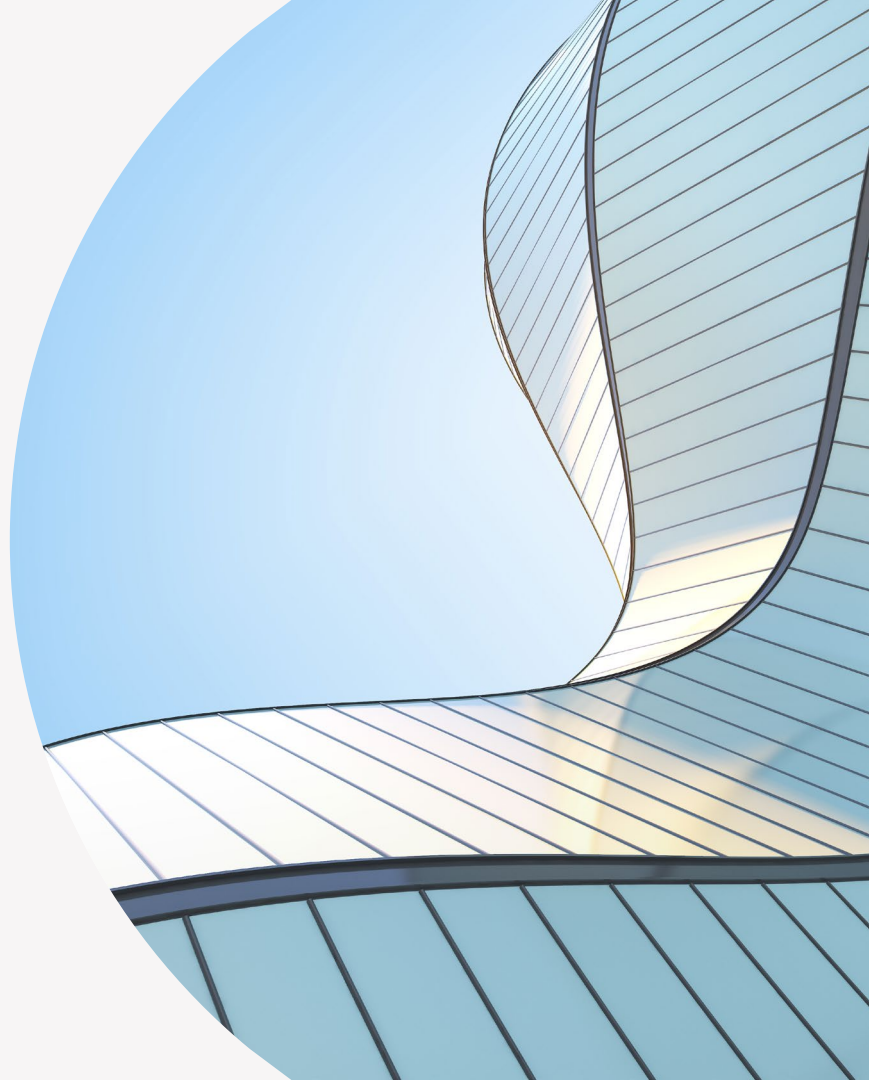


**Colin
Biggers
& Paisley**

From shadows to safeguards: tracing the journey of privacy law

Katherine Jones & Jessica Yazbek
10 February 2026



and we are off at the races ...



Victoria Park Racing and Recreation Grounds Co Ltd v Taylor [1937] HCA 45

Canadian Law Review - June 1938

The difficulty was of course to frame a legal claim that would fall within the accepted rules of law. There was natural hesitation in placing the whole emphasis on the breach of a right of privacy,³ for such a right still smacks of novelty in an English court. One plea adopted was an action on the case for nuisance affecting the use and enjoyment of plaintiff's land; another was the rather surprising argument that the use of land for broadcasting is an unnatural user of land within the principle of *Rylands v. Fletcher*;⁴ a third was that the plaintiff

1970s - 2000s

PRIVACY COMMITTEE ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 37, 1975.

An Act to provide for the constitution of a Privacy Committee and to define its powers, authorities, duties and functions; to amend the Defamation Act, 1974, and the Ombudsman Act, 1974; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE



Privacy Act 1988

No. 119 of 1988

TABLE OF PROVISIONS

PART I—PRELIMINARY

Possum privacy



Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd [2001] HCA 63

Gleeson CJ

"The respondent invited this Court to depart from old authority; declare that Australian law now recognises a tort of invasion of privacy; hold that it is available to be relied upon by corporations as well as individuals; and conclude that this is the missing cause of action for which everyone in the case has so far been searching....

