

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO
BUDGET ESTIMATES 2024-2025

PA-Office of the Australian Information Commissioner

BE24-005 - Clearview AI

Senator David Shoebridge asked the following question on 29 May 2024:

Senator SHOEBRIDGE: Regarding Clearview AI, my understanding is that a direction was issued to delete Australian images from their databases. Has Clearview AI complied with that?

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.

Senator SHOEBRIDGE: Have they asserted that they've complied with the orders?

Ms Kind: I can't speak to that, I'm afraid. I can take that on notice.

Senator SHOEBRIDGE: Could you advise us whether or not they have agreed to comply with the orders and then, if they have, what—if any—due diligence you can undertake or that you are planning to verify the compliance with the orders?

Ms Kind: Yes

The response to the senator's question is as follows:

On 14 October 2021, the Australian Information Commissioner determined under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) that Clearview AI Inc (**Clearview**) breached Australians' privacy by scraping their biometric information from the internet and disclosing it through a facial recognition tool (**the Determination**) and made a declaration, amongst other things, that Clearview must destroy all data it has collected from individuals in Australia.

On 3 November 2021, Clearview applied for merits review of the Determination. On 8 May 2023, the Tribunal found Clearview was bound by the Privacy Act and breached Australian Privacy Principles 3.3 and 1.2, and directed the matter be listed for further hearing to determine the terms of the Tribunal's decision. On 8 August 2023, Clearview withdrew its application.

The effect of the withdrawal is that the Determination continues to have legal effect and the declarations remain valid. Clearview is therefore required to provide confirmation of its compliance with the Commissioner's declarations and the Commissioner will be considering next steps in this regard.

From: [PERERA-PILLAI,Felicity](#)
To: [HALE,Annamie](#); [WHIP,Caren](#); [MOORE,David](#)
Cc: [MASO,Kylie](#)
Bcc: [PERERA-PILLAI,Felicity](#)
Subject: Clearview AI Inc | Talking points for SRC on 25 June 2024[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Friday, 21 June 2024 12:54:00 PM
Attachments: [Clearview SRC Talking Points for 25 June 2024.docx](#)
[image002.jpg](#)
[image003.jpg](#)
[image001.jpg](#)

Hi Annamie and Caren

In relation to the Clearview agenda item, David and I have drafted some talking points for you ahead of the SRC meeting next Tuesday (**attached**).

Caren – we were unsure if you wanted to speak to the matter or if you preferred David to do so, however, please let us know and I can make any amendments to the draft talking points as required.

Annamie – we included a comment in the attached draft as to whether you wanted to speak to the financial considerations (e.g. cost of running this matter in the reduced budgetary environment) or if you wanted Caren / David to do so.

Please let me know if there's anything else required – I will also attach the draft talking points to our pre-SRC meeting calendar invite for Tuesday.

Thanks
Felicity



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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Wednesday, June 19, 2024 7:54 AM
To: WHIP,Caren <Caren.Whip@oaic.gov.au>
Cc: MOORE,David <David.Moore@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>
Subject: RE: [FOR URGENT CLEARANCE] Clearview AI Inc | Draft SRC paper [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Thanks very much Caren – I've sent through a meeting invite for us to discuss today and will draft a short paragraph in the memo re corresponding directly with Clearview in the meantime.

Thanks
Felicity



Felicity Perera-Pillai

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From: WHIP, Caren <Caren.Whip@oaic.gov.au>

Sent: Wednesday, June 19, 2024 3:01 AM

To: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Cc: MOORE, David <David.Moore@oaic.gov.au>; HALE, Annamie <Annamie.Hale@oaic.gov.au>;

MASO, Kylie <Kylie.Maso@oaic.gov.au>

Subject: RE: [FOR URGENT CLEARANCE] Clearview AI Inc | Draft SRC paper
[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Morning Felicity

I have reviewed both the legal memorandum and the SRC brief. The memo was really very well done – a very big thank you to you and David for producing such a quality document.

s42



It may also be useful to think about how we might engage the public/media **s42**

As you know there has been considerable media interest on this front. A public, albeit brief, public statement, will likely be appropriate once we have issued any correspondence to Clearview and provided Clearview with sufficient time to respond.

s42

I am not suggesting we add anything to the memo in this regard, but it is likely to be something the Commissioners will raise in next week's SRC, so it would be good to be on the front foot with any possible solutions.

Perhaps we can discuss later today – happy for you to find a time to discuss.

Regards

Caren



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Note: I am not in the office on Fridays.

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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Sent: Monday, June 17, 2024 1:56 PM

To: WHIP,Caren <Caren.Whip@oaic.gov.au>

Cc: MOORE,David <David.Moore@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>

Subject: [FOR URGENT CLEARANCE] Clearview AI Inc | Draft SRC paper [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: High

OFFICIAL: Sensitive//Legal Privilege

Hi Caren

As discussed, please find **attached** the draft SRC paper for your review and clearance, as well as the relevant attachments referred to in the paper. We are required to submit the

paper by **COB tomorrow, 18 June.**

As you will see, we have left a few comments throughout the draft SRC paper and Attachment A (the legal memorandum) indicating our views / reasoning.

Please let us know if you would like to discuss before the paper is submitted (we are relatively free tomorrow afternoon) and I can send through a meeting invite.

Many thanks

Felicity



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From: [PARAJULI,Shree](#)
To: [PERERA-PILLAI,Felicity](#)
Cc: [MOORE,David](#)
Subject: Clearview article summary [SEC=OFFICIAL]
Date: Monday, 24 June 2024 11:19:57 AM

Hi David and Felicity,

Please see the below summary for updates on the Clearview AI matter to be forwarded to Caren and Annamie.

1. On Friday 21 June 2024, Clearview AI reached a settlement of \$50 million in an Illinois lawsuit which consolidated lawsuits from around the U.S. filed against Clearview.
2. The settlement is not a traditional payout; plaintiffs will be given a share of Clearview's potential value and attorney fees' estimating at \$20 million will come out of the settlement amount.
3. Clearview is not admitting any liability as part of this settlement agreement, but a national campaign to notify plaintiffs is part of the agreement.
4. Attorneys for Clearview affirmed that Clearview did not have the funds to pay any legal judgment if the suit went forward.
5. The settlement agreement has raised concerns among privacy advocates and other litigants as legitimising Clearview's conduct in breach of privacy rights, given the company can continue to operate.
6. In 2022, Clearview settled a separate case in Illinois alleging violation of privacy rights by agreeing to stop selling access to its database to private businesses or individuals. The agreement still enabled Clearview to work with federal agencies and local law enforcement outside Illinois.

Kind regards,

Shree Parajuli

Determinations Support Officer

Office of the Australian Information Commissioner

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From: [PERERA-PILLAI,Felicity](#)
To: [PARAJULI,Shree](#)
Cc: [MOORE,David](#)
Subject: Clearview article summary [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Monday, 24 June 2024 12:28:26 PM

OFFICIAL: Sensitive//Legal Privilege

Hi Shree

Thanks very much for this – please see some minor amendments in **red** below (when you send it to Caren and Annamie, please also forward the original email chain i.e. the one from Strat Comms for context). Happy for you to send on to Annamie and Caren once the below changes have been made.

Thanks

Felicity

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From: PARAJULI,Shree <Shree.Parajuli@oaic.gov.au>
Sent: Monday, June 24, 2024 9:20 AM
To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Cc: MOORE,David <David.Moore@oaic.gov.au>
Subject: Clearview article summary [SEC=OFFICIAL]

Hi David and Felicity,

Please see the below summary for updates on the Clearview AI matter to be forwarded to Caren and Annamie.

Dear Annamie and Caren

Further to the [Associated Press article](#) on Clearview AI Inc (**Clearview**) which was published on Friday, please find below a summary of the article:

1. On Friday 21 June 2024, Clearview-~~AI~~ reached a settlement of **USD \$50 million** in an Illinois lawsuit which consolidated lawsuits from around the U.S. filed against Clearview (**by way of background**, in 2022, Clearview settled a separate case in Illinois alleging violation of privacy rights by agreeing to stop selling access to its database to private businesses or individuals, **however, the settlement agreement** ~~The agreement~~ still enabled Clearview to work with federal agencies and local law enforcement outside Illinois).
2. The settlement is not a traditional payout; plaintiffs will be given a share of Clearview's potential value, and attorney fees'-**estimating (which is estimated at USD \$20 million)** will come out of the settlement amount. Clearview is not admitting any liability as part of this settlement agreement, but a national campaign to notify plaintiffs is part of the agreement.
3. **As acknowledged by Wayne Anderson (a retired federal judge who mediated the dispute), the reason for such a 'creative' settlement was because Clearview 'could not have paid any legal judgment if the suit went forward' and 'there was great uncertainty as to whether Clearview would even have enough money to make it through to the end of trial, much less fund a judgment.'**
4. ~~Attorneys for Clearview affirmed that Clearview did not have the funds to pay any legal judgment if the suit went forward.~~
5. The settlement agreement has raised concerns among privacy advocates and other litigants as legitimising Clearview's conduct in breach of privacy rights, given the company can continue to operate.

Implications for us

- It is important to note that the matter involved a class action and was not an action brought by a regulator – the 'creative settlement' in this matter (which was necessitated by the fact it was likely Clearview could not afford to pay a monetary settlement or even make it through a trial) would not be available to us as a regulator.

s42

Kind regards,

Shree Parajuli

Determinations Support Officer

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From: [PARAJULI,Shree](#)
To: [HALE,Annamie](#); [WHIP,Caren](#)
Cc: [PERERA-PILLAI,Felicity](#); [MOORE,David](#)
Subject: FW: Articles of note – Monday 24 June 2024 [SEC=OFFICIAL]
Date: Monday, 24 June 2024 1:12:56 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[Media clips - 24 June 2024.docx](#)
[image003.jpg](#)

Dear Annamie and Caren

Further to the [Associated Press article](#) on Clearview AI Inc (**Clearview**) which was published on Friday, please find below a summary of the article:

1. On Friday 21 June 2024, Clearview reached a settlement of USD \$50 million in an Illinois lawsuit which consolidated lawsuits from around the U.S. filed against Clearview (by way of background, in 2022, Clearview settled a separate case in Illinois alleging violation of privacy rights by agreeing to stop selling access to its database to private businesses or individuals, however, the settlement agreement still enabled Clearview to work with federal agencies and local law enforcement outside Illinois).
2. The settlement is not a traditional payout; plaintiffs will be given a share of Clearview's potential value, and attorney fees' (which is estimated at USD \$20 million) will come out of the settlement amount. Clearview is not admitting any liability as part of this settlement agreement, but a national campaign to notify plaintiffs is part of the agreement.
3. As acknowledged by Wayne Anderson (a retired federal judge who mediated the dispute), the reason for such a 'creative' settlement was because Clearview '*could not have paid any legal judgment if the suit went forward*' and '*there was great uncertainty as to whether Clearview would even have enough money to make it through to the end of trial, much less fund a judgment.*'
4. The settlement agreement has raised concerns among privacy advocates and other litigants as legitimising Clearview's conduct in breach of privacy rights, given the company can continue to operate.

Implications for us

- It is important to note that the matter involved a class action and was not an action brought by a regulator – the 'creative settlement' in this matter (which was necessitated by the fact it was likely Clearview could not afford to pay a monetary settlement or even make it through a trial) would not be available to us as a regulator.

s42



Kind regards,

**Shree Parajuli**

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From: OAIC - Media <media@oaic.gov.au>

Sent: Monday, June 24, 2024 9:45 AM

To: OAIC Executive <DL_OAIC_Executive@external.dese.gov.au>; OAIC Leadership <DL_OAIC_Leadership@external.dese.gov.au>; OAIC - Strategic Communications <DL_OAIC_Strategic_Communications@oaic.gov.au>; MAXFIELD,Chris <Chris.Maxfield@oaic.gov.au>; LAMPE,Naomi <Naomi.Lampe@oaic.gov.au>; GOSAL,Nehal <Nehal.Gosal@oaic.gov.au>; CHENG,Caroline <Caroline.Cheng@oaic.gov.au>; JOVEVSKI,Lisa <Lisa.Jovevski@oaic.gov.au>; QUAN,Trish <Trish.Quan@oaic.gov.au>; LOORHAM,Nathaniel <Nathaniel.Loorham@oaic.gov.au>; SMITH,Delaney <Delaney.Smith@oaic.gov.au>; YEEND,Ruth <Ruth.Yeend@oaic.gov.au>; HARLOW,Bianca <Bianca.Harlow@oaic.gov.au>; CHEANG,Sam <Sam.Cheang@oaic.gov.au>; LAFFERTY,Leah <Leah.Lafferty@oaic.gov.au>; BRYAN,Siobhan <Siobhan.Bryan@oaic.gov.au>; ADAMS,Shane <Shane.Adams@oaic.gov.au>; GONZALEZ,Adriana <Adriana.Gonzalez@oaic.gov.au>; CONLON,Alexandra <Alexandra.Conlon@oaic.gov.au>; HODGES,Amanda <Amanda.Hodges@oaic.gov.au>; BEN-PELECH,Rachel <Rachel.Ben-Pelech@oaic.gov.au>; LAI,Bernie <Bernie.Lai@oaic.gov.au>; HARLOW,Bianca <Bianca.Harlow@oaic.gov.au>; BOOTH,Brett <Brett.Booth@oaic.gov.au>; LOCKYER,Brett <Brett.Lockyer@oaic.gov.au>; BRIGGS,Casey <Casey.Briggs@oaic.gov.au>; BURKE,Cassandra <Cassandra.Burke@oaic.gov.au>; BURNS,Shania <Shania.Burns@oaic.gov.au>; CAHILL,Isabella <Isabella.Cahill@oaic.gov.au>; WOLNIZER,Carla <Carla.Wolnizer@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; CALANDRA-ZAMECNIK,Carmela <Carmela.Calandra-Zamecnik@oaic.gov.au>; WOO,Caroline <Caroline.Woo@oaic.gov.au>; PETRIE,Claire <Claire.Petrie@oaic.gov.au>; DE PALMA,Claire <Claire.dePalma@oaic.gov.au>; SMITH,Delaney <Delaney.Smith@oaic.gov.au>; KORMAS,Dimitrios <Dimitrios.Kormas@oaic.gov.au>; LOH,Elaine <Elaine.Loh@oaic.gov.au>; MCPHEE,Emily <Emily.McPhee@oaic.gov.au>; ANNETTS,Fiona <Fiona.Annetts@oaic.gov.au>; DRUC,Galina <Galina.Druc@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; GILLBERG,Sally <Sally.Gillberg@oaic.gov.au>; HANAEE,Thomas <Thomas.Hanaee@oaic.gov.au>; HARRAR,Jasmina <Jasmina.Harrar@oaic.gov.au>; HUGGONSON,Sarah <Sarah.Huggonson@oaic.gov.au>; VAYZER,Iris <Iris.Vayzer@oaic.gov.au>; SCOLYER,Jackie <Jackie.Scolyer@oaic.gov.au>; CORBETT,Jason <Jason.Corbett@oaic.gov.au>; JEFFRESON,Oscar <Oscar.Jeffreson@oaic.gov.au>; ESLICK,Jessica <Jessica.Eslick@oaic.gov.au>; JANG, Ji <Ji.Jang@oaic.gov.au>; STEWART,Jo <Jo.Stewart@oaic.gov.au>; GRENFELL,Joseph <Joseph.Grenfell@oaic.gov.au>; TULLOCH,Karen <Karen.Tulloch@oaic.gov.au>; THORPE,Kate <Kate.Thorpe@oaic.gov.au>; KWONG,Katie <Katie.Kwong@oaic.gov.au>; SNODGRASS,Kristy <Kristy.Snodgrass@oaic.gov.au>; HILLIKER,Lauren <Lauren.Hilliker@oaic.gov.au>; JOVEVSKI,Lisa <Lisa.Jovevski@oaic.gov.au>; TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; LY,Barbara

