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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Clarification to Hansard – Budget Estimates 2024-25 hearing on 29 May 2024

Dear Committee Secretary

I write to provide clarification of evidence I gave to the Senate Standing Committee on Legal and Constitutional Affairs during the Budget Estimates 2024-25 hearing on 29 May 2024.

Evidence of Ms Carly Kind, Privacy Commissioner.

On page 109 of the transcript, in response to a question from Senator Shoebridge asking for identification of the six major investigations being undertaken, I said:

Ms Kind: We have six major investigations afoot, 12 further Commissioner Initiated Investigations and around 100 preliminary inquiries that we've begun making into particular practices and entities.

I wish to clarify that we have 15 ongoing Commissioner Initiated Investigations, of which 4 are major investigations. We also have carriage of one significant investigation which originated from an individual privacy complaint. We have approximately 100 matters about which preliminary inquiries are being made or are being assessed to determine whether preliminary inquiries are warranted.

On page 109 of the transcript, in response to a question from Senator Shoebridge regarding the six major investigations afoot, I also wish to clarify that American Express is a privacy investigation flowing from an individual privacy complaint. It is not a Commissioner Initiated Investigation. It is, however, being managed by our Major Investigations Branch.

On page 110 of the transcript, in response to a question from Senator Shoebridge regarding the Optus data breach, I said:

Ms Kind: We opened our investigation in March 2023.

I wish to clarify that the investigation was opened on 11 October 2022.

On page 110 of the transcript, in response to a question from Senator Shoebridge regarding temporary funding for terminating measures, I said:

Ms Kind: Yes, that's correct.

I wish to clarify that temporary funding also applies to the Clinical Labs investigation.

Ms Kind: That matter was remitted for mediation in September 2023 and we are still in mediation.

I wish to clarify that the matter was referred for mediation by an order of the Federal Court made in September 2023. The mediation commenced in February 2024 and we are still in mediation.

On page 114 of the transcript, in response to a question from Senator Shoebridge regarding a direction to Clearview AI to delete Australian images from their database, I said:

Ms Kind: We are currently looking into whether or not there has been compliance with those orders. The question is not easily answered, as Clearview AI aren't present here in the jurisdiction, and understanding whether or not they've complied with orders is a technical matter, but it is currently on foot with my colleagues.

I wish to clarify that we are currently considering our next steps, and the issue of whether there has been compliance is a part of that consideration. The question is not easily answered, as we understand that Clearview AI aren't present here in the jurisdiction, and understanding whether or not they've complied with orders is a technical matter.

On page 119 of the transcript, in response to a question by Senator Scarr regarding remediation through class-action law firms as opposed to getting an outcome through OAIC, I said:

Ms Kind: With respect to the Privacy Act proposal: that's an individual right of action, to make a claim of interference of privacy. It doesn't envisage a class-action approach. In terms of the functions, we have to bring civil proceedings under section 13 of the Privacy Act: those don't result in individual compensation referred back to individuals affected by privacy violations. I think that's the difference and it's why, perhaps, multiple avenues of enforcement might yield different outcomes.

I wish to clarify that civil penalty proceedings are commenced for contraventions under s13G of the Privacy Act.

On page 121 of the transcript, in response to a question by Senator Shoebridge regarding concerns about facial recognition in the retailing environment, I said:

Ms Kind: The Privacy Act requires entities to obtain consent when acquiring sensitive personal information, which biometric data qualifies as, with the exception of some permitted general situations in section 16 of the act.

I wish to clarify that the Privacy Act requires entities to obtain consent when acquiring sensitive personal information, which biometric data qualifies as, except in certain circumstances, including in respect of permitted general situations in s 16A of the Privacy Act.

Yours sincerely

Carly Kind
Privacy Commissioner

19 June 2024