But the lack of precision of the concept of privacy is a reason for caution in declaring a new tort of the kind for which the respondent contends. Another reason is the tension that exists between interests in privacy and interests in free speech.. "

Grosse v Purvis [2003] QDC 151

Senior Judge Skoien

[442] It is a bold step to take, as it seems, the first step in this country to hold that there can be a civil action for damages based on the actionable right of an individual person to privacy. But I see it as a logical and desirable step. In my view there is such an actionable right.

...

[444] In my view the essential elements would be:

- (a) a willed act by the defendant,
- (b) which intrudes upon the privacy or seclusion of the plaintiff,
- (c) in a manner which would be considered highly offensive to a reasonable person of ordinary sensibilities,
- (d) and which causes the plaintiff detriment in the form of mental psychological or emotional harm or distress or which prevents or hinders the plaintiff from doing an act which she is lawfully entitled to do.

Ordered:

- (a) damages for invasion of privacy;
- (b) damages for harassment;
- (c) damages for intentional infliction of physical harm to the plaintiff;
- (d) damages for nuisance;
- (e) damages for trespass;
- (f) damages for assault;
- (g) damages for battery;

Jane Doe v ABC [2007] VCC 281

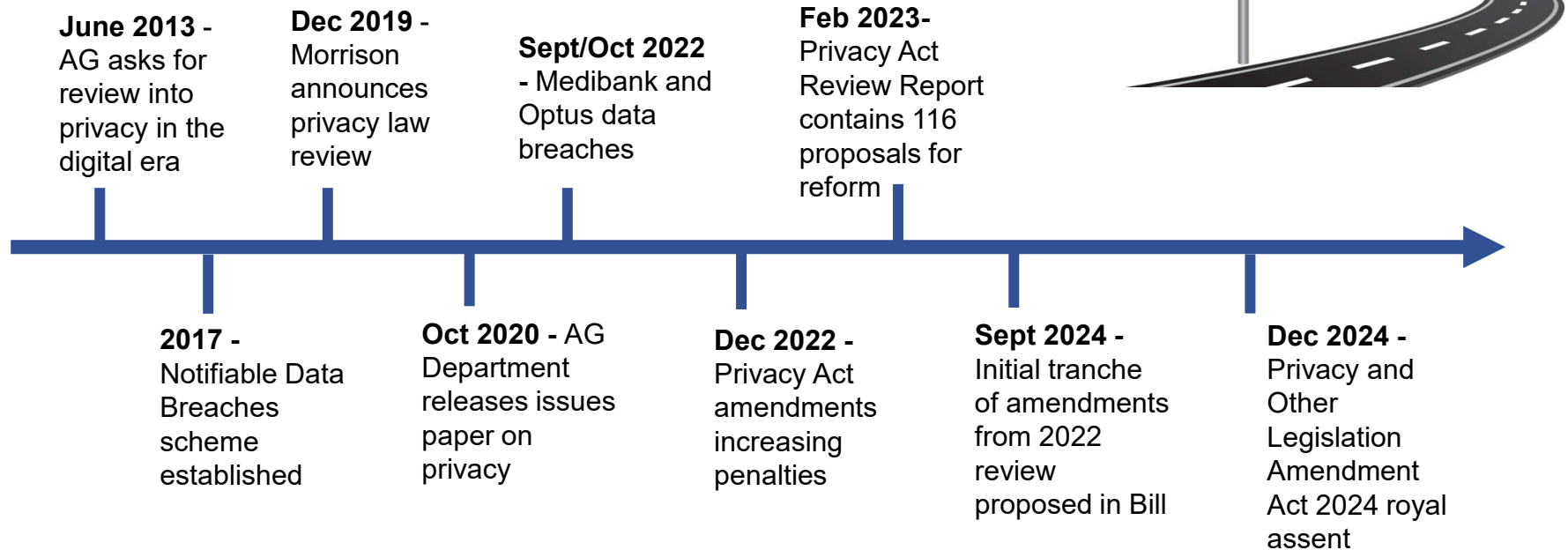
The ABC radio reported on the conviction detailing:

- name of the offender and victim
- the suburb in which the offence took place, and
- that the offence took place in the victim's home.