<Barbara.Ly@oaic.gov.au>; SHUEY,Madeleine <Madeleine.Shuey@oaic.gov.au>; SUI,Margaret <Margaret.Sui@oaic.gov.au>; MATHISON,Rachel <Rachel.Mathison@oaic.gov.au>; BLOWES,Matthew <Matthew.Blowes@oaic.gov.au>; KURISHINGAL,Melissa <Melissa.Kurishingal@oaic.gov.au>; FOOT,Michael <Michael.Foot@oaic.gov.au>; LAMPE,Naomi <Naomi.Lampe@oaic.gov.au>; HEDGES,Nathan <Nathan.Hedges@oaic.gov.au>; LOORHAM,Nathaniel <Nathaniel.Loorham@oaic.gov.au>; PULS,Nicola <Nicola.Puls@oaic.gov.au>; BILAC,Nicole <Nicole.Bilac@oaic.gov.au>; DL_OAIC_Legal Services Team <LegalServicesTeam@external.dese.gov.au>; OAIC - Media <media@oaic.gov.au>; PARAJULI,Shree <Shree.Parajuli@oaic.gov.au>; PENN,Kayla <Kayla.Penn@oaic.gov.au>; PULS,Nicola <Nicola.Puls@oaic.gov.au>; MOHAN,Ritu <Ritu.Mohan@oaic.gov.au>; ROBERTS,Lucy <Lucy.Roberts@oaic.gov.au>; ROWSE,Lucy <Lucy.Rowse@oaic.gov.au>; YEEND,Ruth <Ruth.Yeend@oaic.gov.au>; MARIA,Sara <Sara.Maria@oaic.gov.au>; LOH,Sarah <Sarah.Loh@oaic.gov.au>; GOVIL,Shantanu <Shantanu.Govil@oaic.gov.au>; WATSON,Shona <Shona.Watson@oaic.gov.au>; BRYAN,Siobhan <Siobhan.Bryan@oaic.gov.au>; SMITH,Ashleigh <Ashleigh.Smith@oaic.gov.au>; ALEXANDROU,Soulla <Soulla.Alexandrou@oaic.gov.au>; OTOREPEC,Stephanie <Stephanie.Otorepec@oaic.gov.au>; SPILIOPOULOS,Steven <Steven.Spiliopoulos@oaic.gov.au>; TJONDRO,Eleanor <Eleanor.Tjondro@oaic.gov.au>; TODOROFF,Zoe <Zoe.Todoroff@oaic.gov.au>; MACKIE,Tom <Tom.Mackie@oaic.gov.au>; ASH,Travis <Travis.Ash@oaic.gov.au>; QUAN,Trish <Trish.Quan@oaic.gov.au>; TIAN,Wendy <Wendy.Tian@oaic.gov.au>

Cc: OAIC - Media <media@oaic.gov.au>

Subject: Articles of note – Monday 24 June 2024 [SEC=OFFICIAL]

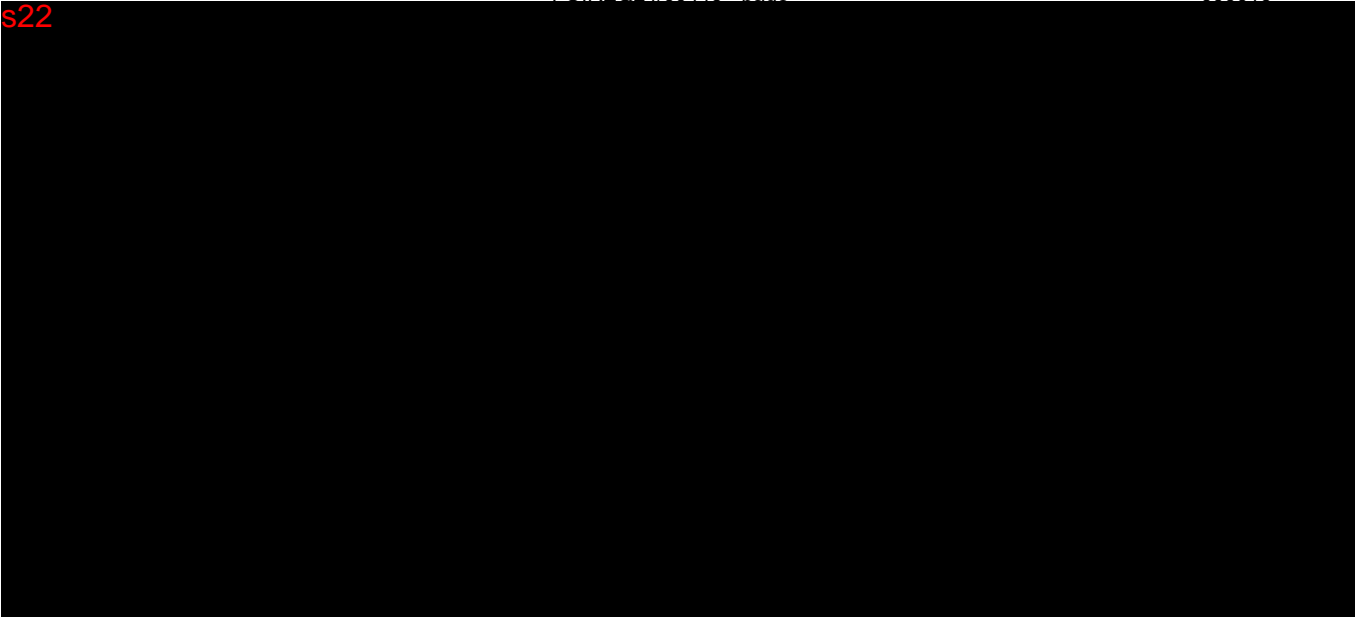
Good morning

Please see articles of note below. No actions, though a note that we were notified of the Corpus Christi College incident in March.

s22

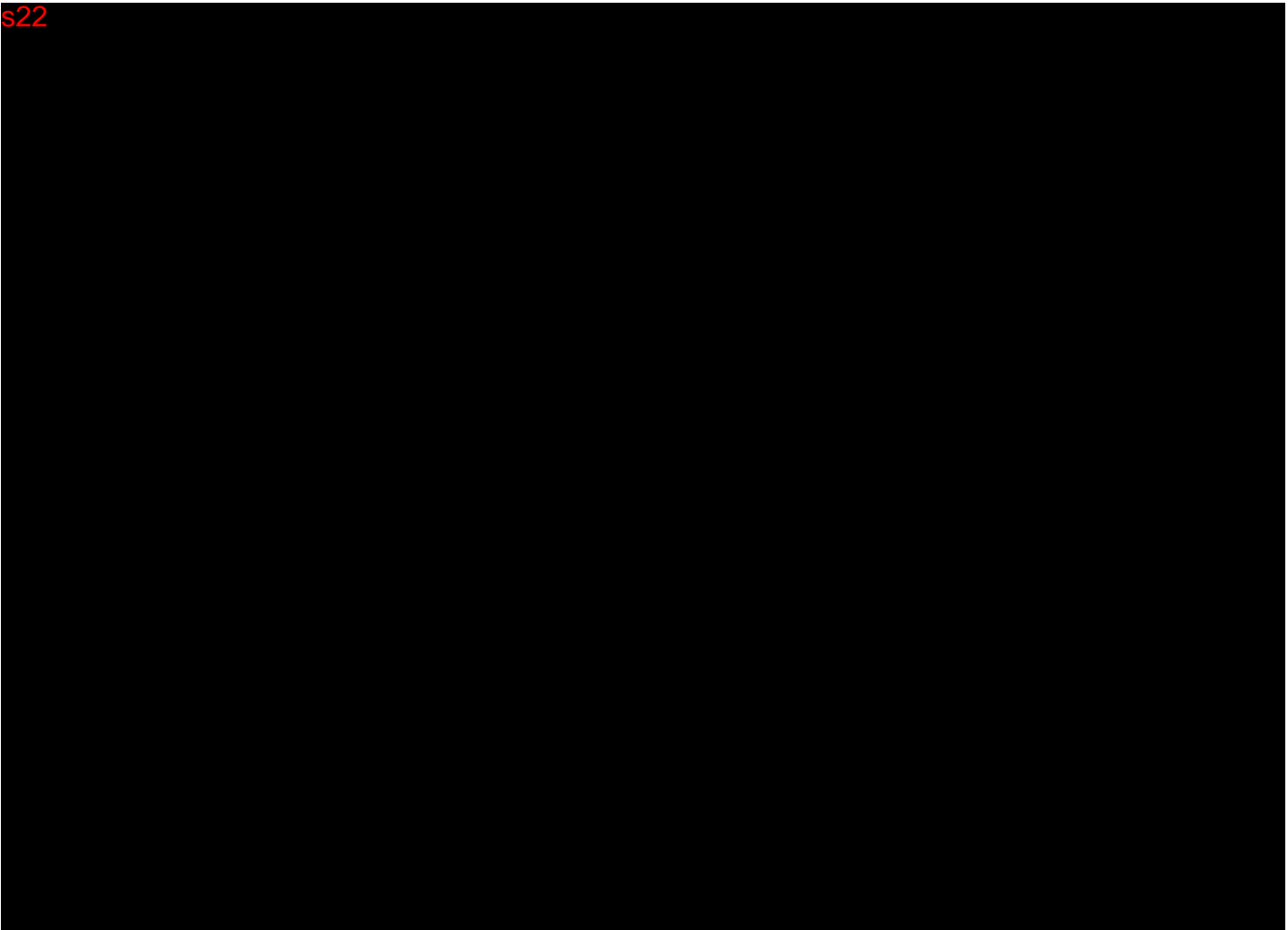


s22

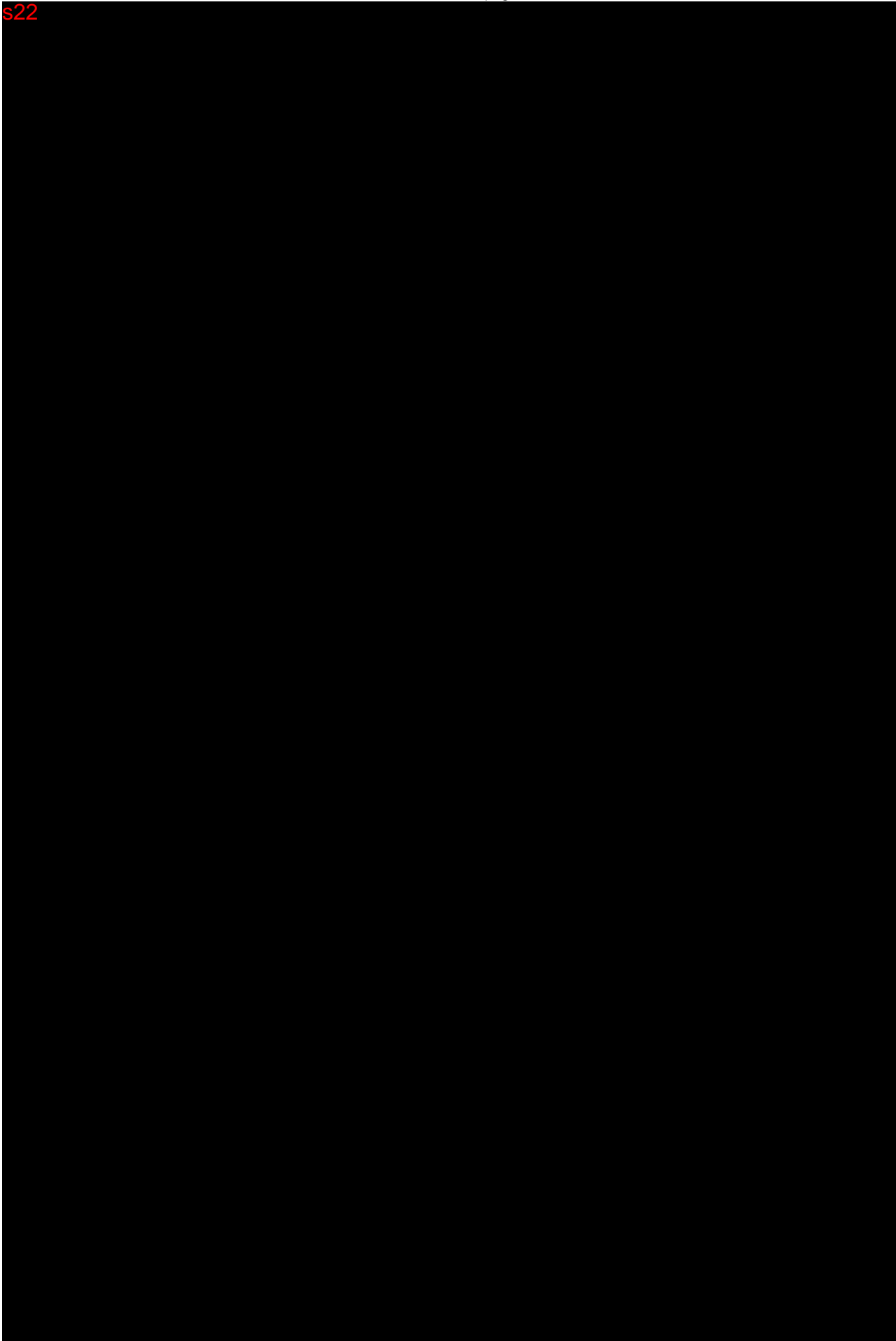
**Clearview AI**

[Associated Press](#): Facial recognition startup Clearview AI reached a settlement Friday in an Illinois lawsuit alleging its massive photographic collection of faces violated the subjects' privacy rights, a deal that attorneys estimate could be worth more than \$50 million. But the unique agreement gives plaintiffs in the federal suit a share of the company's potential value, rather than a traditional payout. Attorneys' fees estimated at \$20 million also would come out of the settlement amount.

s22



s22



Amy Kiely (she/her)



Assistant Director, Strategic Communications
Office of the Australian Information Commissioner
Brisbane

P +61 2 9942 4103 **M** s47F **E** amy.kiely@oaic.gov.au

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From: [PERERA-PILLAI, Felicity](#)
To: [HALE, Annamie](#)
Cc: [WHIP, Caren](#); [MOORE, David](#)
Subject: [(QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]
Date: Tuesday, 25 June 2024 12:53:07 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)
Importance: High

OFFICIAL: Sensitive

Hi Annamie

As discussed in our meeting today, here is our draft response to the [Clearview QoN](#) for your review and clearance.

