each does it in different words. The two Industry memoranda each say the instrument "is intended as a statement of intent and is not intended to have legal effect". The Home Affairs memorandum says at clause 1.2 that it "establishes a non-binding framework for strategic cooperation". **All three are quoted in full at Section 4, and they are not paraphrased into one formula, because they are not one formula.**

Second: one of the three contains a termination clause, and it is the best available objection to what follows. Clause 6.1 of the Home Affairs memorandum permits either party to terminate "in its absolute discretion" on thirty days' written notice. **What that does and does not do is set out at Section 5, before the finding.**

Third: the domain. All three instruments were read end to end — every numbered clause, every headed section, and the signature block of each. **Two company statements were read in part**, for their dates and for the sentences quoted at Section 7, and they are **secondary. Not read, and named:** the *Expectations for data centres and AI infrastructure developers*; the National AI Plan; the AI Plan for the Australian Public Service; the Volume Sourcing Arrangement referred to at clause 4.3 of the Microsoft Industry memorandum; and the Microsoft Business and Services Agreement of 23 January 2026 referred to at clause 5.1 of the Home Affairs memorandum. **No claim in this assessment rests on any of them.**

(The full statement of what this assessment does not claim is held at Section 8, Bounds. It is not an afterthought,

and a reader who reads only the finding should read that section with it.)

2. Finding

These are the instruments that exist. The Australian Government published them as the formal expression of its relationship with these companies on artificial intelligence and on digital resilience. They are the record.

What is published records intentions, disclaims binding force in three different formulations, and names only Australian law.

The two Industry memoranda each record, at clause 1.3, that the company “is committed to upholding Australia’s laws and values so as to maintain strong social licence for investment”. **The Home Affairs memorandum records no commitment of that kind at all.** Beyond those two clauses, **the only law named anywhere in any of the three is Australian law.**

None of the three contains an applicable-law provision, a compliance-with-law provision, a force majeure provision, or a governing-law provision. None contemplates the company’s incorporating jurisdiction directing it, restricting it, or overriding a commitment the memorandum records. **The question does not appear in the instruments in any form.**

The consequence is narrow and it is a consequence about a record. Nothing in these instruments establishes what happens when the incorporating jurisdiction directs otherwise — and nothing in them was an obligation. **Those two limbs are not in tension. They are the same fact seen from two sides:** an instrument that creates no obligation has nothing for a conflict of laws to bite on, and so has no occasion to address one.

This is a different kind of gap from the ones this practice has recorded before, and the difference is stated rather than left for a reader to assume. Earlier assessments found a question missing from instruments built to ask questions — a certification framework that tests ownership without testing compulsion, a vendor question set headed for data sovereignty that asks where data is. **Those instruments are built to answer something. These are not.** They are built to express a relationship, and they say so. **The finding is therefore not that these memoranda failed at a task they were set. It is that the published record of the relationship contains no answer to the question, and the instruments say what they are: a statement of intent and a non-binding framework.**

3. What each records in relation to Australian law

The two Industry memoranda carry an identically placed clause. **Anthropic**, clause 1.3:

“Anthropic is committed to upholding Australia’s laws and values so as to maintain strong social licence for investment.”

Microsoft, clause 1.3:

“Microsoft is committed to upholding Australia’s laws and values so as to maintain strong social license for investment.”

A note on spelling, for fidelity and no other purpose. The two clauses differ by one letter — **“licence” in the Anthropic memorandum, “license” in the Microsoft memorandum.** Both are quoted above exactly as published. **The difference is recorded so that a reader comparing them does not conclude that one has been transcribed wrongly here. No inference is drawn from it.**

Each Industry memorandum also records commitments touching Australian operations. Anthropic at clause 3.3:

“Anthropic supports the Australian Government’s Expectations for data centres and AI infrastructure developers and will align its Australian operations with those expectations.”

Microsoft at clause 2.2:

“Microsoft supports and commits to meeting the Australian Government’s Expectations for data centres and AI infrastructure developers. Microsoft’s global approach to operating as a responsible and trusted provider of digital infrastructure is consistent with the expectations, and Microsoft will continue to align its Australian operations accordingly, including through ongoing, proactive engagement with government, local communities and other stakeholders.”

The Home Affairs memorandum records no commitment to uphold Australian law, and no counterpart to clause 1.3. Its only reference to legal or regulatory frameworks is clause 3.4, headed “Regulatory Simplification”:

“Collaborate on frameworks that streamline compliance and promote interoperability of resilience efforts domestically and globally.”