Breach of s4(1A) of the Judicial Proceedings Reports Act 1958 (Vic)

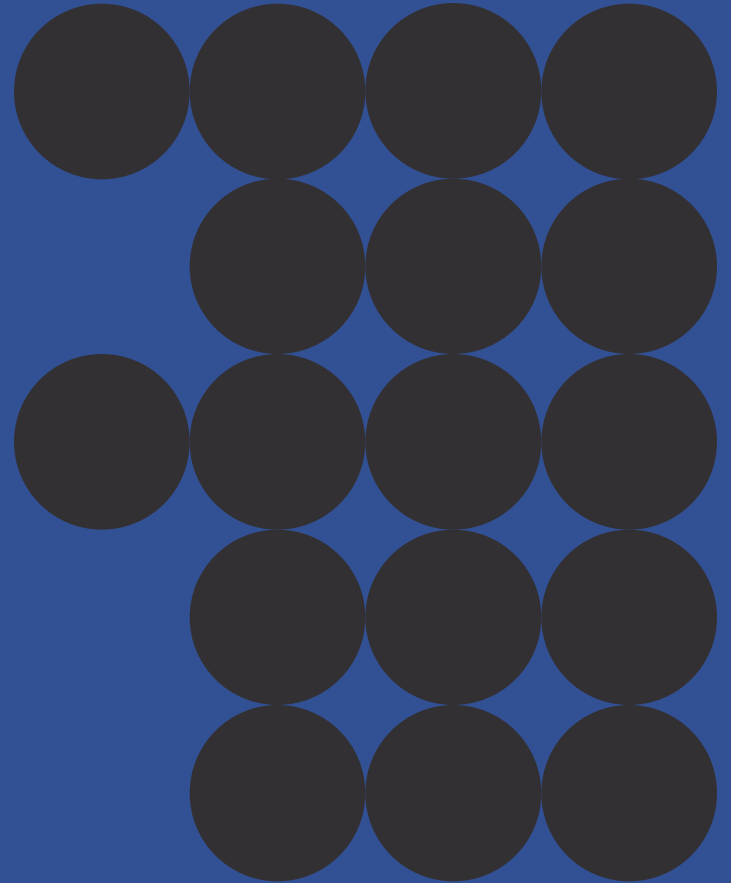


Next wave of reforms



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Key changes - Privacy and Other Legislation Amendment Act 2024



Key changes - Privacy and Other Legislation Amendment Act 2024

Statutory tort for serious invasion of privacy

Stronger enforcement powers for the OAIC and Minister

New civil penalties

Streamlined information sharing for emergencies or eligible data breaches

Transparency on automated decision-making

Development of a Children's Privacy Code

Criminal offences for doxxing

Tiered Civil Penalty Regime & Expanded Powers

Breach Type	Penalty for Individuals	Penalty for Corporates
Infringement notice issued	\$3,960	\$19,800 - \$66,000
Standalone APP breach	\$66,000	\$330,000
Interference with privacy (non-serious)	\$660,000	\$3.3m
Serious interference with privacy	\$2.5m	\$50m

Expanded Powers:

- **Infringement & compliance notices:** Issued without court proceedings.
- **Monitoring & investigation:** Includes entry, search, and seizure powers.
- **Public inquiries:** OAIC can investigate systemic privacy risks.
- **Court orders:** Federal courts can now order compensation, corrective action, and public statements.

Implications for Insurance Operations

- **Higher risk exposure** for mishandling sensitive data (e.g. health, financial).
- **Increased scrutiny** of vendor arrangements and cross-border transfers.
- **Need for defensible privacy practices** across underwriting, claims, and operations.

New Statutory Tort of privacy

Elements

1. invasion of privacy by:
 - intrusion into seclusion or
 - misuse of private information
2. reasonable expectation of privacy
3. invasion was **intentional or reckless**
4. invasion was **serious**
5. does not require proof of damage
6. public interest in privacy outweighs any countervailing public interests

First Injunction for intrusion into seclusion

Kurraba Group Pty
Ltd & Anor v
Williams [2025]
NSWDC 396

2 October 2025

Kurraba Group

124 Walker St, North Sydney NSW 2060, Australia

[Write a review](#)