I understand from Brenton's below email that you must clear and submit it to Carly and Liz by **COB tomorrow, Wednesday 26 June**.

Please let me know if we can assist with anything further.

Many thanks
Felicity



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OFFICIAL: Sensitive

From: ATTARD, Brenton <Brenton.Attard@oaic.gov.au>
Sent: Tuesday, June 18, 2024 1:23 PM
To: HALE, Annamie <Annamie.Hale@oaic.gov.au>; WHIP, Caren <Caren.Whip@oaic.gov.au>; MOORE, David <David.Moore@oaic.gov.au>
Cc: NURNEY, Lorraine <Lorraine.Nurney@oaic.gov.au>; LATHAM, Erica <Erica.Latham@oaic.gov.au>
Subject: (QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL]
Importance: High

Hi Annamie, Caren and David

Flagging that QoN BE24-005: Clearview AI ([D2024/018566](#)) has been reallocated from DR to Corporate. Referred for your action.

Regards

Brenton

From: ATTARD, Brenton <Brenton.Attard@oaic.gov.au>
Sent: Friday, June 14, 2024 6:47 PM
To: CASTALDI, Andre <Andre.Castaldi@oaic.gov.au>; GHALI, Sarah <Sarah.Ghali@oaic.gov.au>; HALE, Annamie <Annamie.Hale@oaic.gov.au>; AGO, Rocelle <Rocelle.Ago@oaic.gov.au>; GHALI, Rob <Rob.Ghali@oaic.gov.au>; GIBSON, Isla <Isla.Gibson@oaic.gov.au>; STEWART, Jo <Jo.Stewart@oaic.gov.au>; ROBERTS, Lucy <Lucy.Roberts@oaic.gov.au>; BUTLER, Larissa <Larissa.Butler@oaic.gov.au>; LATHAM, Erica <Erica.Latham@oaic.gov.au>
Cc: FALK, Angelene <Angelene.Falk@oaic.gov.au>; TYDD, Liz <Elizabeth.Tydd@oaic.gov.au>; KIND, Carly <Carly.Kind@oaic.gov.au>; DRAYTON, Melanie <Melanie.Drayton@oaic.gov.au>; RYDER, Penny <Penny.Ryder@oaic.gov.au>; NURNEY, Lorraine <Lorraine.Nurney@oaic.gov.au>; OTOREPEC, Stephanie <Stephanie.Otorepec@oaic.gov.au>; GRANT, Fiona <Fiona.Grant@oaic.gov.au>; LINEHAN, Lisa <Lisa.Linehan@oaic.gov.au>; CRONE, Simon <Simon.Crone@oaic.gov.au>
Subject: [For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL]
Importance: High

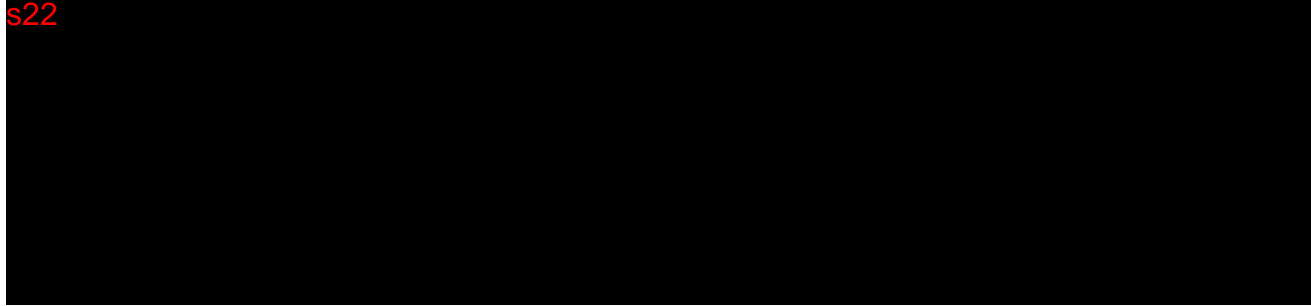
Dear Assistant Commissioners

The OAIC has received nine questions on notice following the OAIC's appearance at the May 2024 Budget Estimates hearing on Wednesday 29 May.

The deadline for submission of the Agency Head cleared responses to these QoNs is midday Friday 5 July 2024.

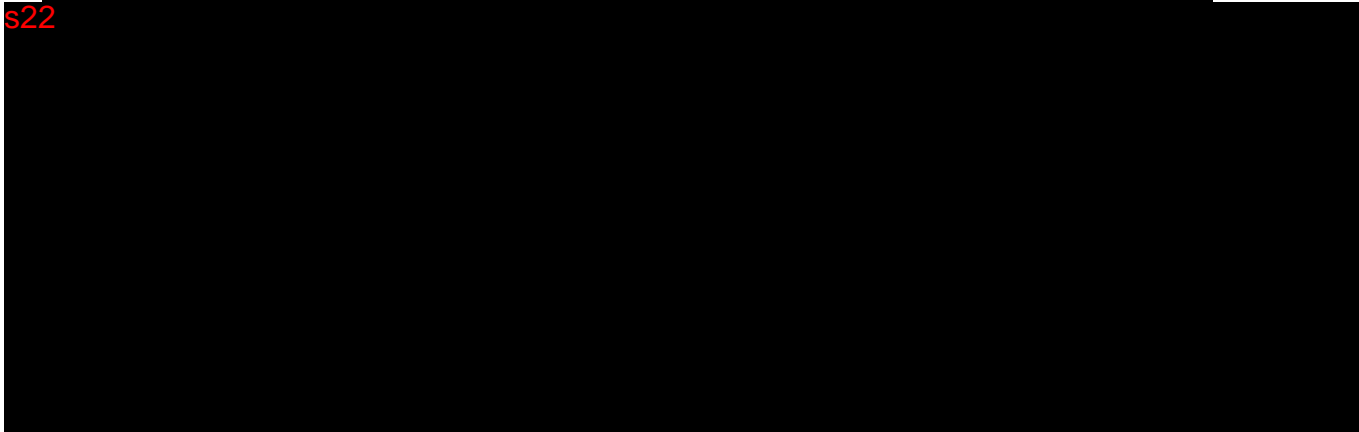
The QoN response templates have been prepared as below:

s22



BE24-005	Clearview AI	Annamie Hale / Caren Whip and David Moore	D2024/018566
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s22



Clearance timeline

- Assistant Commissioners to clear and submit to Commissioners (Privacy & FOI) by cob Wednesday 26 June
- Commissioners (Privacy & FOI) to clear and submit to AIC by cob Friday 28 June
- AIC Commissioner clearance by cob Wednesday 3 July.

The Acting Deputy Commissioner will review responses by exception. Please refer relevant response to Melanie for her review.

Please copy Lorraine and I in each step of clearance so that we can monitor, assist and progress the QoNs. The status of the QoNs will be tracked in this workbook: D2024/018561.

[@GIBSON,Isla](#) [@STEWART,Jo](#) [@ROBERTS, Lucy](#) [@BUTLER, Larissa](#) [@LATHAM, Erica](#) could you please allocate clearance time in diaries.

Let me know if you have any questions.

Regards,

Brenton

From: [MOORE,David](#)
To: [PERERA-PILLAI,Felicity](#)
Cc: [WHIP,Caren](#)
Subject: FW: SRC paper [SEC=OFFICIAL]
Date: Tuesday, 25 June 2024 1:11:08 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Hey Felicity – Can you start putting together a response to Angelene?



David Moore (he/him)
Principal Lawyer
Office of the Australian Information Commissioner
Sydney
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From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Tuesday, June 25, 2024 1:09 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Subject: SRC paper [SEC=OFFICIAL]

David thank you for the SRC paper on CV.

Does it contain the answer to the questions sought by Commissioners on 3 April, noted at point 2 of the Background section?

Regards
Angelene

From: [MOORE, David](#)
To: [FALK, Angelene](#)
Cc: [WHIP, Caren](#); [PERERA-PILLAI, Felicity](#)
Subject: RE: SRC paper [SEC=OFFICIAL]
Date: Tuesday, 25 June 2024 1:28:44 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Hi Angelene

The answers are primarily contained on page 10 of Attachment A.

In summary:

- a full estimate of costs to run the s 55A matter to its conclusion;
 - Para 23 - For a hearing that Clearview contests, the estimate is **\$550,000**. For an uncontested hearing, this was **\$210,000**
 - This includes AGS fees, most expert fees and Counsel disbursements,

s42

s42

- an indicative timeline of key dates if the s 55A proceedings were commenced.
 - Para 26:
 - Statement of claim could be prepared by AGS within 3 weeks of receiving instructions. We would then have to work through our internal processes to approve this before it could be filed.
 - Application for service outside of jurisdiction could be prepared within another 2 weeks (noting that in Meta, this issue proved contentious and I understand took around 2 months)
 - Beyond this, the timeline will really depend on whether Clearview chooses to participate. If they do participate, AGS suggested that it may take at least 1 to 2 years to receive judgment.

These factors were all considered in making our recommendation.

I look forward to discussing at the SRC meeting however please let me know if you have any further questions.

Thanks

David



David Moore (he/him)

Principal Lawyer

Office of the Australian Information Commissioner

Sydney

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From: FALK,Angelene <Angelene.Falk@oaic.gov.au>

Sent: Tuesday, June 25, 2024 1:09 PM

To: MOORE,David <David.Moore@oaic.gov.au>

Subject: SRC paper [SEC=OFFICIAL]

David thank you for the SRC paper on CV.

Does it contain the answer to the questions sought by Commissioners on 3 April, noted at point 2 of the Background section?

Regards

Angelene

From: [MOORE,David](#)
To: [FALK,Angelene](#)
Cc: [WHIP,Caren](#); [PERERA-PILLAI,Felicity](#)
Subject: RE: SRC paper [SEC=OFFICIAL]
Date: Tuesday, 25 June 2024 1:43:53 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Hi Angelene

CyberCX charged us 20k although the total would be a bit higher (AGS preparing the brief etc).

Thanks

David



David Moore (he/him)

Principal Lawyer

Office of the Australian Information Commissioner

Sydney

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From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Tuesday, June 25, 2024 1:40 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Subject: RE: SRC paper [SEC=OFFICIAL]

Thank you David, that's very helpful.

How much was the CyberX report?

Regards
Angelene

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Tuesday, June 25, 2024 1:29 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Subject: RE: SRC paper [SEC=OFFICIAL]

Hi Angelene

The answers are primarily contained on page 10 of Attachment A.

In summary:

- a full estimate of costs to run the s 55A matter to its conclusion;
 - Para 23 - For a hearing that Clearview contests, the estimate is **\$550,000**. For an uncontested hearing, this was **\$210,000**
 - This includes AGS fees, most expert fees and Counsel disbursements,

s42

s42

- an indicative timeline of key dates if the s 55A proceedings were commenced.
 - Para 26:
 - Statement of claim could be prepared by AGS within 3 weeks of receiving instructions. We would then have to work through our internal processes to approve this before it could be filed.
 - Application for service outside of jurisdiction could be prepared within another 2 weeks (noting that in Meta, this issue proved contentious and I understand took around 2 months)
 - Beyond this, the timeline will really depend on whether Clearview chooses to participate. If they do participate, AGS suggested that it may take at least 1 to 2 years to receive judgment.

These factors were all considered in making our recommendation.

I look forward to discussing at the SRC meeting however please let me know if you have any further questions.

Thanks

David

David Moore (he/him)
Principal Lawyer
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Sydney



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From: FALK,Angelene <Angelene.Falk@oaic.gov.au>

Sent: Tuesday, June 25, 2024 1:09 PM

To: MOORE,David <David.Moore@oaic.gov.au>

Subject: SRC paper [SEC=OFFICIAL]

David thank you for the SRC paper on CV.

Does it contain the answer to the questions sought by Commissioners on 3 April, noted at point 2 of the Background section?

Regards
Angelene

From: [HALE,Annamie](#)
To: [WHIP,Caren](#); [PARAJULI,Shree](#)
Cc: [PERERA-PILLAI,Felicity](#); [MOORE,David](#)
Subject: RE: Articles of note – Monday 24 June 2024 [SEC=OFFICIAL]
Date: Wednesday, 26 June 2024 10:10:37 AM
Attachments: [image003.jpg](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.jpg](#)
[image010.jpg](#)
[image011.jpg](#)

Agree – thank you Shree. It was really useful.



Annamie Hale (she/her)
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From: WHIP,Caren <Caren.Whip@oaic.gov.au>
Sent: Wednesday, June 26, 2024 9:55 AM
To: PARAJULI,Shree <Shree.Parajuli@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>
Cc: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Subject: RE: Articles of note – Monday 24 June 2024 [SEC=OFFICIAL]

Thank you for this comprehensive summary, Shree.