That is a commitment to collaborate on frameworks. It is not a commitment in relation to any particular body of law.

4. What each says about its own binding force

Three instruments, three formulations. They are set out separately because they are not the same sentence.

The **Anthropic** memorandum, under the heading “Nature of the understanding”:

“This MOU is intended as a statement of intent and is not intended to have legal effect.”

The **Microsoft** Industry memorandum, under the same heading:

“This MOU is intended as a statement of intent and is not intended to have legal effect.”

The **Home Affairs** memorandum, at clause 1.2, in its purpose section rather than a closing note:

“This Memorandum of Understanding establishes a non-binding framework for strategic cooperation to strengthen Australia’s digital resilience.”

The first two are word for word identical to each other and differ from the third. The Industry formula disclaims legal effect; the Home Affairs formula describes the framework as non-binding. **Both amount to a disclaimer of binding force, and this assessment treats them as doing the same work — but it quotes all three rather than reporting one, because a reader is entitled to see that the Commonwealth used two different forms of words and placed them in two different parts of the document.**

Each of the two Industry memoranda continues that it confers no preferential treatment in Commonwealth procurement processes, grant programs or regulatory decisions, does not limit the Commonwealth’s ability to engage with other companies or organisations, and does not commit either party to future arrangements.

5. What none of them contains, and the one thing one of them does

None of the three contains an applicable-law clause, a compliance-with-law clause, a force majeure clause, or a governing-law clause. All three were read end to end for the proposition and not for a word.

None of the three contemplates the company’s incorporating jurisdiction directing it, restricting it, or overriding a commitment the instrument records.

One of the three contains a termination clause, and it is disclosed here rather than left for a critic to find. Clause 6.1 of the Home Affairs memorandum:

“This Memorandum of Understanding becomes effective upon signature and will be reviewed annually. Amendments, including any extension, must be made in writing, signed by both parties. Either party may terminate this Memorandum of Understanding in its absolute discretion by providing a minimum of 30 days’ written notice to the other party.”

What it does: it permits either party to leave, for any reason or for none, on thirty days’ notice. **A party whose position changes — for any cause, including one arising under another country’s law — may exit.**

What it does not do: it does not subordinate the instrument to any law. It does not contemplate a conflict between a commitment recorded in the memorandum and an obligation arising elsewhere, and it does not say what happens to the commitment if one arises. **It is an exit, not a rule for the case where the question is put. The two Industry memoranda contain no termination provision at all.**

6. Three levels of corporate structure, and a fourth entity

The Commonwealth signed the three instruments with counterparties at three different levels of corporate structure. This is recorded as structure and nothing more.

The **Anthropic** memorandum is signed “For Anthropic PBC, by: Dario Amodei, CEO and Co-Founder, Anthropic” — the parent entity itself.

The **Microsoft** Industry memorandum is signed “For Microsoft, by: Jane Livesey, President of Microsoft Australia & New Zealand”, and its closing section adds a sentence the Anthropic memorandum has no counterpart to:

“Where appropriate, Microsoft may work with Microsoft Corporation and/or other Microsoft affiliates to progress the objectives set out in this MOU.”

The **Home Affairs** memorandum is entered into, at clause 1.1, by “Microsoft Corporation, (Microsoft) represented by Lisa Monaco, President Microsoft Global Affairs”. Its confidentiality clause 5.1 binds the parties to terms of an agreement made between “Microsoft Ireland Operations Limited on behalf of Microsoft Corporation and all Affiliates, and the Commonwealth of Australia as represented by the Digital Transformation Agency”.

Four corporate entities are named across the three instruments. No finding is made about any company’s corporate arrangements, and none about which entity any law reaches. The structure is recorded because the instruments record it, and because an assessment about incorporating jurisdictions should not leave a reader to assume that “the company” means one thing in all three.

7. The export control direction, as dated facts

The only sources for what follows are statements published by one of the companies. They are secondary as to what any government did, and they are labelled secondary here and not only in the source register.