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Most relevant

Newest

Highest rating

Lowest rating



Annette Church

Local Guide · 16 reviews · 20 photos



9 months ago

Fantastic professional company - can't rate them highly enough



Hover to react



Mark Aidasani

Local Guide · 14 reviews



9 months ago

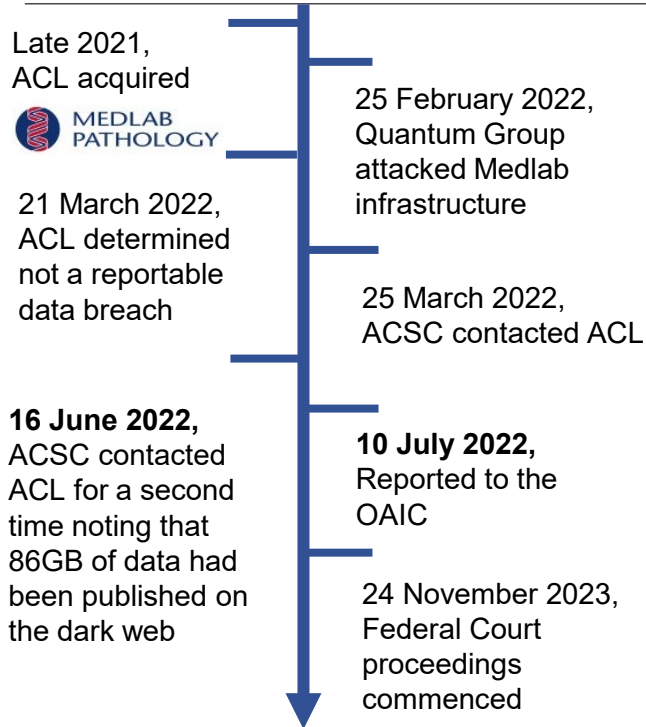
Ashleigh was really helpful with my inquiries and gave me the information I was after.



Hover to react



First civil penalties judgment



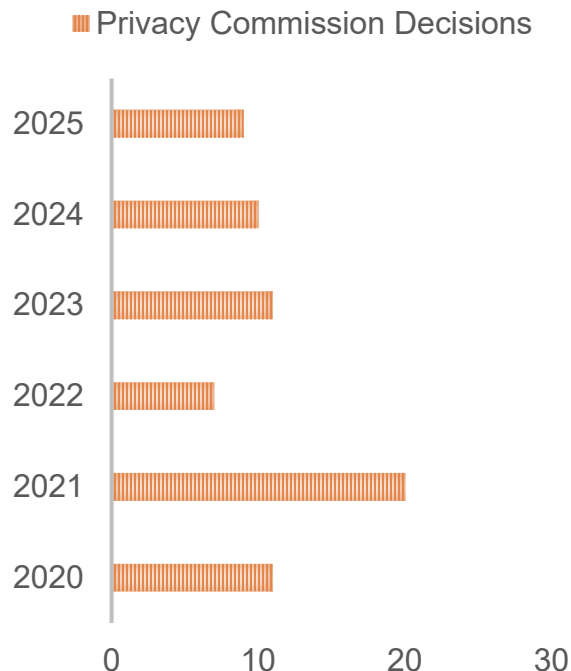
Australian Information Commissioner v Australian Clinical Labs Limited (No 2) [2025] FCA 1224

[89] ACL admits ...that it was *practicable* for it to have prepared a statement that complied with s 26WK(3) of the Act and to have provided a copy to the Commissioner *within two to three days* of it becoming aware on 16 June 2022 ...

[121] The parties have agreed a penalty of:

- (a) \$4.2 million for the 223,000 contraventions of s 13G(a) by reason of the breaches of APP 11.1 against a maximum penalty of \$495,060,000,000
- (b) \$800,000 for the single contravention of s 13G(a) by reason of the contravention of s 26WH(2) against a maximum penalty of \$2.2 million, and
- (c) \$800,000 for the single contravention of s 13G(a) by reason of the contravention of s 26WH(2) against a maximum penalty of \$2.2 million.

2025 OAIC Privacy Investigations



APP Breached	Determination
APP 6, APP 11, APP 1	Dismissed
APP 6, APP 10.2	Dismissed
APP 6, APP 11, APP 11	(Services Aust) Apology, Conduct a review, \$50,629 for non-economic loss (lost time), \$200,000 non-economic loss for pain and distress, \$16,879 for economic-loss
APP 12.1, APP 12.9	Dismissed
Privacy Safeguard 11	(Regional Bank of Aust) Findings made. Must not repeat
APP 11.1	Document procedure, \$7,500 for non-economic loss, give person access
APP 3.3, APP 3.4, APP 5.1, APP 5.2, APP 1.3, APP 1.4	(Kmart) Findings made. Must not repeat
APP 6	(Fortrend Securities) Apology, \$10,000 for non-economic loss, \$3,500 aggravated damages, Conduct review
APP 11.1	(Vinomofo) Conduct review