Regards

Caren



Caren Whip (she/her)
General Counsel
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
P +61 2 9942 4172 **E** caren.whip@oaic.gov.au

Note: I am not in the office on Fridays.

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From: PARAJULI,Shree <Shree.Parajuli@oaic.gov.au>
Sent: Monday, June 24, 2024 1:12 PM
To: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>
Cc: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Subject: FW: Articles of note – Monday 24 June 2024 [SEC=OFFICIAL]

Dear Annamie and Caren

Further to the [Associated Press article](#) on Clearview AI Inc (**Clearview**) which was published on Friday, please find below a summary of the article:

1. On Friday 21 June 2024, Clearview reached a settlement of USD \$50 million in an Illinois lawsuit which consolidated lawsuits from around the U.S. filed against Clearview (by way of background, in 2022, Clearview settled a separate case in Illinois alleging violation of privacy rights by agreeing to stop selling access to its database to private businesses or individuals, however, the settlement agreement still enabled Clearview to work with federal agencies and local law enforcement outside Illinois).
2. The settlement is not a traditional payout; plaintiffs will be given a share of Clearview's potential value, and attorney fees' (which is estimated at USD \$20 million) will come out of the settlement amount. Clearview is not admitting any liability as part of this settlement agreement, but a national campaign to notify plaintiffs is part of the agreement.
3. As acknowledged by Wayne Anderson (a retired federal judge who mediated the dispute), the reason for such a 'creative' settlement was because Clearview '*could not have paid any legal judgment if the suit went forward*' and '*there was great uncertainty as to whether Clearview would even have enough money to make it through to the end of trial, much less fund a judgment.*'
4. The settlement agreement has raised concerns among privacy advocates and other litigants as legitimising Clearview's conduct in breach of privacy rights, given the company can continue to operate.

Implications for us

- It is important to note that the matter involved a class action and was not an action brought by a regulator – the 'creative settlement' in this matter (which was necessitated by the fact it was likely Clearview could not afford to pay a monetary settlement or even make it through a trial) would not be available to us as a regulator.

s42



Kind regards,



Shree Parajuli

Determinations Support Officer
Office of the Australian Information Commissioner
GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0589 E shree.parajuli@oaic.gov.au

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From: OAIC - Media <media@oaic.gov.au>

Sent: Monday, June 24, 2024 9:45 AM

To: OAIC Executive <DL_OAIC_Executive@external.dese.gov.au>; OAIC Leadership <DL_OAIC_Leadership@external.dese.gov.au>; OAIC - Strategic Communications <DL_OAIC_Strategic_Communications@oaic.gov.au>; MAXFIELD,Chris <Chris.Maxfield@oaic.gov.au>; LAMPE,Naomi <Naomi.Lampe@oaic.gov.au>; GOSAL,Nehal <Nehal.Gosal@oaic.gov.au>; CHENG,Caroline <Caroline.Cheng@oaic.gov.au>; JOVEVSKI,Lisa <Lisa.Jovevski@oaic.gov.au>; QUAN,Trish <Trish.Quan@oaic.gov.au>; LOORHAM,Nathaniel <Nathaniel.Loorham@oaic.gov.au>; SMITH,Delaney <Delaney.Smith@oaic.gov.au>; YEEND,Ruth <Ruth.Yeend@oaic.gov.au>; HARLOW,Bianca <Bianca.Harlow@oaic.gov.au>; CHEANG,Sam <Sam.Cheang@oaic.gov.au>; LAFFERTY,Leah <Leah.Lafferty@oaic.gov.au>; BRYAN,Siobhan <Siobhan.Bryan@oaic.gov.au>; ADAMS,Shane <Shane.Adams@oaic.gov.au>; GONZALEZ,Adriana <Adriana.Gonzalez@oaic.gov.au>; CONLON,Alexandra <Alexandra.Conlon@oaic.gov.au>; HODGES,Amanda <Amanda.Hodges@oaic.gov.au>; BEN-PELECH,Rachel <Rachel.Ben-Pelech@oaic.gov.au>; LAI,Bernie <Bernie.Lai@oaic.gov.au>; HARLOW,Bianca <Bianca.Harlow@oaic.gov.au>; BOOTH,Brett <Brett.Booth@oaic.gov.au>; LOCKYER,Brett <Brett.Lockyer@oaic.gov.au>; BRIGGS,Casey <Casey.Briggs@oaic.gov.au>; BURKE,Cassandra <Cassandra.Burke@oaic.gov.au>; BURNS,Shania <Shania.Burns@oaic.gov.au>; CAHILL,Isabella <Isabella.Cahill@oaic.gov.au>; WOLNIZER,Carla <Carla.Wolnizer@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; CALANDRA-ZAMECNIK,Carmela <Carmela.Calandra-Zamecnik@oaic.gov.au>; WOO,Caroline <Caroline.Woo@oaic.gov.au>; PETRIE,Claire <Claire.Petrie@oaic.gov.au>; DE PALMA,Claire <Claire.dePalma@oaic.gov.au>; SMITH,Delaney <Delaney.Smith@oaic.gov.au>; KORMAS,Dimitrios <Dimitrios.Kormas@oaic.gov.au>; LOH,Elaine <Elaine.Loh@oaic.gov.au>; MCPHEE,Emily <Emily.McPhee@oaic.gov.au>; ANNETTS,Fiona <Fiona.Annetts@oaic.gov.au>; DRUC,Galina <Galina.Druc@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; GILLBERG,Sally <Sally.Gillberg@oaic.gov.au>; HANAEE,Thomas <Thomas.Hanaee@oaic.gov.au>; HARRAR,Jasmina <Jasmina.Harrar@oaic.gov.au>; HUGGONSON,Sarah <Sarah.Huggonson@oaic.gov.au>; VAYZER,Iris <Iris.Vayzer@oaic.gov.au>; SCOLYER,Jackie <Jackie.Scolyer@oaic.gov.au>; CORBETT,Jason <Jason.Corbett@oaic.gov.au>; JEFFRESON,Oscar <Oscar.Jeffreson@oaic.gov.au>; ESLICK,Jessica <Jessica.Eslick@oaic.gov.au>; JANG, Ji <Ji.Jang@oaic.gov.au>; STEWART,Jo <Jo.Stewart@oaic.gov.au>; GRENFELL,Joseph <Joseph.Grenfell@oaic.gov.au>; TULLOCH,Karen <Karen.Tulloch@oaic.gov.au>; THORPE,Kate <Kate.Thorpe@oaic.gov.au>; KWONG,Katie <Katie.Kwong@oaic.gov.au>; SNODGRASS,Kristy <Kristy.Snodgrass@oaic.gov.au>; HILLIKER,Lauren <Lauren.Hilliker@oaic.gov.au>; JOVEVSKI,Lisa

<Lisa.Jovevski@oaic.gov.au>; TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; LY,Barbara <Barbara.Ly@oaic.gov.au>; SHUEY,Madeleine <Madeleine.Shuey@oaic.gov.au>; SUI,Margaret <Margaret.Sui@oaic.gov.au>; MATHISON,Rachel <Rachel.Mathison@oaic.gov.au>; BLOWES,Matthew <Matthew.Blowes@oaic.gov.au>; KURISHINGAL,Melissa <Melissa.Kurishingal@oaic.gov.au>; FOOT,Michael <Michael.Foot@oaic.gov.au>; LAMPE,Naomi <Naomi.Lampe@oaic.gov.au>; HEDGES,Nathan <Nathan.Hedges@oaic.gov.au>; LOORHAM,Nathaniel <Nathaniel.Loorham@oaic.gov.au>; PULS,Nicola <Nicola.Puls@oaic.gov.au>; BILAC,Nicole <Nicole.Bilac@oaic.gov.au>; DL_OAIC_Legal Services Team <LegalServicesTeam@external.dese.gov.au>; OAIC - Media <media@oaic.gov.au>; PARAJULI,Shree <Shree.Parajuli@oaic.gov.au>; PENN,Kayla <Kayla.Penn@oaic.gov.au>; PULS,Nicola <Nicola.Puls@oaic.gov.au>; MOHAN,Ritu <Ritu.Mohan@oaic.gov.au>; ROBERTS,Lucy <Lucy.Roberts@oaic.gov.au>; ROWSE,Lucy <Lucy.Rowse@oaic.gov.au>; YEEND,Ruth <Ruth.Yeend@oaic.gov.au>; MARIA,Sara <Sara.Maria@oaic.gov.au>; LOH,Sarah <Sarah.Loh@oaic.gov.au>; GOVIL,Shantanu <Shantanu.Govil@oaic.gov.au>; WATSON,Shona <Shona.Watson@oaic.gov.au>; BRYAN,Siobhan <Siobhan.Bryan@oaic.gov.au>; SMITH,Ashleigh <Ashleigh.Smith@oaic.gov.au>; ALEXANDROU,Soulla <Soulla.Alexandrou@oaic.gov.au>; OTOREPEC,Stephanie <Stephanie.Otorepec@oaic.gov.au>; SPILIOTOPOULOS,Steven <Steven.Spiliotopoulos@oaic.gov.au>; TJONDRO,Eleanor <Eleanor.Tjondro@oaic.gov.au>; TODOROFF,Zoe <Zoe.Todoroff@oaic.gov.au>; MACKIE,Tom <Tom.Mackie@oaic.gov.au>; ASH,Travis <Travis.Ash@oaic.gov.au>; QUAN,Trish <Trish.Quan@oaic.gov.au>; TIAN,Wendy <Wendy.Tian@oaic.gov.au>

Cc: OAIC - Media <media@oaic.gov.au>

Subject: Articles of note – Monday 24 June 2024 [SEC=OFFICIAL]

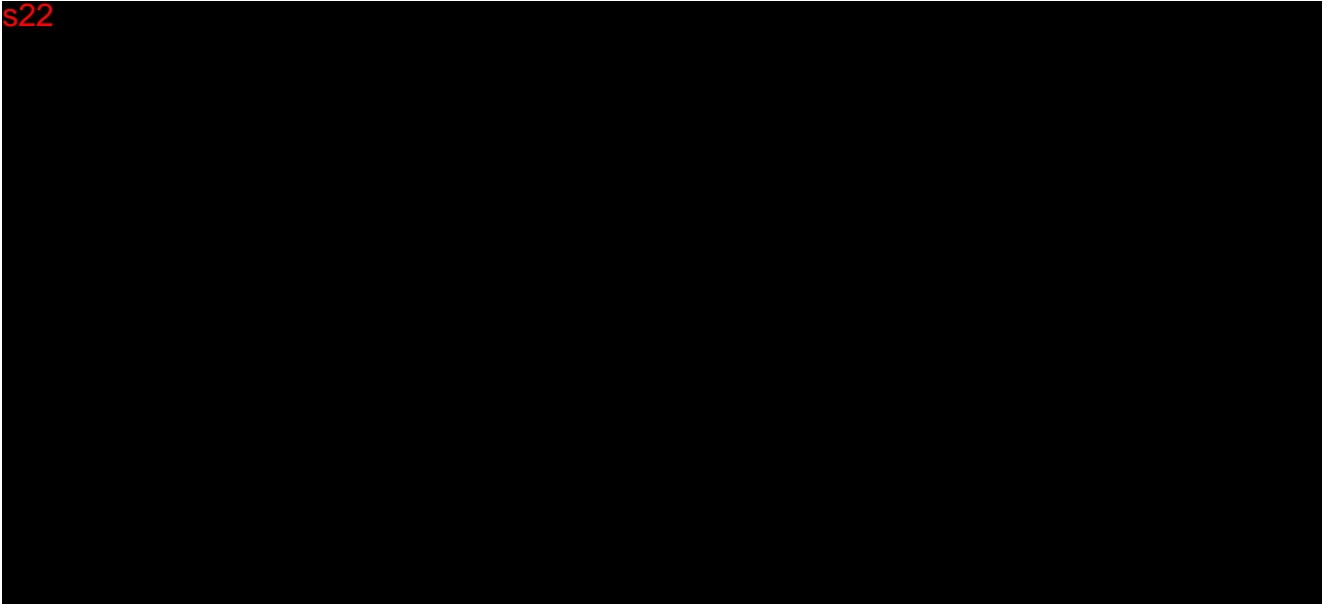
Good morning

Please see articles of note below. No actions, though a note that we were notified of the Corpus Christi College incident in March.

