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THE UNIVERSITY OF
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Supplementary Report

Registration as an alternative to licensing

Centre for AI, Trust, and Governance

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1 Registration as an alternative

1.1 Introduction

This supplementary report adds to the University of Sydney Centre for AI, Trust, and Governance report of 4 February 2026. That report (Report) had the title “Australia’s Right to Regulate Technology: A proposal for reform”. The Report proposed licensing of platforms as a key mechanism.

Feedback on the Report has suggested that the appetite for a licence regime would be greater if there was a simpler first step. It would be essential that this step could achieve the same outcomes as a licensing regime. These are:

- (a) an entity in Australia that can sue or be sued;
- (b) a link between that entity and products and services provided in Australia; and
- (c) an assurance that the entity has the financial capacity to pay for the consequences of any legal or regulatory action taken against it.

This supplementary report outlines an approach to registration as an alternative to licensing.

1.2 Approach

This supplementary report proposes the introduction of a **Social Media Services Register** (the Register). This would require that providers of social media services that are accessible to Australian end-users to register with the Australian Communications and Media Authority (ACMA). The proposal draws its structural architecture from the Associated Newspaper Register set out in section 59 of the *Broadcasting Services Act 1992* (Cth). It employs the definitions of *social media service* and *age-restricted social media platform* taken from the *Online Safety Act 2021* (Cth).

In order to meet the requirements set out above, registration would impose three substantive obligations on each registrant:

- (a) disclosure of every service the provider operates in Australia;
- (b) nomination of an Australian entity with a domestic address for service, capable of suing and being sued in Australian courts on behalf of the platform; and
- (c) production of a Financial Sufficiency Certificate (FSC) from a registered company auditor confirming the Australian entity holds sufficient resources to meet damages awards and pecuniary penalties. The auditor would accept direct financial responsibility for that certification, including stepping into the shoes of the platform to the extent certified if funds prove insufficient.

The scheme is modelled closely on existing Australian legislative frameworks. In particular, the foreign company local agent regime in the *Corporations Act 2001* (Cth)

and the appointed actuary liability framework under the *Insurance Act 1973* (Cth). It avoids requiring the creation of a new regulatory body.

2 Policy Rationale

Social media platforms that operate in Australia but are incorporated offshore routinely present enforcement difficulties. This is the reason that the Report proposed a licensing regime. We have seen the eSafety Commission, in respect of X, face the practical impossibility of process serving. Litigants with damage in Australia have no local entity to sue. The proposed Register addresses this gap by:

- (a) creating a public record of every social media service accessible in Australia and the entity responsible for it;
- (b) ensuring an Australian legal entity stands behind each service and can be brought to account in Australian courts without the need for foreign service or complex jurisdictional arguments; and
- (c) requiring financial substance behind that entity, certified by a professional who themselves accepts liability if the certification proves incorrect.

The proposal is intentionally narrow in scope. It does not seek to regulate the content of social media services or to impose new substantive obligations on platforms beyond those already found in the *Online Safety Act 2021* (Cth) and other Commonwealth statutes. It creates infrastructure consisting of a register and a chain of financial responsibility. It does not try to create new content regime.

3 Legislative Architecture

3.1 Structural model: section 59 of the *Broadcasting Services Act*

The proposed Register is modelled on the *Associated Newspaper Register* maintained by ACMA under section 59 of the *Broadcasting Services Act 1992* (Cth). That section requires ACMA to maintain a register of newspapers associated with the licence areas of commercial television and radio broadcasting licences. Key structural features of section 59 that are replicated in the proposal include:

- (a) ACMA as the maintaining authority, with the Register accessible on the internet;
- (b) a duty to enter and remove names from the Register upon satisfaction of defined conditions;
- (c) the power to supply certified copies of or extracts from the Register, which are admissible in evidence in all courts and proceedings without further proof; and
- (d) maintenance of the Register by electronic means.

The proposal adapts this structure by substituting the newspaper circulation thresholds with an Australian end-user nexus test. That is, a social media service

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must register if it is accessible to or delivered to one or more end-users in Australia. It adds a registration application process with mandatory disclosure requirements.

3.2 Definitions: *Online Safety Act*

The proposal adopts the existing statutory definitions in the *Online Safety Act 2021* (Cth) to avoid definitional inconsistency across the Commonwealth online regulatory framework. The key definitions are set out below.

