



Australian Government

Office of the Australian Information Commissioner

Senate Economics References Committee

Inquiry into the influence of international digital platforms

Senator Andrew Bragg (Chair) asked the following questions of the OAIC on 22 August 2023:

CHAIR: I'm wondering about your enforcement capacity and how successful you've been in enforcing the existing obligations. I would be grateful if you could tell me how many enforcement actions you've been able to bring as OAIC, as well as how many people you have working on enforcement.

The OAIC's response to the Senator's question is as follows:

The OAIC has a range of functions and powers directed towards protecting the privacy of individuals, which are conferred by the *Privacy Act 1988* (Privacy Act) and by other legislation containing privacy protection provisions. These include powers that allow the OAIC to engage and work with regulated entities to facilitate compliance and best privacy practice, as well as investigation and enforcement powers to redress privacy breaches, which are based on an escalation model. The OAIC's *Privacy Regulatory Action policy* sets out the OAIC's approach to using its privacy regulatory powers.

The OAIC's Dispute Resolution branch and Major Investigations branch undertake enforcement-related activities.

The Dispute Resolution branch is responsible for resolving privacy disputes. It undertakes a range of activities including:

- handling privacy complaints, which involves resolving privacy complaints at the earliest opportunity by assisting parties to reach settlement through conciliation; investigating more complex complaints and providing outcomes; and supporting the Information Commissioner to make determinations, which may include declarations about entities taking remedial action
- administering the Notifiable Data Breaches scheme to ensure individuals are notified of data breaches so they can act to protect their personal information, and that breaches are contained and remediated
- conducting Commissioner-initiated preliminary inquiries and investigations into particular acts and practices, which may result in further regulatory action which may include civil penalty proceedings, determinations and enforceable undertakings.
- handling privacy and FOI enquiries.

As at 5 September 2023, the full time equivalent staff count (FTE) for the Dispute Resolution branch is 45.7.

The Major Investigations branch was established on 31 October 2022 to investigate serious breaches of the Privacy Act, due to the increased complexity, scale and impact of these matters, and recommend suitable regulatory responses. It is responsible for:

- investigating breaches where it is likely that significant numbers of individuals are affected and are likely to experience serious adverse consequences
- recommending suitable regulatory action which may include civil penalty proceedings, determinations and enforceable undertakings.

As at 5 September 2023, the FTE for the Major Investigations branch is 8.6.

The OAIC has taken enforcement action against digital platforms and international tech companies such as Ashley Madison, Amazon, Uber and Clearview AI. More broadly, the OAIC has major ongoing investigations into companies including Optus and Medibank following data breaches that occurred in the digital environment.

In March 2020, the OAIC commenced civil penalty proceedings against Facebook Inc and Facebook Ireland in the Federal Court of Australia alleging the social media platform has committed serious and/or repeated interferences with privacy in contravention of Australian privacy law. Those proceedings are ongoing.