s22

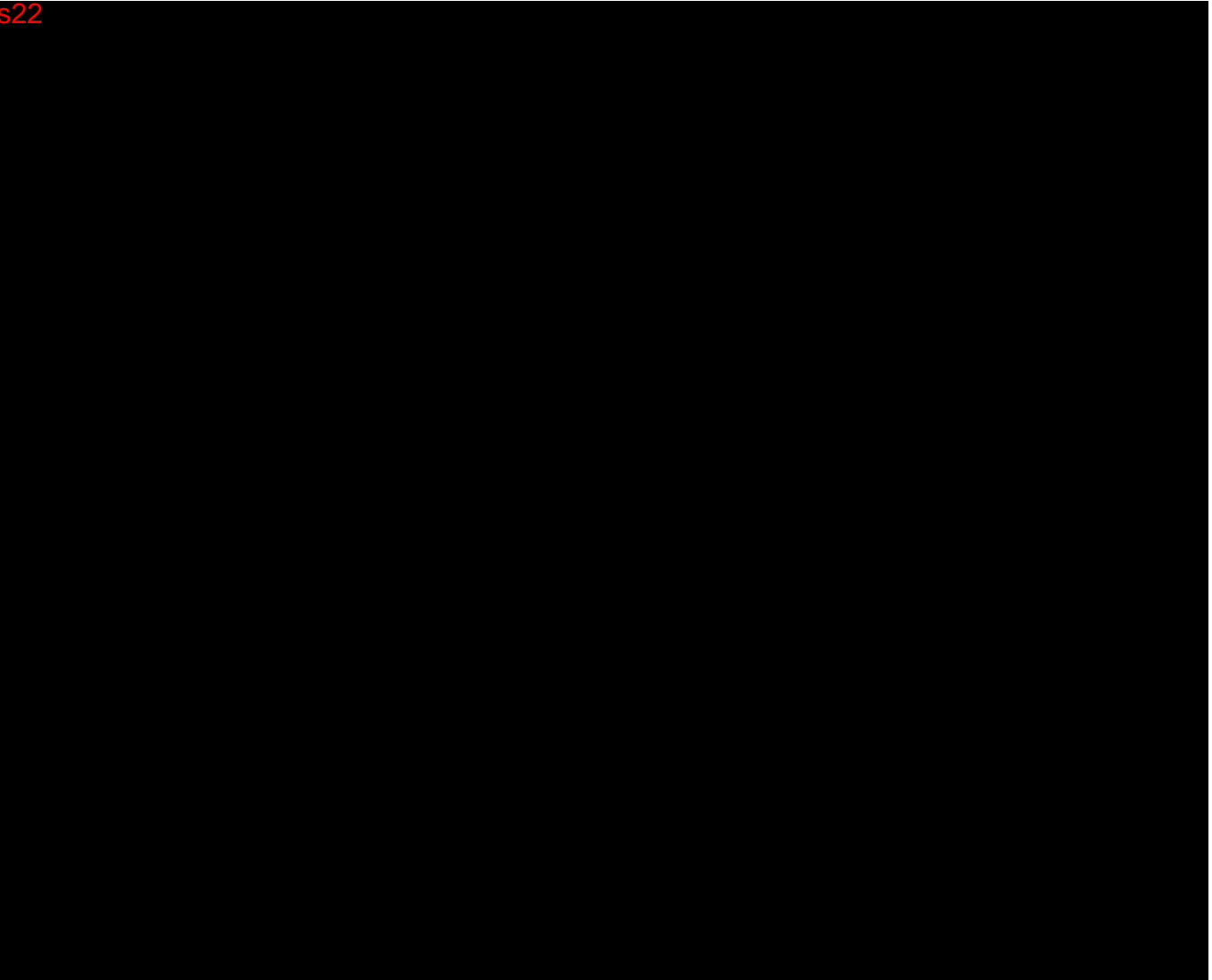


s22

**Clearview AI**

[Associated Press](#): Facial recognition startup Clearview AI reached a settlement Friday in an Illinois lawsuit alleging its massive photographic collection of faces violated the subjects' privacy rights, a deal that attorneys estimate could be worth more than \$50 million. But the unique agreement gives plaintiffs in the federal suit a share of the company's potential value, rather than a traditional payout. Attorneys' fees estimated at \$20 million also would come out of the settlement amount.

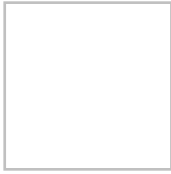
s22



s22



Amy Kiely (she/her)
Assistant Director, Strategic Communications
Office of the Australian Information Commissioner
Brisbane



P +61 2 9942 4103 **M** s47F **E** amy.kiely@oaic.gov.au

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From: [HALE,Annamie](#)
To: [PERERA-PILLAI,Felicity](#)
Cc: [WHIP,Caren](#); [MOORE,David](#)
Subject: RE: [(QoN reallocation)][For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]
Date: Thursday, 27 June 2024 9:07:09 PM
Attachments: [image003.jpg](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.jpg](#)
[image010.jpg](#)
[image011.jpg](#)

OFFICIAL: Sensitive

This is cleared.

Thank you



Annamie Hale (she/her)
Assistant Commissioner, Corporate
Office of the Australian Information Commissioner
Melbourne | GPO Box 5288 Sydney NSW 2001
M **s47F** E annamie.hale@oaic.gov.au



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OFFICIAL: Sensitive

From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Tuesday, June 25, 2024 12:53 PM
To: HALE,Annamie <Annamie.Hale@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Subject: [(QoN reallocation)][For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]
Importance: High

OFFICIAL: Sensitive

Hi Annamie

As discussed in our meeting today, here is our draft response to the [Clearview QoN](#) for your review and clearance.

I understand from Brenton's below email that you must clear and submit it to Carly and Liz by **COB tomorrow, Wednesday 26 June**.

Please let me know if we can assist with anything further.

Many thanks

Felicity



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

P +61 2 9246 0468 **E** felicity.perera-pillai@oaic.gov.au

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OFFICIAL: Sensitive

From: ATTARD,Brenton <Brenton.Attard@oaic.gov.au>

Sent: Tuesday, June 18, 2024 1:23 PM

To: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>

Cc: NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>; LATHAM,Erica <Erica.Latham@oaic.gov.au>

Subject: (QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL]

Importance: High

Hi Annamie, Caren and David

Flagging that QoN BE24-005: Clearview AI ([D2024/018566](#)) has been reallocated from DR to Corporate. Referred for your action.

Regards

Brenton

From: ATTARD,Brenton <Brenton.Attard@oaic.gov.au>

Sent: Friday, June 14, 2024 6:47 PM

To: CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>; GHALI,Sarah <Sarah.Ghali@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; GHALI,Rob <Rob.Ghali@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; STEWART,Jo <Jo.Stewart@oaic.gov.au>; ROBERTS,Lucy <Lucy.Roberts@oaic.gov.au>; BUTLER,Larissa <Larissa.Butler@oaic.gov.au>; LATHAM,Erica <Erica.Latham@oaic.gov.au>

Cc: FALK,Angelene <Angelene.Falk@oaic.gov.au>; TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>; OTOREPEC,Stephanie <Stephanie.Otorepec@oaic.gov.au>; GRANT,Fiona <Fiona.Grant@oaic.gov.au>; LINEHAN,Lisa <Lisa.Linehan@oaic.gov.au>; CRONE,Simon <Simon.Crone@oaic.gov.au>

Subject: [For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024
[SEC=OFFICIAL]

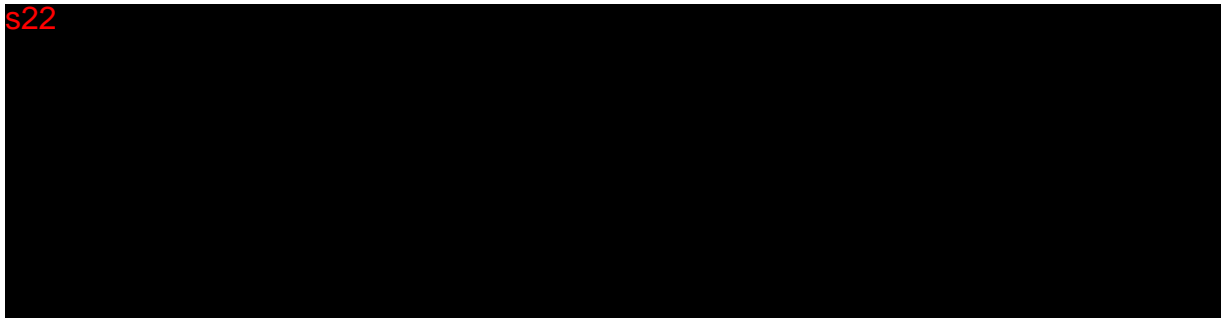
Importance: High

Dear Assistant Commissioners

The OAIC has received nine questions on notice following the OAIC’s appearance at the May 2024 Budget Estimates hearing on Wednesday 29 May.

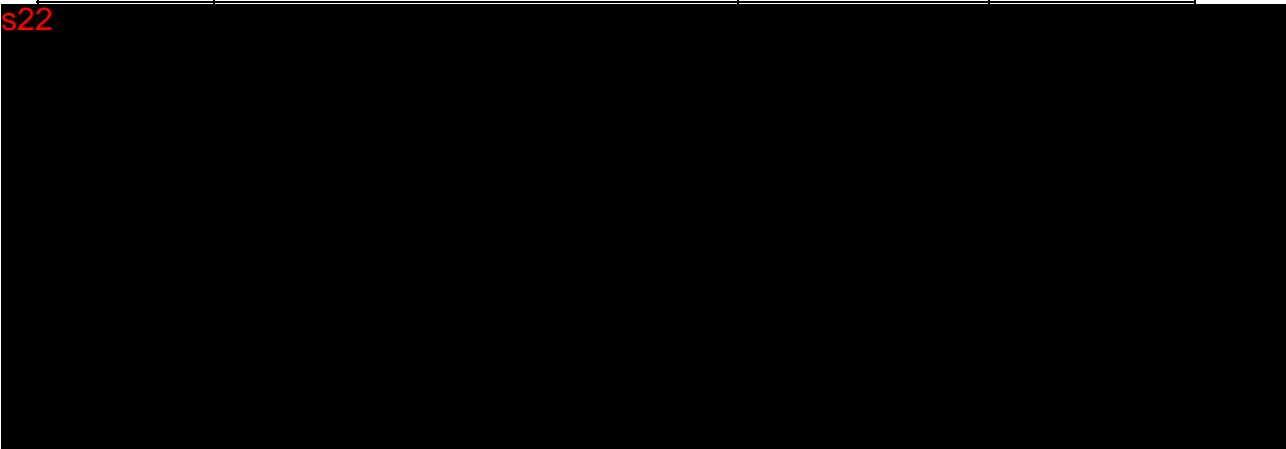
The deadline for submission of the Agency Head cleared responses to these QoNs is midday Friday 5 July 2024.

The QoN response templates have been prepared as below:



s22

BE24-005	Clearview AI	Annamie Hale / Caren Whip and David Moore	D2024/018566
----------	--------------	---	--------------



s22

s22

Clearance timeline

- Assistant Commissioners to clear and submit to Commissioners (Privacy & FOI) by cob Wednesday 26 June
- Commissioners (Privacy & FOI) to clear and submit to AIC by cob Friday 28 June
- AIC Commissioner clearance by cob Wednesday 3 July.

The Acting Deputy Commissioner will review responses by exception. Please refer relevant response to Melanie for her review.

Please copy Lorraine and I in each step of clearance so that we can monitor, assist and progress the QoNs. The status of the QoNs will be tracked in this workbook: D2024/018561.

[@GIBSON,Isla](#) [@STEWART,Jo](#) [@ROBERTS,Lucy](#) [@BUTLER,Larissa](#) [@LATHAM,Erica](#) could you please allocate clearance time in diaries.

Let me know if you have any questions.

Regards,

Brenton

From: [PERERA-PILLAI,Felicity](#)
To: [ATTARD,Brenton](#)
Cc: [HALE,Annamie](#); [MOORE,David](#); [WHIP,Caren](#); [NURNEY,Lorraine](#)
Subject: [(QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]
Date: Friday, 28 June 2024 10:25:36 AM
Attachments: [image003.jpg](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.jpg](#)
[image010.jpg](#)
[image001.jpg](#)

OFFICIAL: Sensitive

Hi Brenton

As per the below, Annamie has cleared the Clearview QoN ([D2024/018566](#)).

Please do not hesitate to let me know if there is anything further required.

Thanks
Felicity



Felicity Perera-Pillai
Senior Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0468 E felicity.perera-pillai@oaic.gov.au

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From: HALE,Annamie <Annamie.Hale@oaic.gov.au>
Sent: Thursday, June 27, 2024 7:07 PM
To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Subject: RE: [(QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

This is cleared.

Thank you



Annamie Hale (she/her)
Assistant Commissioner, Corporate
Office of the Australian Information Commissioner
Melbourne | GPO Box 5288 Sydney NSW 2001
M s47F **E** annamie.hale@oaic.gov.au



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OFFICIAL: Sensitive

From: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Tuesday, June 25, 2024 12:53 PM
To: HALE, Annamie <Annamie.Hale@oaic.gov.au>
Cc: WHIP, Caren <Caren.Whip@oaic.gov.au>; MOORE, David <David.Moore@oaic.gov.au>
Subject: [(QoN reallocation)][For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]
Importance: High

OFFICIAL: Sensitive

Hi Annamie

As discussed in our meeting today, here is our draft response to the [Clearview QoN](#) for your review and clearance.

I understand from Brenton's below email that you must clear and submit it to Carly and Liz by **COB tomorrow, Wednesday 26 June**.

Please let me know if we can assist with anything further.

Many thanks
Felicity



Felicity Perera-Pillai
Senior Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0468 **E** felicity.perera-pillai@oaic.gov.au

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Sent: Tuesday, June 18, 2024 1:23 PM
To: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Cc: NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>; LATHAM,Erica <Erica.Latham@oaic.gov.au>
Subject: (QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL]
Importance: High

Hi Annamie, Caren and David

Flagging that QoN BE24-005: Clearview AI ([D2024/018566](#)) has been reallocated from DR to Corporate. Referred for your action.