3.2.1 Key Definitions from the *Online Safety Act*

Social media service (*Online Safety Act 2021* (Cth) section 13) which can be summarised as an electronic service:

- (a) the sole or primary purpose of which is to enable online social interaction between 2 or more end-users;
- (b) which allows end-users to link to or interact with some or all other end-users; and
- (c) which allows end-users to post material.

It does not include an exempt service (none of the material on which is accessible to, or delivered to, one or more end-users in Australia).

Age-restricted social media platform (s 63C)

A broader definition inserted by the *Online Safety Amendment (Social Media Minimum Age) Act 2024* (Cth). This can be summarised as an electronic service a sole or significant purpose of which is to enable online social interaction, with the same interaction and posting conditions. This captures platforms that may not qualify as a “social media service” under section 13 of the *Online Safety Act 2021* (Cth). For example, services that are not solely or primarily social.

Provider

The entity that operates the relevant service (consistent with usage throughout the *Online Safety Act 2021* (Cth), including in Part 4A). The proposal uses “provider” to align with section 5 of *Online Safety Act 2021* (Cth).

The registration obligation proposed in this supplementary report applies to providers of both *social media services* (s 13) and *age-restricted social media platforms* (s 63C). Capturing both definitions ensures comprehensive coverage without the need to cross definitional boundaries in a new instrument.

3.3 Australian entity and address for service

The requirement that each registrant nominate an Australian entity capable of suing and being sued is closely modelled on the *local agent* framework for registered

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foreign companies under the *Corporations Act 2001* (Cth), Part 5B.2.¹ Under that scheme, ASIC may not register a foreign company unless it has appointed at least one local agent who is resident in Australia. The local agent is answerable for all things the foreign company is required to do under the Act, and may be held personally liable by a court for penalties imposed on the foreign company.

Section 601CJ of the *Corporations Act 2001* (Cth) provides that a local agent is *personally liable* to a penalty imposed on the foreign company if the court is satisfied the local agent should be so liable.² The proposed scheme extends this logic to civil liability for damages, not merely regulatory penalties, and couples it with the Financial Sufficiency Certificate requirement described below.

3.4 Financial Sufficiency Certificate and auditor liability

The requirement for a Financial Sufficiency Certificate (FSC) from an Australian registered company auditor is the most innovative feature of the proposal. The novelty is the auditor's direct financial responsibility for that certificate. While novel in this precise configuration, it draws on several existing threads of Australian law:

3.4.1 Appointed Actuary framework (Insurance Act 1973 and Life Insurance Act 1995)

Under the *Insurance Act 1973* (Cth) and the *Life Insurance Act 1995* (Cth), general insurers and life companies must appoint an actuary who certifies the financial soundness of the entity.³ APRA's Prudential Standard CPS 320 imposes obligations directly and personally on the Appointed Actuary. The personal responsibility for complying with those obligations continues to rest with the actuary even where the insurer has not complied. The proposed FSC regime adopts an analogous structure. The auditor accepts statutory responsibility for the accuracy of their certification. It goes further by attaching direct financial liability to that responsibility.

3.4.2 Environmental financial assurance (State and Territory frameworks)

Environmental legislation across Australia requires operators of licensed premises to provide financial assurance (typically a bank guarantee or bond) sufficient to cover the costs of remediation if the operator fails.⁴ The leading example is the *Protection of the Environment Operations Act 1997* (NSW). The surety providing the bond takes on direct financial liability to the regulator up to the face value of the instrument. The

¹*Corporations Act 2001* (Cth), ss 601CF–601CJ.

²*Corporations Act 2001* (Cth), s 601CJ.

³*Insurance Act 1973* (Cth), s 39; *Life Insurance Act 1995* (Cth), s 93; APRA, Prudential Standard CPS 320 Actuarial and Related Matters.

⁴See, for example, *Protection of the Environment Operations Act 1997* (NSW), ss 295A–295E (financial assurance framework). Environmental financial assurance bonds have long required third-party sureties to guarantee the performance of regulated entities.

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proposed auditor liability mechanism is the functional equivalent. The auditor's FSC is an assurance instrument, and the auditor stands behind that instrument with their own resources. This is analogous to the surety on an environmental bond

3.4.3 Foreign company local agent personal liability

The *Corporations Act 2001* (Cth) already contemplates that a local agent may be personally liable for obligations of a foreign corporate entity. The proposed auditor liability provision replicates this structure in a financial context: just as a local agent answers for the foreign company's regulatory obligations, the auditor answers for the financial adequacy of the Australian entity up to the amount certified.

