

Commissioner brief: Summary of High Profile NDBs

Key messages

- Most of the breaches receiving significant media coverage in the last 12 months resulted from malicious or criminal attacks – for example such attacks accounted for 65% of notifications to the OAIC in January to June 2021.
 - In a number of instances, the company experiencing the data breach issued a public statement, typically following formal notification to individuals potentially affected by the breach and to the OAIC, as required by the NDB Scheme.
- Media coverage of data breaches has helped build public awareness of privacy rights and issues and can also help consumers understand the risks associated with putting information online and the steps that they can take to protect themselves.

Critical issues

High Profile NDBs for period October 2020 to October 2021

Entity	Description	Date of Breach	OAIC Action Taken	Public status of OAIC action
§ 47E(d) - Certain operations of agencies				

Commissioner brief: Alinta Energy

Key messages

- On 3 March 2020, we commenced preliminary inquiries with Alinta in response to media reports regarding Alinta's privacy compliance. The matter remains open, however the OAIC does not report on matters under current inquiry or investigation and rarely reports where a matter is escalated to investigation.
- The APPs do not generally prevent an organisation from sending personal information overseas. However, organisations need to carefully consider steps that may need to be taken to comply with the APPs when doing so.
 - However certain types of personal information are subject to data localisation requirements. For example, part IIIA of the Privacy Act, restricts sending information held in the Australian credit reporting system overseas.

Critical facts

- s 47E(d) - Certain operations of agencies [REDACTED]
- On 3 March 2020 we commenced preliminary inquiries with Alinta. The inquiries related to APP 8 – Cross-border disclosure of personal information. s 47E(d) - Certain operations of agencies [REDACTED]
- s 47E(d) - Certain operations of agencies [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Commissioner brief: Biometrics

Key messages

- The OAIC has privacy oversight of Identity-Matching Services such as the National Facial Biometric Matching Capability (NFBMC) and the National Drivers Licence Facial Recognition Solution (NDLFRS), which involve the collection and handling of large volumes of sensitive information.
 - We are engaging with the Department of Home Affairs (Home Affairs) on an MoU to conduct 2 privacy assessments, one each for the NFBMC and NDLFRS.
- We continue to engage with Home Affairs to incorporate additional safeguards into the draft legislation and the NFBMC's associated governance framework. s 47E(d) - Certain operations of agencies
 - The Parliamentary Joint Committee on Security and Intelligence's (PJCIS's) advisory report on *the Identity-Matching Services Bill 2019* (the IMS Bill) recommended redrafting to include amongst other things more robust privacy safeguards (Rec 1).

Critical facts

- Home Affairs operates the NFBMC to prevent identity crime, and for general law enforcement, national and protective security, and identity verification purposes. The NFBMC facilitates the sharing of facial images between the Commonwealth and states and territories, through its identity-matching services.¹
- The IMS Bill and the Australian Passports Amendment (Identity-Matching Services) Bill 2019 provide the legal framework for Home Affairs to operate identity-matching services. The OAIC made a submission to the PJCIS in 2018,² recommending that Home Affairs specified privacy protections applicable to the NFBMC within its overarching legislation. The OAIC has also provided Home Affairs with a range of policy advice in relation to the NFBMC's governance documents. s 47E(d) - Certain operations of agencies
- In December 2019, the Australian Human Rights Commission's (AHRC) released its Discussion Paper on Human rights and Technology recommending that the Australian Government implement a legal moratorium on facial recognition technology (FRT) until it introduces a suitable legal framework.³


¹ Services include the Face Verification Service ('one to one' matching) and Face Identification Service ('one to many' matching). The NDLFRS (as part of the NFBMC) will be a centralised database of driver licence holdings from every state and territory

² OAIC, *Review of the Identity-matching Services Bill 2018 and the Australian Passports Amendment (Identity-matching Services) Bill 2018 — submission to Parliamentary Joint Committee on Intelligence and Security*, 2018 < <https://www.oaic.gov.au/engage-with-us/submissions/review-of-the-identity-matching-services-bill-2018-and-the-australian-passports-amendment-identity-matching-services-bill-2018-submission-to-parliamentary-joint-committee-on-intelligence-and-security/>>.

³ See the Australian Human Rights Commission's Discussion Paper on Human rights and technology (2019), <https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-and-technology-discussion-paper-2019>. See proposal 11 at p.10.