Regards

Brenton

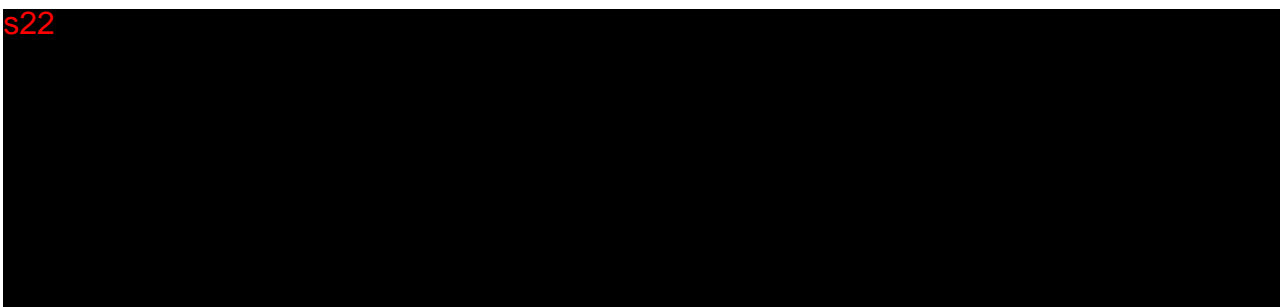
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To: CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>; GHALI,Sarah <Sarah.Ghali@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; GHALI,Rob <Rob.Ghali@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; STEWART,Jo <Jo.Stewart@oaic.gov.au>; ROBERTS,Lucy <Lucy.Roberts@oaic.gov.au>; BUTLER,Larissa <Larissa.Butler@oaic.gov.au>; LATHAM,Erica <Erica.Latham@oaic.gov.au>
Cc: FALK,Angelene <Angelene.Falk@oaic.gov.au>; TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>; OTOREPEC,Stephanie <Stephanie.Otorepec@oaic.gov.au>; GRANT,Fiona <Fiona.Grant@oaic.gov.au>; LINEHAN,Lisa <Lisa.Linehan@oaic.gov.au>; CRONE,Simon <Simon.Crone@oaic.gov.au>
Subject: [For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL]
Importance: High

Dear Assistant Commissioners

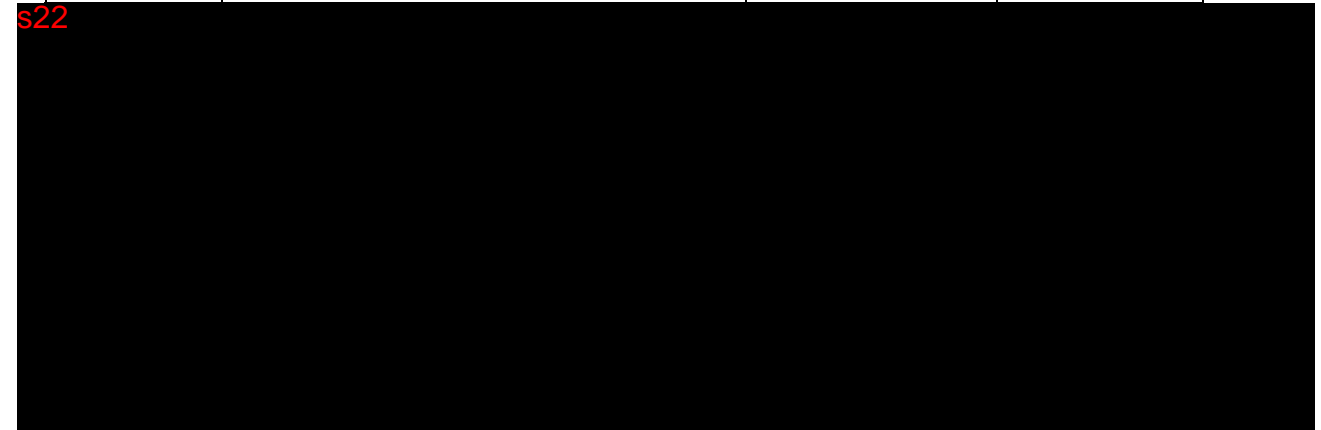
The OAIC has received nine questions on notice following the OAIC’s appearance at the May 2024 Budget Estimates hearing on Wednesday 29 May.

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The QoN response templates have been prepared as below:



BE24-005	Clearview AI	Annamie Hale / Caren Whip and David Moore	D2024/018566
----------	--------------	---	--------------



Clearance timeline

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- AIC Commissioner clearance by cob Wednesday 3 July.

The Acting Deputy Commissioner will review responses by exception. Please refer relevant response to Melanie for her review.

Please copy Lorraine and I in each step of clearance so that we can monitor, assist and progress the QoNs. The status of the QoNs will be tracked in this workbook: D2024/018561.

[@GIBSON,Isla](#) [@STEWART,Jo](#) [@ROBERTS, Lucy](#) [@BUTLER,Larissa](#) [@LATHAM, Erica](#) could you please allocate clearance time in diaries.

Let me know if you have any questions.

Regards,

Brenton

From: [MOORE,David](#)
To: [PERERA-PILLAI,Felicity](#)
Subject: FW: Legal papers for upcoming meetings [SEC=OFFICIAL]
Date: Friday, 28 June 2024 10:44:52 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

FYI



David Moore (he/him)
Principal Lawyer
Office of the Australian Information Commissioner
Sydney
P +61 2 9942 4131 **M** [s47F](#) **E** david.moore@oaic.gov.au

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From: OAIC - Secretariat <Secretariat@oaic.gov.au>
Sent: Friday, June 28, 2024 9:18 AM
To: MASO,Kylie <Kylie.Maso@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; HARTRIDGE,Sam <Sam.Hartridge@oaic.gov.au>; GOVIL,Shantanu <Shantanu.Govil@oaic.gov.au>
Subject: RE: Legal papers for upcoming meetings [SEC=OFFICIAL]

Good morning Kylie

One more paper has come to mind. At this week's SRC meeting Commissioners asked for another paper on Clearview in two meetings time, so it's on the forward agenda for 23 July.

Kind regards

Ali

From: MASO,Kylie <Kylie.Maso@oaic.gov.au>
Sent: Thursday, June 27, 2024 3:10 PM
To: OAIC - Secretariat <Secretariat@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; HARTRIDGE,Sam <Sam.Hartridge@oaic.gov.au>; GOVIL,Shantanu <Shantanu.Govil@oaic.gov.au>
Subject: Legal papers for upcoming meetings [SEC=OFFICIAL]

Hi Secretariat,

Here is the plan for legal papers for the upcoming SRC and GB meetings:

s22

Please let me know if you have any questions or concerns, or if you are aware of any papers we have missed.

Kind Regards,

Kylie



Kylie Maso (she/her)
Executive Director, Legal
Office of the Australian Information Commissioner
Canberra | GPO Box 5288 Sydney NSW 2001
P s47F E kylie.maso@oaic.gov.au

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From: [ATTARD, Brenton](#)
To: [PERERA-PILLAI, Felicity](#)
Cc: [HALE, Annamie](#); [MOORE, David](#); [WHIP, Caren](#); [NURNEY, Lorraine](#)
Subject: RE: [(QoN reallocation)][For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]
Date: Friday, 28 June 2024 11:54:04 AM
Attachments: [image002.jpg](#)
[image004.jpg](#)
[image009.jpg](#)
[image010.jpg](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)

OFFICIAL: Sensitive

Thank you Felicity.

OFFICIAL: Sensitive

From: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Friday, June 28, 2024 10:26 AM
To: ATTARD, Brenton <Brenton.Attard@oaic.gov.au>
Cc: HALE, Annamie <Annamie.Hale@oaic.gov.au>; MOORE, David <David.Moore@oaic.gov.au>; WHIP, Caren <Caren.Whip@oaic.gov.au>; NURNEY, Lorraine <Lorraine.Nurney@oaic.gov.au>
Subject: [(QoN reallocation)][For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi Brenton

As per the below, Annamie has cleared the Clearview QoN ([D2024/018566](#)).

Please do not hesitate to let me know if there is anything further required.

Thanks
Felicity



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Senior Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0468 E felicity.perera-pillai@oaic.gov.au

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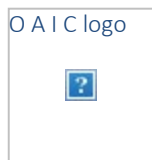
OFFICIAL: Sensitive

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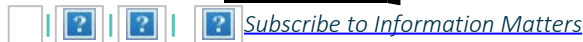
OFFICIAL: Sensitive

This is cleared.

Thank you



Annamie Hale (she/her)
Assistant Commissioner, Corporate
Office of the Australian Information Commissioner
Melbourne | GPO Box 5288 Sydney NSW 2001
M s47F **E** annamie.hale@oaic.gov.au



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OFFICIAL: Sensitive

From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
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Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Subject: [(QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL:Sensitive]
Importance: High

OFFICIAL: Sensitive

Hi Annamie

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I understand from Brenton's below email that you must clear and submit it to Carly and Liz by **COB tomorrow, Wednesday 26 June**.

Please let me know if we can assist with anything further.

Many thanks

Felicity



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

P +61 2 9246 0468 **E** felicity.perera-pillai@oaic.gov.au

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Sent: Tuesday, June 18, 2024 1:23 PM

To: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>

Cc: NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>; LATHAM,Erica <Erica.Latham@oaic.gov.au>

Subject: (QoN reallocation)[For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024 [SEC=OFFICIAL]

Importance: High

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Regards

Brenton

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Sent: Friday, June 14, 2024 6:47 PM

To: CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>; GHALI,Sarah <Sarah.Ghali@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; GHALI,Rob <Rob.Ghali@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; STEWART,Jo <Jo.Stewart@oaic.gov.au>; ROBERTS,Lucy <Lucy.Roberts@oaic.gov.au>; BUTLER,Larissa <Larissa.Butler@oaic.gov.au>; LATHAM,Erica <Erica.Latham@oaic.gov.au>

Cc: FALK,Angelene <Angelene.Falk@oaic.gov.au>; TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>; OTOREPEC,Stephanie <Stephanie.Otorepec@oaic.gov.au>; GRANT,Fiona <Fiona.Grant@oaic.gov.au>; LINEHAN,Lisa <Lisa.Linehan@oaic.gov.au>; CRONE,Simon <Simon.Crone@oaic.gov.au>

Subject: [For action] Preparation of responses to QoNs taken at Estimates hearing 29 May 2024
[SEC=OFFICIAL]

Importance: High

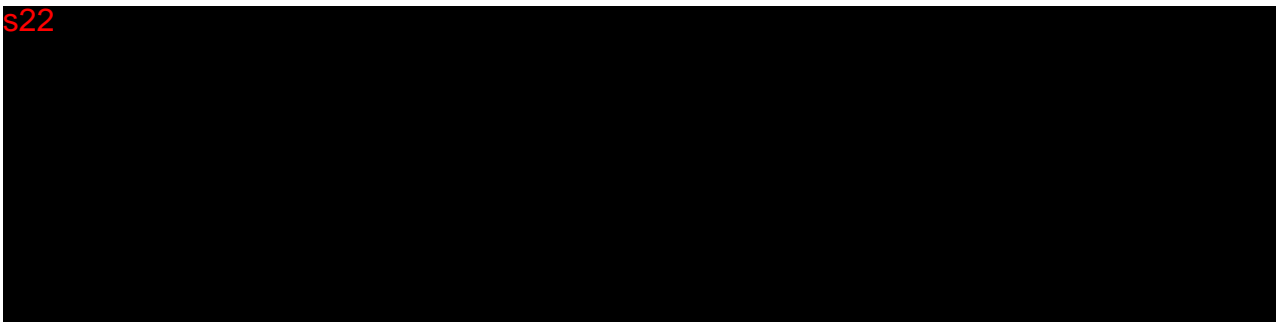
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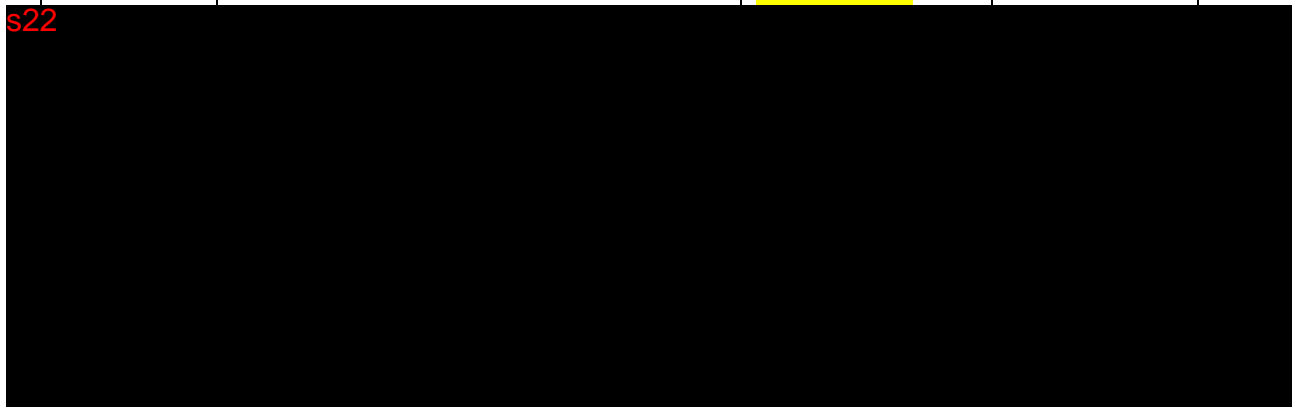
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BE24-005	Clearview AI	Annamie Hale / Caren Whip and David Moore	D2024/018566
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[@GIBSON,Isla](#) [@STEWART,Jo](#) [@ROBERTS,Lucy](#) [@BUTLER,Larissa](#) [@LATHAM,Erica](#) could you please allocate clearance time in diaries.

Let me know if you have any questions.

Regards,

Brenton

From: [PERERA-PILLAI, Felicity](#)
To: [MOORE, David](#)
Subject: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL]
Date: Monday, 1 July 2024 11:55:54 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

Meeting Request	
Date meeting required by	Thursday 4 July 2024
Fixed or flexible	Fixed (but there may be some flexibility if the Commissioner is unavailable this week)
If fixed, why?	Caren Whip, General Counsel, is on leave for two weeks after this Thursday and as per the action items arising from the SRC meeting on 25 June, Commissioner Kind is to lead an out-of-session meeting to discuss next steps on the Clearview matter, and the matter is on the agenda for the 23 July SRC meeting (with papers due on 16 July).
Meeting length	30 minutes
OAIC Attendees	Carly Kind, Privacy Commissioner Andre Castaldi, Assistant Commissioner Dispute Resolution Caren Whip, General Counsel David Moore, Principal Lawyer Felicity Perera-Pillai, Senior Lawyer Fiona Grant, Director
OAIC Meeting Lead	Carly Kind, Privacy Commissioner
External Attendees	N/A
Purpose of the meeting/outcome sought	To decide on next steps for the Clearview matter, including: (1) whether the Dispute Resolution Branch should now take over the matter; (2) s42 [REDACTED] (3) and the preparation for the SRC meeting on 23 July.
Agenda items	<ol style="list-style-type: none"> 1. Next steps – s42 [REDACTED] 2. Whether the Dispute Resolution Branch should now take over the file; and 3. Preparation for SRC to be held on 23 July (paper due 16 July), including whether DR to draft paper and send to Legal for consultation
Pre-reading/documents (including CM)	N/A

| link) |

Dear Lucy

We are requesting a meeting with Commissioner Kind either tomorrow, Wednesday or Thursday this week.

Kind regards



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

P +61 2 9246 0468 **E** felicity.perera-pillai@oaic.gov.au

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From: [MOORE,David](#)
To: [PERERA-PILLAI,Felicity](#)
Subject: RE: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL]
Date: Monday, 1 July 2024 12:43:23 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Hey Felicity

Thanks – I have made a few little changes. I have also reached to Andre to give him a heads up and he mentioned we should include Annan, which I have done. I am also happy to keep it at half an hour.

For pre-reading, should we put the SRC paper/Legal Memo but maybe put a note for Lucy saying that this pre-reading isn't strictly necessary, but it does set out the background and history for the matter which may be useful? Conscious that Andre and Annan may not be across the details.

Subject to that, please send.