3.5 Unsuitability of a Parent Company Guarantee

A parent company guarantee is unsuitable for four reinforcing reasons.

First, and most fundamentally, the parent controls the subsidiary. It can strip the child entity of assets, cause it to cease trading, or wind it up entirely. These are all lawful corporate decisions that leave the guarantee attached to a shell. The parent has no incentive to preserve the entity whose liabilities it has just guaranteed.

Second, the parent is almost invariably also a foreign corporation. Enforcing a guarantee against an entity incorporated in Delaware, the Cayman Islands, or Singapore requires the same cross-border enforcement machinery that the registration scheme is designed to avoid. One offshore entity guaranteeing another solves nothing.

Third, a guarantee is only as strong as the guarantor's willingness to honour it. Unlike the auditor mechanism proposed in this supplementary report, there is no independent professional standing behind the instrument with their own licence, reputation, and statutory obligations at risk. A parent can simply decline to pay and force the claimant into protracted litigation in a foreign jurisdiction.

Fourth, corporate groups restructure constantly. The parent that gives the guarantee today may have divested the relevant business, merged with another entity, or itself become insolvent by the time a claim is made. The auditor mechanism, by contrast, requires a fresh professional certificate at regular intervals, ensuring the assurance remains current and independently verified.

4 Draft Legislative Text

The following is proposed as a new Division to be inserted into the Online Safety Act 2021 (Cth), or alternatively as a standalone Part within an amendment to the Broadcasting Services Act 1992 (Cth). Either host Act would be appropriate; the

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Online Safety Act is preferred given it already contains the relevant definitions and the ACMA has an existing regulatory relationship with social media providers.

Division [X] — Social Media Services Register

[X]A ACMA to maintain Social Media Services Register

- (1) The ACMA is to maintain a register to be known as the Social Media Services Register (the Register).
- (2) The Register must, in relation to each registered provider, contain:
 - (a) the legal name of the provider and each trading name under which any of the provider's social media services are made available to end-users in Australia;
 - (b) a description of each social media service operated by the provider that is accessible to, or delivered to, end-users in Australia;
 - (c) the name and Australian address for service of the nominated Australian entity for the provider; and
 - (d) details of the Financial Sufficiency Certificate in force for the provider, including the name of the certifying auditor and the amount certified.
- (3) The Register may be maintained by electronic means.
- (4) The Register is to be made available for inspection on the internet free of charge.
- (5) The ACMA may supply copies of or extracts from the Register certified by an authorised ACMA officer, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

[X]B Registration obligation

- (1) A provider of a social media service or age-restricted social media platform that is accessible to, or delivered to, one or more end-users in Australia must apply to the ACMA for registration in accordance with section [X]C within [90] days of the commencement of this Division (for existing providers) or within [30] days of first making the service accessible to end-users in Australia (for new providers).
- (2) A provider that contravenes subsection (1) is liable to a civil penalty of 500 penalty units per day that the contravention continues.

Note: *The civil penalty is consistent with penalty levels applicable to providers under Part 4A of this Act.*

[X]C Application for registration

- (1) An application for registration must:
 - (a) be made in the form approved by the ACMA;
 - (b) set out the information referred to in paragraphs [X]A(2)(a) and (b);
 - (c) nominate an Australian entity in accordance with section [X]D; and
 - (d) be accompanied by a Financial Sufficiency Certificate that complies with section [X]F.
- (2) The ACMA must register the provider if satisfied that:

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- (a) the application complies with subsection (1); and
 - (b) the Financial Sufficiency Certificate is in force and complies with section [X]F.
- (3) The ACMA must refuse to register the provider if not so satisfied and must give the provider written notice of the refusal and the reasons for it.

[X]D Nominated Australian entity

- (1) A provider must at all times maintain a nominated Australian entity in relation to each registered social media service.
- (2) The nominated Australian entity must:
 - (a) be a body corporate incorporated in Australia, or a natural person ordinarily resident in Australia;
 - (b) have a registered address in Australia at which documents may be served;
 - (c) be capable of suing and being sued in that capacity in any court in Australia in relation to the social media services of the provider; and
 - (d) have given written consent to act as nominated Australian entity for the provider.
- (3) The nominated Australian entity is answerable for doing all acts, matters and things that the provider is required to do under this Division.
- (4) If a court makes an order for the payment of damages or a pecuniary penalty against a provider in relation to a social media service operated in Australia, and the court is satisfied that:
 - (a) the nominated Australian entity should be liable for the whole or part of that amount; and
 - (b) it is just and equitable in the circumstances for the nominated Australian entity to be so liable;the nominated Australian entity is liable to pay that amount or that part of that amount.