No United States government document specific to this direction was located. Five sources were searched across two runs: the Bureau of Industry and Security site, the Federal Register, the Department of Commerce, the company’s own site, and a targeted search of BIS press releases and temporary denial orders for June 2026. **What those searches returned was a different instrument — the January 2025 *Framework for Artificial Intelligence Diffusion* — and enforcement actions from 2012 to 2022. That establishes that no such document was found. It does not establish that none exists, and none is asserted either way.**

One pointer exists that those searches did not reach, and it is disclosed here rather than omitted. In the company’s 30 June statement the words “have been lifted” are a hyperlink to a post on x.com by a named United States official. **That post was not retrieved, is not pinned, and is not read. Nothing is asserted**

about what it says. It is recorded because a reader is entitled to know that the search which returned nothing was not exhaustive.

The company's statement of **12 June 2026**:

"The US government, citing national security authorities, has issued an export control directive to suspend all access to Fable 5 and Mythos 5 by any foreign national, whether inside or outside the United States, including foreign national Anthropic employees. The net effect of this order is that we must abruptly disable Fable 5 and Mythos 5 for all our customers to ensure compliance."

Both sentences are quoted. The second carries the all-customers point, and quoting the first alone would leave this statement and the next looking inconsistent. In the source the word "all" is emphasised, in bold and underlined; that emphasis is the company's and is not reproduced here.

The company's statement of **30 June 2026**, quoted in full and without ellipsis:

"On Friday, June 12, the US government applied export controls to our newest models, Claude Fable 5 and Claude Mythos 5. This required us to restrict access to foreign nationals, whether inside or outside the United States. Because the order took effect immediately and we had no reliable way to verify nationality in real-time, we suspended access to both models for all users. As of today, June 30, the export controls on Fable 5 and Mythos 5 have been lifted."

The third sentence is quoted because removing it would change what a reader infers. It gives the mechanism: the order took effect immediately, the company had no reliable way to verify nationality in real time, and so it suspended access for all users.

The two statements describe the same outcome in two different ways, and both formulations are the company's own. On 12 June the disabling of access for all customers is called "**the net effect of this order**". On 30 June it is presented as what followed from an inability to verify nationality in real time. **This assessment records both and resolves neither.** Nothing on this record establishes which is the better description of the direction's terms, and **no United States government document was located against which either could be checked.**

This section supports no part of the finding, and that is deliberate. The finding at Section 2 stands in identical terms whether or not this direction occurred. It rests on what three instruments say and do not say, and those instruments would say exactly the same if nothing had happened in June. **Nothing here suggests that the direction followed from the memoranda, or that the memoranda should have prevented it.** The dates are on the record; they are not an argument.

8. Bounds

This assessment examines the text of three published instruments. It makes no finding about Anthropic, about Microsoft, about any Microsoft entity, or about any company's conduct, capability,

or exposure to any law. The companies appear because the instruments are named for them and the clauses are in their names. **They are parties to a published instrument and are treated in no other capacity.**

It makes no finding about any minister, any department, or either government's conduct. The signatories are named because the instruments name them. **No claim is made about a decision by any of them.**

It does not say any commitment was broken. No commitment in any of the three instruments is said to have been performed or not performed.

It does not say the memoranda should have said something else. Whether an instrument of this kind ought to address a conflict of laws is a question about drafting choices, and this assessment does not reach it. **A statement of intent is a legitimate instrument and nothing here says otherwise.**

It does not characterise the export control direction's purpose, legality or motivation. It records what a company published about it and when, from sources it labels secondary.

It does not say that an organisation or a government could not discover the answer elsewhere. The question this assessment says is not addressed in these instruments may be addressed in others, in contracts, or not at all. **What is said is narrower: on the published record of this relationship, the question is not put.**

Two limits on method are held throughout. First, this assessment relies on the three instruments and, for Section 7 only, on two company statements. It does not draw on the five documents named at Section 1 as not read. **Where an instrument says something, this assessment records that it says it, and no further.** Second, **every absence recorded here was established by reading all three instruments end to end, and is bounded by them.**

Earlier work in this practice is cited and not repeated. AOS-CMP-2026-001 found that two Commonwealth assurance instruments do not test whether a provider can be lawfully compelled by a foreign government. AOS-ACD-2026-001 found that a Commonwealth guidance document's vendor question set, in a group headed for data sovereignty, asks where data is and not whose law reaches the vendor holding it. **Neither assessment's reasoning is repeated here and this document does not depend on either.** They are cited for those two findings and no more: for what the two instruments and the one question set each do not do, and not for any proposition about Commonwealth material at large. **The difference in kind is stated at Section 2 and is not a matter of degree.**