Cheers

David



David Moore (he/him)
 Principal Lawyer
 Office of the Australian Information Commissioner
 Sydney
 P +61 2 9942 4131 M S47F E david.moore@oaic.gov.au

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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Monday, July 1, 2024 11:56 AM
To: MOORE,David <David.Moore@oaic.gov.au>
Subject: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL]

Meeting Request	
Date meeting required by	Thursday 4 July 2024
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OAIC Meeting Lead	Carly Kind, Privacy Commissioner
External Attendees	N/A
Purpose of the meeting/outcome sought	To decide on next steps for the Clearview matter, including: s42 [REDACTED] [REDACTED] [REDACTED] (2) which branch should take the lead on this work; (3) and the preparation for the SRC meeting on 23 July.
Agenda items	<ol style="list-style-type: none"> 1. s42 [REDACTED] [REDACTED] 2. Which branch should take the lead on this work; and 3. Preparation for SRC to be held on 23 July (paper due 16 July), including whether DR to draft paper and send to Legal for consultation
Pre-reading/documents (including CM link)	N/A

Dear Lucy

We are requesting a meeting with Commissioner Kind either tomorrow, Wednesday or Thursday this week.

Kind regards



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

P +61 2 9246 0468 E felicity.perera-pillai@oaic.gov.au

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From: [MOORE,David](#)
To: [CASTALDI,Andre](#); [BOAG,Annan](#); [GRANT,Fiona](#)
Cc: [WHIP,Caren](#); [PERERA-PILLAI,Felicity](#)
Subject: FW: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Monday, 1 July 2024 1:33:12 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[Clearview AI SRC Paper - Final 19.06.24.pdf](#)
[Attachment A - Legal memorandum \[Privileged\].pdf](#)
[image004.jpg](#)

OFFICIAL: Sensitive

Hi Andre, Annan and Fiona

Please see below a request to meet with Carly about the Clearview matter. Annan, Andre suggested that we include you in the request as well.

One of the action items from the latest SRC meeting was to have a meeting with Carly to discuss next steps on Clearview in light of the decision not to progress enforcement in the courts. Carly also mentioned that DR may be better placed to take this matter forward, which is why we are suggesting that you all attend this meeting.

Felicity has **attached** the SRC paper and legal memorandum (please note, both contain privileged materials) which may be helpful background for you, although you do not necessarily need to read them. We can also provide you with a quick phone update prior to any meeting if that will help.

Cheers

David



David Moore (he/him)
Principal Lawyer
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P +61 2 9942 4131 **M** [s47F](#) **E** david.moore@oaic.gov.au

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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Monday, July 1, 2024 1:05 PM
To: ROBERTS, Lucy <Lucy.Roberts@oaic.gov.au>
Cc: MOORE,David <David.Moore@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>

Subject: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive

Meeting Request	
Date meeting required by	Thursday 4 July 2024
Fixed or flexible	Fixed (but there may be some flexibility if the Commissioner is unavailable this week)
If fixed, why?	Caren Whip, General Counsel, is on leave for two weeks after this Thursday and as per the action items arising from the SRC meeting on 25 June, Commissioner Kind is to lead an out-of-session meeting to discuss next steps on the Clearview matter, and the matter is on the agenda for the 23 July SRC meeting (with papers due on 16 July).
Meeting length	30 minutes
OAIC Attendees	Carly Kind, Privacy Commissioner Andre Castaldi, Assistant Commissioner Dispute Resolution Annan Boag, Assistant Commissioner Digital ID & Implementation Caren Whip, General Counsel David Moore, Principal Lawyer Felicity Perera-Pillai, Senior Lawyer Fiona Grant, Director
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External Attendees	N/A
Purpose of the meeting/outcome sought	To decide on next steps for the Clearview matter, including: s42 [REDACTED] [REDACTED] [REDACTED] (2) which branch should take the lead on this work; and (3) the preparation for the SRC meeting on 23 July.
Agenda items	1. s42 [REDACTED] [REDACTED] [REDACTED] 2. Which branch should take the lead on this work; and

	3. Preparation for SRC to be held on 23 July (paper due 16 July), including whether DR to draft paper and send to Legal for consultation
Pre-reading/documents (including CM link)	<p>1. Clearview AI SRC Paper (for SRC held on 25 June 2024)</p> <p>2. Attachment A to SRC Paper [Privileged]</p> <p>[Please note that the above materials are not essential pre-reading, but they do set out the background and history for the matter which may be useful]</p>

Dear Lucy

We are requesting a meeting with Commissioner Kind either tomorrow, Wednesday or Thursday this week.

Kind regards



Felicity Perera-Pillai

Senior Lawyer

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Perth | GPO Box 5288 Sydney NSW 2001

P +61 2 9246 0468 **E** felicity.perera-pillai@oaic.gov.au

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From: [ROBERTS, Lucy](#)
To: [PERERA-PILLAI, Felicity](#)
Cc: [MOORE, David](#); [WHIP, Caren](#)
Subject: RE: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive]
Date: Monday, 1 July 2024 2:31:46 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

OFFICIAL: Sensitive

Hi all

We are quite limited for time this week however, I believe all attendees will be available at 12:00pm on Wednesday 3 July 2024.

Please let me know if this is not suitable, and if you would like me to send through the meeting invite.

Kind regards
Lucy



Lucy Roberts (she/her)
 Executive Assistant to the Privacy Commissioner
 Office of the Australian Information Commissioner
 P +61 2 9942 4198 E lucy.roberts@oaic.gov.au

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From: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Monday, July 1, 2024 1:05 PM
To: ROBERTS, Lucy <Lucy.Roberts@oaic.gov.au>
Cc: MOORE, David <David.Moore@oaic.gov.au>; WHIP, Caren <Caren.Whip@oaic.gov.au>
Subject: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive

Meeting Request	
Date meeting required by	Thursday 4 July 2024

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Purpose of the meeting/outcome sought	To decide on next steps for the Clearview matter, including: s42 [REDACTED] [REDACTED] [REDACTED] (2) which branch should take the lead on this work; and (3) the preparation for the SRC meeting on 23 July.
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Pre-reading/documents (including CM link)	<ol style="list-style-type: none"> 1. Clearview AI SRC Paper (for SRC held on 25 June 2024) 2. Attachment A to SRC Paper [Privileged]

[Please note that the above materials are not essential pre-reading, but they do set out the background and history for the matter which may be useful]

Dear Lucy

We are requesting a meeting with Commissioner Kind either tomorrow, Wednesday or Thursday this week.

Kind regards



Felicity Perera-Pillai

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From: [MOORE, David](#)
To: [BOAG, Annan](#)
Cc: [PERERA-PTILAI, Felicity](#)
Subject: RE: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive]
Date: Monday, 1 July 2024 5:42:29 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

OFFICIAL: Sensitive

Hi Annan

Not a problem. We were trying to get hold of the minutes but were not successful.

s42

s47E(d)

[REDACTED] We could write a letter based on the information that we already know/have; effectively setting out our expectations for Clearview in to comply with our determination. However, this part of the SRC meeting discussion was quite short and I think its worth considering what we want to achieve from this letter, what the likely reaction to it may be, and then consider our approach from there, be it an open letter or otherwise.

Please let me know if you have any more questions.

Thanks

David



David Moore (he/him)
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P +61 2 9942 4131 M [s47F](#) E david.moore@oaic.gov.au

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From: BOAG,Annan <Annan.Boag@oaic.gov.au>
Sent: Monday, July 1, 2024 4:57 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Subject: RE: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi David,

Thanks for sharing. I am trying to remember the discussion in SRC and who put forward the idea of finalising by way of a letter setting out our expectations – which might be published. Was it your suggestion or was it Carly's? Or someone else?

s47E(d)

Annan

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From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Monday, July 1, 2024 1:33 PM
To: CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>; GRANT,Fiona <Fiona.Grant@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Subject: FW: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive

Hi Andre, Annan and Fiona

Please see below a request to meet with Carly about the Clearview matter. Annan, Andre suggested that we include you in the request as well.

One of the action items from the latest SRC meeting was to have a meeting with Carly to discuss next steps on Clearview in light of the decision not to progress enforcement in the courts. Carly also mentioned that DR may be better placed to take this matter forward,

which is why we are suggesting that you all attend this meeting.

Felicity has **attached** the SRC paper and legal memorandum (please note, both contain privileged materials) which may be helpful background for you, although you do not necessarily need to read them. We can also provide you with a quick phone update prior to any meeting if that will help.

Cheers

David



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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Sent: Monday, July 1, 2024 1:05 PM

To: ROBERTS,Lucy <Lucy.Roberts@oaic.gov.au>

Cc: MOORE,David <David.Moore@oaic.gov.au>; WHIP,Caren

<Caren.Whip@oaic.gov.au>

Subject: [MEETING REQUEST] - Meeting with Commissioner Kind to discuss Clearview AI matter as per SRC action item [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive

Meeting Request	
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OAIC Meeting Lead	Carly Kind, Privacy Commissioner
External Attendees	N/A
Purpose of the meeting/outcome sought	To decide on next steps for the Clearview matter, including: s42 [REDACTED] [REDACTED] [REDACTED] [REDACTED] (2) which branch should take the lead on this work; and (3) the preparation for the SRC meeting on 23 July.
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Pre-reading/documents (including CM link)	<ol style="list-style-type: none"> Clearview AI SRC Paper (for SRC held on 25 June 2024) Attachment A to SRC Paper [Privileged] <p>[Please note that the above materials are not essential pre-reading, but they do set out the background and history for the matter which may be useful]</p>

Dear Lucy

We are requesting a meeting with Commissioner Kind either tomorrow, Wednesday or Thursday this week.

Kind regards



Felicity Perera-Pillai

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Perth | GPO Box 5288 Sydney NSW 2001

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From: [PERERA-PILLAI, Felicity](#)
To: [WHIP, Caren](#); [MOORE, David](#)
Subject: Clearview FPP meeting file note 04.07.24 [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Thursday, 4 July 2024 5:50:47 PM
Attachments: [Clearview - FPP file note - 04.07.24.docx](#)
[image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

OFFICIAL: Sensitive//Legal Privilege

Hi both

Please find **attached** my file note from today – it is also saved on the Resolve file.

Thanks
Felicity



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

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From: [WHIP,Caren](#)
To: [PERERA-PILLAI,Felicity](#); [MOORE,David](#)
Subject: RE: Clearview FPP meeting file note 04.07.24 [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Thursday, 4 July 2024 6:56:00 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

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Thanks so much Felicity, this is helpful in terms of next steps.

Regards
Caren



Caren Whip (she/her)
General Counsel
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Sydney | GPO Box 5288 Sydney NSW 2001
P +61 2 9942 4172 **E** caren.whip@oaic.gov.au

Note: I am not in the office on Fridays.

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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Thursday, July 4, 2024 5:50 PM
To: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Subject: Clearview FPP meeting file note 04.07.24 [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Hi both

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From: [PERERA-PILLAI, Felicity](#)
To: [MOORE, David](#)
Subject: Clearview | Discussion points [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Monday, 22 July 2024 5:13:41 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

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Hi David

I have drafted some discussion points for Caren (and then Annan/Carly) to consider based off our meeting for your review and consideration.

A couple of drafting notes:

1. We discussed keeping the statement relatively broad and not specifically naming Clearview (although Carly wanted us to refer to their conduct / circumstances) – I have therefore set out some public facts about the case but have not mentioned Clearview;
2. **s42** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
3. As Carly requested, I drafted the below as 'discussion bullet points' rather than a complete statement at this stage; and
4. I have adopted the format of the TikTok statement on our website ([TikTok preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

++++

Bullet points for discussion:

- My office [drafting note: Carly to release the statement and sign off as PC] has been considering whether to take further action against an organisation that was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) which found that the organisation had failed to comply with the Australian Privacy Principles in Schedule 1 of the Privacy Act by providing a facial recognition search product for registered users and had therefore interfered with the privacy of Australian individuals. Notably, the organisation's product utilised a web crawler (sometimes called a 'web spider') to indiscriminately collect (or 'scrape') images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as the organisation withdrew its application to have the Determination reviewed by the Administrative Appeals Tribunal, the Australian Information Commissioner made declarations, including for the [REDACTED]

organisation to cease collecting images from individuals in Australia. [Drafting note: to avoid any s 29 issues, I confirm that this is all publicly available information as per the Determination.]

- After much consideration, I have concluded that there is insufficient evidence to satisfy me that the organisation is currently carrying on business in Australia for the purpose of s 5B(3) of the Privacy Act. Websites, and particularly social media sites, widely use ‘caching’, which is where some webpage data is stored on a temporary server closest to the end user so that the webpage can be accessed more quickly. With caching, web browsers can display webpages without having to ‘fetch’ information directly from the original web server, which may be geographically far from the end user. For example, data can originate from an Australian server but be cached overseas, such as on a server in the United States. The limitations of current technology means that there are significant challenges in being able to identify whether data originated from an Australian server in circumstances where a web crawler collected data from a website cached on a server outside of Australia. s42 [REDACTED]
- A regulator like the OAIC must always direct its attention and resources towards where it will have the greatest impact. Accordingly, I have decided not to pursue enforcement action in this case given that doing so would be on uncertain legal footing.
- I strongly caution organisations with an Australian link against developing, providing, or selling facial recognition search products that utilise web crawlers, particularly where it involves the indiscriminate collection of personal information on a mass scale, as there is a high risk that doing so will amount to a breach of the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including commencing civil penalty proceedings under s 13G of the Privacy Act (which may result in the court’s imposition of significant monetary penalties).
- Similarly, members of the public, organisations, agencies, and small businesses should also be very cautious when engaging entities that offer such products given their obligations under the Privacy Act.
- My office will also be considering its next steps to address broader issues raised by the use of web crawlers, with a focus on enforcing compliance with the Privacy Act through using the broad regulatory powers available.

Thanks
Felicity



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

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From: [PERERA-PILLAI,Felicity](#)
To: [MOORE,David](#)
Cc: [LIM,Jennifer](#); [MASO,Kylie](#); [HALE,Annamie](#); [WHIP,Caren](#)
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Tuesday, 6 August 2024 3:28:39 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image005.jpg](#)
[Clearview FPP meeting file note 04.07.24 SECOFFICIALSensitive ACCESSLegal-Privilege.msg](#)
[image004.jpg](#)

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Thanks David.