Note: *This subsection is modelled on the personal liability of local agents for foreign companies under section 601CJ of the Corporations Act 2001.*

- (5) A provider must notify the ACMA in writing within [7] days if the nominated Australian entity changes. The ACMA must update the Register accordingly.

[X]E Consequences of absence of nominated Australian entity

- (1) If a provider does not have a nominated Australian entity, any process, notice or other document required or authorised to be served on the provider may be served on the ACMA, and service on the ACMA is taken to be service on the provider.
- (2) A provider that does not have a nominated Australian entity is liable to a civil penalty of 300 penalty units per day that the contravention continues.

[X]F Financial Sufficiency Certificate

- (1) A Financial Sufficiency Certificate is a certificate that:
 - (a) is issued by a person who is a registered company auditor within the meaning of the Corporations Act 2001 and who holds a current

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- registration under Division 2 of Part 9.2 of that Act (the certifying auditor);⁵
- (b) is addressed to the ACMA;
 - (c) certifies that, at the date of the certificate, the nominated Australian entity holds, or has access to, financial resources sufficient to meet:
 - (i) any award of damages in any court in Australia against the provider in relation to any social media service operated in Australia; and
 - (ii) any pecuniary penalty imposed under any Commonwealth, State or Territory law against the provider in relation to any such service;
 - (iii) up to the amount specified in the certificate (the certified amount);
 - (d) specifies a certified amount of not less than [the amount prescribed by the legislative rules]; and
 - (e) is dated and signed by the certifying auditor.
- (2) A Financial Sufficiency Certificate must be renewed at least once in each 12-month period.
- (3) A provider must notify the ACMA within 7 days if a Financial Sufficiency Certificate lapses or is withdrawn. The ACMA may suspend the provider's registration pending provision of a replacement certificate.

[X]G Liability of certifying auditor

- (1) A certifying auditor who issues a Financial Sufficiency Certificate takes personal financial responsibility for that certificate.
- (2) If, at any time after a Financial Sufficiency Certificate is issued:
 - (a) a judgment for damages or a pecuniary penalty order is made against the provider in relation to a social media service operated in Australia; and
 - (b) the nominated Australian entity does not have sufficient financial resources to satisfy that judgment or order up to the certified amount; the certifying auditor is liable to satisfy the shortfall up to the certified amount as if the certifying auditor were the provider.
- (3) For the purposes of subsection (2), the certifying auditor is taken to stand in the shoes of the provider to the extent of the certified amount. Any person entitled to enforce the judgment or order against the provider may enforce it against the certifying auditor to that extent.
- (4) The certifying auditor's liability under this section does not limit any other liability the certifying auditor may have, whether at law or in equity, in respect of the Financial Sufficiency Certificate.

⁵Corporations Act 2001 (Cth), s 9 (definition of 'registered company auditor'). Only a registered company auditor within the meaning of the Corporations Act may issue a Financial Sufficiency Certificate under the proposed scheme.

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- (5) A certifying auditor must not issue a Financial Sufficiency Certificate unless the certifying auditor holds professional indemnity insurance in respect of this section in the amount of not less than [the prescribed amount] with an insurer approved by APRA.

Note: *This section establishes a novel but principled liability mechanism analogous to the personal obligations imposed on Appointed Actuaries under the Insurance Act 1973 (Cth) and Life Insurance Act 1995 (Cth), and the surety liability that arises under environmental financial assurance instruments. It ensures that the certification has substantive force and is not merely a paper exercise.*

[X]H Removal from Register

- (1) The ACMA must remove a provider from the Register if:
- (a) the provider requests removal and the ACMA is satisfied that the provider no longer operates any social media service accessible to, or delivered to, end-users in Australia; or
 - (b) the ACMA is satisfied that the provider has ceased to operate in Australia and has no nominated Australian entity.
- (2) Removal from the Register does not affect any liability that arose while the provider was registered.

[X]I Updating the Register

- (1) A registered provider must notify the ACMA in writing within [30] days of any change to the information described in paragraphs [X]A(2)(a) or (b).
- (2) A registered provider that contravenes subsection (1) is liable to a civil penalty of [50] penalty units per day that the contravention continues.
- (3) The ACMA may, on its own initiative, update the Register to correct errors or omissions.