Commissioner brief: International regulatory developments

Key messages

- Globally interoperable data protection laws are increasingly important to protect individuals online and reduce regulatory friction for business - particularly noting increased cross-border data flows. This was an important aspect of OAIC submission to the Privacy Act Review.
- The OAIC actively engages with a range of international privacy and data protection networks. Since October 2018, I have been a member of the Executive Committee of the Global Privacy Assembly. The Global Privacy Assembly is the leading global forum of data protection and privacy authorities with over 130 members across all continents.
- International engagement ensure the OAIC learns from others' experiences, identifies areas of synergy and facilitates international collaboration, including on enforcement. The OAIC has MOUs with the Data Protection Commissioner of Ireland (April 2014), the UK Information Commissioner's Office (January 2020) and the Singaporean Personal Data Protection Commission (March 2020). Under our MOU with the ICO we undertook a joint investigation into the information handling practices of Clearview AI.
- We work closely with Australian government agencies on initiatives that facilitate cross-border transfers of data while protecting privacy, such as working with the Attorney-General's Department to implement the APEC Cross-Border Privacy Rules (CBPRs) in Australia, and providing advice to the Department of Foreign Affairs and Trade in relation to Australia's Free Trade Agreements. In January 2021, the Australian Government elevated the bilateral relationship with Malaysia to a Comprehensive Strategic Partnership (CSP). s 47E(d) - Certain operations of agencies

- We monitor international privacy developments, particularly in Europe, the UK, Canada and the USA, to inform both the advice we provide to Australian Government and our own regulatory action. For example, we have closely been monitoring the UK's age appropriate design code and the introduction of the Californian Consumer Privacy Act in light of the Government's proposed online privacy code.

Commissioner brief: Senator Patrick Federal Court

Key messages

- s 47E(d) - Certain operations of agencies
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
- Senator Patrick lodged Federal Court proceedings on 9 September 2021 alleging unreasonable delays in conducting reviews of his IC review applications. The Federal Court has set a case management and interlocutory hearing for 29 October 2021.

Critical facts

- The *Freedom of Information Act 1982* does not set a timeframe for IC review decisions. The relevant PBS measure is 80% of IC reviews are finalised within 12 months. In 2019-2020 the number of IC reviews finalised within 12 months was 72%, in 2020-2021 was 73% and up to 30 September 2021 was 82%.
- The proceedings relate to 23 applications for Information Commissioner review, of refusals or partial access decisions by government departments on FOI applications made by Senator Patrick. s 47E(d) - Certain operations of agencies
[Redacted]
[Redacted]
[Redacted]
- Senator Patrick issued a media release about the Federal Court proceedings on 10 September 2021 ([Federal court action commenced to tackle PMs transparency allergy](#)). Senator Patrick also posted news on his Twitter account on 10 September 2021 and his

Commissioner brief: DHA

s 47E(d) - Certain operations of agencies

Key messages

- On s 47E(d) - Certain operations of agencies a person in immigration detention made a privacy complaint to the OAIC about the Minister for Home Affairs.
- An investigation was commenced on s 47E(d) - Certain operations of agencies and is in its final stages.
- The OAIC is committed to ensuring that all public statements on its privacy regulatory action are accurate, fair and balanced, and comply with the OAIC's legal obligations with regards to privacy, confidentiality, and secrecy.
- Generally, I do not comment publicly on the specifics of my investigations until the matter has been finalised.¹
- The OAIC handles privacy complaints, including those against Government Ministers, in accordance with the OAIC's *Privacy regulatory action policy*² and *Guide to privacy regulatory action*.³
- Particular considerations and reasons for my decisions are set out in my determinations available on the OAIC website.⁴

Critical issues

s 47E(d) - Certain operations of agencies

- [REDACTED]
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¹Privacy regulatory action policy. Paragraphs [53] - [59]. <https://www.oaic.gov.au/about-us/our-regulatory-approach/privacy-regulatory-action-policy/#public-communication-as-part-of-privacy-regulatory-action>

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³ <https://www.oaic.gov.au/about-us/our-regulatory-approach/guide-to-privacy-regulatory-action/>

⁴ <https://www.oaic.gov.au/privacy/privacy-decisions/privacy-determinations/>

Commissioner brief: Budget and resourcing February 2022

KEY MESSAGES

- Total appropriation for 2021-22 is \$26.730million
- 2021-22 ASL – cap 147; the internal budgeted cap 127; Actual FTE at 31 December 2021 is 111.
- The 2021-22 Budget provided ongoing funding for FOI Commissioner appointment.
- 2021-22 MYEFO provides additional \$1.997million for transition of ICT services and Federal Court proceedings. It also provides \$0.912 for the expansion of Digital Identity in 2022-23.
- Funding reduces from 1 July 2022 due to terminating measures.

KEY BUDGET NOTES

1 July 2021

- MYEFO 2021-22 increased revenue by \$1.447 million from \$25.283million to \$26.730million. Total capital revenue increased from nil to \$0.550million.

Funding is for:

- Transition of ICT shared services \$1.098million plus \$0.550million capital.
- Federal Court proceedings: \$0.349million
- The published PBS includes \$150,000 in MOU funding. Actual MOU is \$252,500. (Actual figures will be updated in 2022-23 PBS.)
- Total MYEFO published funding is \$26.880million including MOU and 147 ASL
- OAIC will seek permission to operate at loss of \$1.630million for transition of payroll and finance services to Service Delivery Office. The transition is self-funded.
- The 2021-22 Budget provides \$5.951million across five key areas:
 - Transition of ICT shared services \$1.098million
 - Federal Court proceedings: \$0.349million
 - Freedom of Information: \$980,000
 - Expansion of Consumer Data Right: \$1.454million
 - Digital Health: \$2.070million.

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