Damages for harm

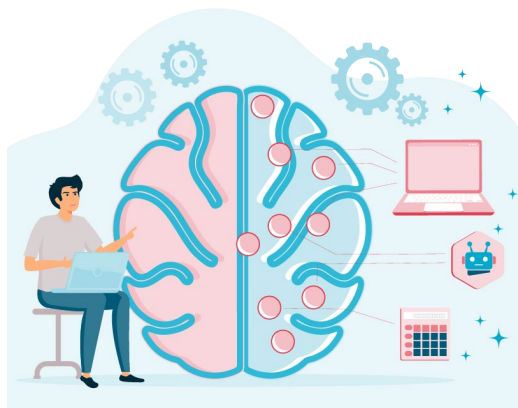
Cat.	Description	OAIC *	OVIC
0	No substantiating evidence of loss or damage	\$0	\$0
1	General anxiousness, trepidation, concern or embarrassment	\$500 - \$4000	\$500 - \$5000
2	Moderate anxiousness, fear, pain and suffering, distress or humiliation. Minor physiological symptoms, such as loss of sleep or headaches.	\$4001 - \$8000	\$5000 - \$12,000
3	Significant or prolonged anxiousness, fear, pain and suffering, distress or humiliation. May cause psychological or other harm, and may result in a prescribed course of treatment	\$8001 - \$12,000	\$12,000 - \$20,000
4	Development or exacerbation of a mental health resulting in a referral to a mental health specialist for treatment	\$12,001 - \$20,000	
5	Extreme loss or damage	> \$20,000	> \$20,000
	Statutory Cap		\$100,000

* 'WP' and Secretary to the Department of Home Affairs (Privacy) [2021] AICmr 2

Automated Decision-Making | APP 1.7 amendment

"Automated decision making" (ADM) is a computer program that:

1. makes a decision or does a thing (or omits to make a decision/do a thing);
2. that is substantially and directly related to making a decision;
3. the decision significantly affects the rights or interest of the individual; and
4. the personal information about the individual is used in operation of the computer program to make the decision or do the thing.



New obligations for ADM apply from **10 December 2026**. Privacy policies must identify the kinds of:



Personal information used in automated decision-making



Decisions made solely by the operation of a computer program;



Decisions for made based on a thing that is "substantially and directly related" to the making of the decision

Cross Border Disclosure

Amendment to APP 8.

Mechanisms to enhance the flow of information across borders, provided:

- those countries have privacy laws protecting personal information about an individual in a way that is overall the same or similar to the Privacy Act and APPs in Australia; and
- there are mechanisms that the individual can access to take action to enforce that protection.

Children's Privacy

- Development of Privacy Code by the OAIC in the next 24 months
- Will set out:
 - How APPs apply to the privacy of children (persons under 18)
 - may impose additional requirements to the APPs - as long as they are not contrary to or inconsistent with the APPs
 - will apply to internet and electronic services (including social media platforms) likely to be accessed by children

Doxxing

Against individuals

- person uses a carriage service to make available or publish
- the "personal data" about an individual
- reasonable person would regard as menacing or harassing towards the individual

Against groups

- person uses a carriage service to make available or publish
- personal data about one or more group members
- in whole or in part because the group is distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin

OAIC - Privacy Commissioner focus 2026

Sectors being targeted

1. rental and property
2. chemists and pharmacists
3. licensed venues
4. car rental companies
5. car dealerships
6. pawnbrokers and second-hand dealers

Enforcement possibilities?

- infringement notices for breaches of the Act, including the APPs; and
- expanded entry, search and seizure powers to strengthen enforcement capability.

**The OAIC's first ever
privacy compliance sweep
begins today**



Tranche 2

PRIVACY LAWS NEXT STEPS



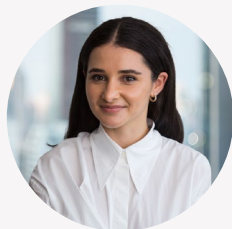
- Removal of the small business (<\$3 million turnover) exemption
- Removal of the employee records exemption
- A right to be erased (as exists in the EU under the GDPR)
- A requirement that use and disclosure of personal information be fair and reasonable (irrespective of consent)
- The expansion of the definition of 'personal information'
- Facial recognition changes
- More regulation around IoT

Presenters.



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Thank you.

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