[X]J Legislative rules

- (1) The Minister may, by legislative instrument, make rules prescribing:
- (a) the minimum certified amount for a Financial Sufficiency Certificate;
 - (b) the minimum amount of professional indemnity insurance to be held by a certifying auditor; and
 - (c) any other matters necessary or convenient to give effect to this Division.

[X]K Definitions

In this Division:

age-restricted social media platform has the same meaning as in section 63C of the Online Services Act 2021.

Australian entity has the same meaning as in section [X]D(2).

certifying auditor has the meaning given in paragraph [X]F(1)(a).

Financial Sufficiency Certificate has the meaning given in section [X]F.

nominated Australian entity has the meaning given in section [X]D.

provider has the meaning given to it in section 5 of the Online Services Act 2021.

social media service has the meaning given to it in section 13 of the Online Services Act 2021 and includes an age-restricted social media platform as defined in section 63C of the Online Services Act 2021.

5 Key Design Choices and Policy Considerations

5.1 Dual definition coverage

Requiring registration of both social media services (s 13) and age-restricted social media platforms (s 63C) ensures that platforms which fall outside the narrower s 13 definition (because, for example, social interaction is a significant but not the primary purpose of the service) remain within scope. This approach avoids platforms engineering themselves out of coverage through definitional arguments.

5.2 Civil penalty for non-registration

The proposal relies on civil penalties rather than criminal offences, consistent with the approach taken throughout Part 4A of the *Online Safety Act 2021* (Cth). A per-day penalty structure creates a continuing incentive to comply and allows the regulator to seek urgent interlocutory relief in the Federal Court.

5.3 Auditor liability: rationale and proportionality

The auditor liability provision in section [X]G is the most significant departure from existing Australian law. Its rationale is that a certification that carries no personal consequence for the certifier is a weak guarantee. The Appointed Actuary model in insurance law demonstrates that personal statutory liability can co-exist with professional practice; the proposed extension to auditors issuing FSCs follows the same logic.

Proportionality is maintained in two ways. First, the auditor's liability is capped at the certified amount. They are not exposed to unlimited liability. Second, the mandatory professional indemnity insurance requirement in section [X]G(5) ensures the auditor has access to resources sufficient to meet that liability. It also maintains market discipline (an insurer will conduct their own due diligence before underwriting).

5.4 Interaction with the Corporations Act foreign company regime

Providers that are already registered as foreign companies under the *Corporations Act 2001* (Cth) and have appointed a local agent will not automatically satisfy the requirements of this Division. The two regimes serve different purposes. *Corporations Act* registration addresses compliance with corporate law. Social Media Services Register registration addresses accountability for online harms and financial liability to injured third parties. However, a provider's existing local agent may also

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serve as the nominated Australian entity if that agent meets the requirements of section [X]D.

5.5 Enforcement

The Register itself is an enforcement tool. Service of process on the nominated Australian entity under section [X]D(2)(b) removes the jurisdictional obstacle that currently bedevils litigation against offshore platforms. The Financial Sufficiency Certificate and auditor liability provisions address the separate problem of platforms that submit to jurisdiction but are judgment-proof.

6 Comparison with Precedents

Table 1: Comparison of proposed approach with existing provisions

Feature	Existing Precedent	Proposed provision
Publicly accessible register	<i>Broadcasting Services Act</i> s 59: Associated Newspaper Register (maintained by ACMA, publicly available online)	ss [X]A–[X]I: Social Media Services Register (same maintaining authority and public access)
Certified copies admissible as evidence	<i>Broadcasting Services Act</i> s 59(7): certified extracts admissible in all courts	s [X]A(5): same rule reproduced
Local agent/address for service	<i>Corporations Act</i> ss 601CF–601CJ: mandatory local agent for all registered foreign companies, personally answerable for company’s compliance	s [X]D: nominated Australian entity mandatory, capable of suing/being sued; personally liable for damages and penalties (court discretion)
Personal statutory liability of certifier/actuary	<i>Insurance Act</i> s 39 and <i>Life Insurance Act</i> s 93: Appointed Actuary personally responsible for statutory obligations; APRA’s CPS 320 imposes obligations directly on the actuary	s [X]G: certifying auditor personally liable up to certified amount; must maintain PI insurance
Third-party financial surety stepping in on failure	Environmental financial assurance bonds (for example, <i>Protection of the Environment Operations Act</i> (NSW) ss 295A–295E): bond surety (bank/insurer) directly liable to regulator if operator fails	s [X]G(2)–(3): auditor “steps into shoes” of provider to extent of certified amount if entity has insufficient funds

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