The finding, held to its narrowest, is this. **It does not say these instruments are deficient.** It says that the Australian Government's published record of its relationship with these companies records intentions, disclaims binding force, names only Australian law, and contains nothing that addresses what happens when the incorporating jurisdiction directs otherwise. **The gap named here is a gap in a published record. It is not, and is not claimed to be, a gap in any outcome.**

References

Department of Industry, Science and Resources 2026, *Memorandum of understanding between the Australian Government and Anthropic on collaboration on AI opportunities*, Australian Government, published 1 April 2026, viewed 15 August 2026, <https://www.industry.gov.au/publications/memorandum-understanding-between-australian-government-and-anthropic-collaboration-ai-opportunities>.

Department of Industry, Science and Resources 2026, *Memorandum of understanding between the Australian Government and Microsoft on collaboration on AI opportunities*, Australian Government, published 23 April 2026, viewed 15 August 2026, <https://www.industry.gov.au/publications/memorandum-understanding-between-australian-government-and-microsoft-collaboration-ai-opportunities>.

Department of Home Affairs 2026, *Memorandum of Understanding on Digital Resilience to Support the Security of Australia*, Australian Government, viewed 15 August 2026, <https://www.homeaffairs.gov.au/cyber-security-subsite/files/memorandum-of-understanding-on-digital-resilience-to-support-the-security-of-australia.pdf>.

AustraliaOS 2026, *The Compellability Gap in Commonwealth Cloud Assurance*, AOS-CMP-2026-001, v1.2, viewed 15 August 2026, <https://australiaos.com.au/verify/AOS-CMP-2026-001>.

AustraliaOS 2026, *The Question Not in the Set*, AOS-ACD-2026-001, v1.0, viewed 15 August 2026, <https://australiaos.com.au/verify/AOS-ACD-2026-001>.

Source pins

Every instrument was retrieved on 15 August 2026 and pinned by SHA-256. **The two company statements are pinned as secondary and are used only in Section 7.**

Ref	Artefact	SHA-256
M-MOU-1	Anthropic memorandum, HTML as served	a0c0d962774d787abaf867afa1f5dd3bf3cfcc043b8c1bfa36c14adaa58c1bed
M-MOU-2	Microsoft memorandum, HTML as served	c4ae76e2d1c0e5349202a5ccb692303627dcfc700078e4fd67b91e4425a7a328
M-MOU-3	Home Affairs memorandum, PDF, 5 pages	855ebd607c2c7c38be0478d90c6cfcd49a20f576d3c481bb1d3574e2890f6e3e
M-ORD-1	Company statement, 12 June 2026 — secondary	8ab9353169af6cb6bf6113396939628ac2bb138c73f0f02b4228c7f27e416868

Ref	Artefact	SHA-256
M-ORD-2	Company statement, 30 June 2026 — secondary	eb90f24ae4e8ca74a38a0d20c86d97bd0afaa5ac98d0ecb2ef2f6ce9c0cce967

Four of the five pinned artefacts are independently archived and every one of those captures was seen to resolve. The fifth is not, and is named.

The three instruments are archived. The archived Home Affairs PDF was fetched raw and hashes to the value struck above, so a reader can check the clauses quoted here against a third-party copy without relying on this practice's archive or on either Department's site remaining unchanged.

Both company statements are archived, and this matters more than it does for the instruments. They are the only account of the June events, they are a company's statements about itself, and they sit on that company's own site. **Captures exist from 13 June 2026 and 1 July 2026 — within a day of each statement's publication, made by a third party, and long before this assessment existed.** Both captures were fetched and **both carry every sentence quoted at Section 7**, including the two sentences of the 12 June statement and the mechanism sentence of the 30 June statement. **A reader can therefore check the Section 7 quotations against contemporaneous third-party copies that this practice neither made nor prompted.**

The Home Affairs landing page, quoted at Section 1, is not confirmed archived. A save was requested at 07:28 UTC on 15 August 2026 and returned an address; **that address was fetched twice and returned 404 both times, so no address is recorded.** A capture index query returned 503 on two occasions, so **it is equally not established that no capture exists. This is a limit on independent verification of one sentence — the Department's statement of what its Digital Resilience Agreements page publishes — and it is recorded rather than softened.** The instrument that page publishes is itself archived, and the quotation at Section 1 is of the page, not of the instrument.

End of document.