Annan's dot points are framed differently to what we had in mind – for ease of reference, I've **attached** the file note from our meeting, but we landed on keeping the statement general and not specifically mentioning Clearview because, amongst other reasons, we discussed that it implies that Clearview are carrying on business in Australia and we are not doing anything about it (and we did not want to draw media attention to this line of enquiry) – see in particular [44] in the file note which I used as a basis to draft the dot points for the statement. Paragraphs [18] and [34]-[37] in the file note also cover this discussion.

More than happy to chat further if that would be helpful.

Many thanks
Felicity



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From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Tuesday, August 6, 2024 12:38 PM
To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>;
HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Hey Felicity

See the email chain below – I know that this is currently with me, but do you recall whether Annan’s dot points represent what we had in mind?

Thanks

David



David Moore (he/him)
Principal Lawyer
Office of the Australian Information Commissioner
Sydney
P +61 2 9942 4131 M s47F E david.moore@oaic.gov.au

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From: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Sent: Tuesday, August 6, 2024 2:31 PM
To: MASO,Kylie <Kylie.Maso@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>
Cc: MOORE,David <David.Moore@oaic.gov.au>
Subject: FW: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

FYI

OFFICIAL: Sensitive//Legal Privilege

From: BOAG,Annan <Annan.Boag@oaic.gov.au>
Sent: Tuesday, August 6, 2024 2:29 PM
To: KIND,Carly <Carly.Kind@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Given the views from legal about the lack of practical benefit in taking further action against Clearview, I had suggested that we finalise the matter and publish a statement (with reference to s 33B) outlining:

- our reasons for not further pursuing the matter
- the steps that we had taken to date in the AAT proceedings and related matters
- cautioning Australian entities against using Clearview's services in light of the concerns we have about their privacy protections

The next steps as I recall them were:

- David to provide dot points summarising steps taken and why we can't effectively proceed against Clearview (written in a way that could form a basis for later public communications)
- Carly to speak with Angelene about the desirability of the above outcome.

Carly, happy to join the conversation with Angelene and David happy to talk about what to include in the points.

Annan

From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Tuesday, August 6, 2024 2:23 PM
To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

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Sent: Friday, July 12, 2024 3:56 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: Re: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi Annan

Thanks, we will have it pushed back.

s47F

but I will arrange a meeting for next week for us to discuss.

Cheers

David

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Sent: Friday, July 12, 2024 3:46:11 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

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Really happy to have a chat about what you are writing to help shape it before it's settled and reviewed by too many people. I could talk now – but if you're logging off shortly maybe next week would be better.

If we don't speak this afternoon have a great weekend!

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As an update, Felicity and I have not yet completed the proposed wording and given there wasn't strict time pressure, decided we would wait for Caren to return from leave to give her a chance to review before it comes to you.

Please let me know what you think – I will only be able to action on Monday as I have to log off pretty shortly.

Thanks

David



David Moore (he/him)

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From: [MOORE,David](#)
To: [BOAG,Annan](#); [KIND,Carly](#)
Cc: [LIM,Jennifer](#); [WHIP,Caren](#); [MASO,Kylie](#); [PERERA-PILLAI,Felicity](#)
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]
Date: Tuesday, 6 August 2024 3:59:39 PM
Attachments: [image001.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)

Hi all

Felicity has proposed a draft which is with Caren/me to review. Apologies for the delay.

I will aim to prioritise this, noting I am not working tomorrow.

Thanks

David



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Hi all

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- our reasons for not further pursuing the matter
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- cautioning Australian entities against using Clearview's services in light of the concerns we have about their privacy protections

The next steps as I recall them were:

- David to provide dot points summarising steps taken and why we can't effectively proceed against Clearview (written in a way that could form a basis for later public communications)
- Carly to speak with Angelene about the desirability of the above outcome.

Carly, happy to join the conversation with Angelene and David happy to talk about what to include in the points.

Annan

From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Tuesday, August 6, 2024 2:23 PM
To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>
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Please let me know what you think – I will only be able to action on Monday as I have to log off pretty shortly.

Thanks

David



David Moore (he/him)

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From: [PERERA-PILLAI,Felicity](#)
To: [MASO,Kylie](#); [LIM,Jennifer](#); [LYONS,Emily](#); [MOORE,David](#)
Cc: [CASTALDI,Andre](#); [HALE,Annamie](#); [WHIP,Caren](#)
Subject: RE: [FOR REVIEW: by 10am Thursday 8 August] Privacy QTB input [SEC=OFFICIAL]
Date: Wednesday, 7 August 2024 5:17:18 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

Thanks very much Kylie.

We have reviewed the wording for **s22** and Clearview and have no further comments / input.

Kind regards
Felicity



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P +61 2 9246 0468 E felicity.perera-pillai@oaic.gov.au

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From: MASO,Kylie <Kylie.Maso@oaic.gov.au>
Sent: Wednesday, August 7, 2024 2:38 PM
To: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>; LYONS,Emily <Emily.Lyons@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
Cc: CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>
Subject: FW: [FOR REVIEW: by 10am Thursday 8 August] Privacy QTB input [SEC=OFFICIAL]
Importance: High

Hi Jenn, David, Emily and Felicity,

Please see the email below from AGD in respect of an urgent question time brief. Can you please review and provide input/updates to me by 9:30am tomorrow? I have divided up the sections as follows:

- **s22**
- Clearview: David/Felicity
- **s22**

My apologies for the tight timeframe. I have only just received this email from AGD.

Kind Regards,

Kylie



Kylie Maso (she/her)
Executive Director, Legal
Office of the Australian Information Commissioner
Canberra | GPO Box 5288 Sydney NSW 2001
P **s47F** E kylie.maso@oaic.gov.au

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From: **s47F**
Sent: Wednesday, August 7, 2024 4:19 PM
To: MASO, Kylie <Kylie.Maso@oaic.gov.au>
Cc: LIM, Jennifer <Jennifer.Lim@oaic.gov.au>; COOKE, Molly <Molly.Cooke@oaic.gov.au>;
s47F
Subject: [FOR REVIEW: by 10am Thursday 8 August] Privacy QTB input [SEC=OFFICIAL]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

OFFICIAL

Hi Kylie

We're currently preparing an updated QTB, and note it includes reference to a number of matters being progressed by the OAIC.

With apologies for the turnaround, I'd be grateful for any updates you may have on the below words by **10am tomorrow, Thursday 8 August**.

Appreciate your help, and happy to discuss

s47F

Legal Officer

Privacy Reform Taskforce
Attorney-General's Department

Ph: **s47F**

W: www.ag.gov.au

s22



If asked about the Clearview AI, Inc AAT determination

- In October 2021, the Information Commissioner found that Clearview AI, Inc. breached Australians' privacy by scraping their biometric information from the web and disclosing it through a facial recognition tool.
- The determination follows a [joint investigation](#) by the OAIC and the UK's Information Commissioner's Office.
- Clearview AI sought to appeal the determination, including on the basis it did not have an 'Australian link' and therefore not subject to the Commissioner's jurisdiction.
- On 8 May 2023, the AAT ruled that there was an Australian link due to Clearview AI's collection of data

from local servers, and that Clearview AI had breached the APPs.

- On 8 August 2023, Clearview withdrew its AAT application before the Tribunal had finalised the matter. This means that the Commissioner's determination dated 14 October 2021 still has effect.
- It is not appropriate for me to make further comment. Questions about the conduct or detail of the proceedings are a matter for the Commissioner.

s22



OFFICIAL

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From: [KIND,Carly](#)
To: [MOORE,David](#); [BOAG,Annan](#)
Cc: [LIM,Jennifer](#); [WHIP,Caren](#); [MASO,Kylie](#); [PERERA-PILLAI,Felicity](#)
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]
Date: Wednesday, 7 August 2024 10:21:38 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image005.jpg](#)

Thanks David. s47F so it would be great to see something on Monday.

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Tuesday, August 6, 2024 4:00 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
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Felicity has proposed a draft which is with Caren/me to review. Apologies for the delay.

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Thanks

David



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From: [MOORE,David](#)
To: [PERERA-PILLAI,Felicity](#)
Subject: RE: Clearview | Discussion points [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Friday, 9 August 2024 2:54:08 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

OFFICIAL: Sensitive//Legal Privilege

Thanks, please send to Caren



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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Friday, August 9, 2024 2:53 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Subject: Clearview | Discussion points [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Hi David

I have finalised the dot points with your changes and below is the draft email to Carly and Annan (will send to Caren first and ask her to get back to us on Monday so we can meet Carly's deadline).

++++

Dear Carly and Annan

Further to the below [drafting note: will reply to the latest email chain], and following our meeting, we have drafted some dot points for your consideration. We note that:

1. To avoid any s 29 issues, we have set out only public facts about the case;
 2. s42
-

s42

3. As Carly requested, we have drafted the below as 'discussion bullet points' rather than a complete statement at this stage;
4. We have avoided directly saying that entities should not engage with Clearview. In our view, the risk is that doing so could indicate that we are of the view Clearview are continuing to breach the Privacy Act and we are not doing anything about this – however, we will leave this with you to consider; and
5. We have adopted the format of the TikTok statement on our website ([TikTok preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

++++

Bullet points for discussion:

- My office has been considering whether to take further action against Clearview which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**), which found that the organisation had failed to comply with the Australian Privacy Principles in Schedule 1 of the Privacy Act by providing a facial recognition search product for registered users and had therefore interfered with the privacy of Australian individuals. Notably, Clearview's product utilised a web crawler (sometimes called a 'web spider') to indiscriminately collect (or 'scrape') images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as Clearview withdrew its application to have the Determination reviewed by the Administrative Appeals Tribunal, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia.
- After much consideration, I have concluded that there is insufficient evidence to satisfy me that further action is warranted. I have no evidence before me that Clearview is acting in breach of the Determination, and the limitations of current technology creates significant challenges in determining whether Clearview are continuing to operate in Australia.
- I strongly caution organisations with an Australian link to closely consider any activities that involve developing, providing, or selling facial recognition search products that utilise web crawlers, particularly where it involves the indiscriminate collection of personal information on a mass scale, as there is a high risk that doing so will amount to a breach of the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including making a Determination or commencing civil penalty proceedings under s 13G of the Privacy Act (which may result in the court's imposition of significant monetary penalties).
- Similarly, members of the public, organisations, agencies, and small businesses should also be very cautious when engaging entities that offer such products given their obligations under the Privacy Act.

- My office will also be considering its next steps to address broader issues raised by the use of web crawlers, with a focus on enforcing compliance with the Privacy Act through using the broad regulatory powers available.

++++

Annan - we will leave this with you, but please let us know if you require any further legal advice from us.

Kind regards
Felicity



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From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Thursday, August 8, 2024 10:59 AM
To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Subject: RE: Clearview | Discussion points [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Hi Felicity

See my changes below – Let's have a chat about it in a bit.

I scaled it down a bit to provide a little less detail. I think we also need to write an email to Carly and Annan basically advising why we do not recommend specifically saying entities shouldn't use Clearview (as that is what he has in his mind). Let's send it to Caren with our proposed email to Carly and Annan.

Thanks

David

David Moore (he/him)
Principal Lawyer
Office of the Australian Information Commissioner



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E david.moore@oaic.gov.au

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From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Sent: Monday, July 22, 2024 5:14 PM

To: MOORE,David <David.Moore@oaic.gov.au>

Subject: Clearview | Discussion points [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Hi David

I have drafted some discussion points for Caren (and then Annan/Carly) to consider based off our meeting for your review and consideration.

A couple of drafting notes:

1. We discussed keeping the statement relatively broad and not specifically naming Clearview (although Carly wanted us to refer to their conduct / circumstances) – I have therefore set out some public facts about the case but have not mentioned Clearview;
2. **s42** [REDACTED]
3. As Carly requested, I drafted the below as 'discussion bullet points' rather than a complete statement at this stage; and
4. I have adopted the format of the TikTok statement on our website ([TikTok preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

++++

Bullet points for discussion:

[REDACTED]

- My office [drafting note: Carly to release the statement and sign off as PC] has been considering whether to take further action against an organisation Clearview [I think Caren didn't want us to not say Clearview at all, rather not to say that we recommend people don't use them etc] which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) which found that the organisation had failed to comply with the Australian Privacy Principles in Schedule 1 of the Privacy Act by providing a facial recognition search product for registered users and had therefore interfered with the privacy of Australian individuals. Notably, the organisation's product utilised a web crawler (sometimes called a 'web spider') to indiscriminately collect (or 'scrape') images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as Clearview withdrew its application to have the Determination reviewed by the Administrative Appeals Tribunal, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. [Drafting note: to avoid any s 29 issues, I confirm that this is all publicly available information as per the Determination.]
- After much consideration, I have concluded that there is insufficient evidence to satisfy me that further action is warranted. the organisation is currently carrying on business in Australia for the purpose of s 5B(3) of the Privacy Act. Websites, and particularly social media sites, widely use 'caching', which is where some webpage data is stored on a temporary server closest to the end user so that the webpage can be accessed more quickly. With caching, web browsers can display webpages without having to 'fetch' information directly from the original web server, which may be geographically far from the end user. For example, data can originate from an Australian server but be cached overseas, such as on a server in the United States. [I still think this is too much detail] I have no evidence before me that Clearview is acting in breach of the Determination, and the limitations of current technology means that there are creates significant challenges to determining whether Clearview are continuing to operate in Australia. in being able to identify whether data originated from an Australian server in circumstances where a web crawler collected data from a website cached on a server outside of Australia. [Drafting note: Carly wanted us to specifically reference the challenges we have faced - s42
- A regulator like the OAI must always direct its attention and resources towards where it will have the greatest impact. Accordingly, I have decided not to pursue enforcement action in this case given that doing so would be on uncertain legal footing.
- I strongly caution organisations with an Australian link against closely consider any activities that involve developing, providing, or selling facial recognition search products that utilise web crawlers, particularly where it involves the indiscriminate collection of personal information on a mass scale, as there is a high risk that doing so will amount to a breach of the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including making a Determination or commencing civil penalty proceedings under s

13G of the Privacy Act (which may result in the court's imposition of significant monetary penalties).

- Similarly, members of the public, organisations, agencies, and small businesses should also be very cautious when engaging entities that offer such products given their obligations under the Privacy Act.
- My office will also be considering its next steps to address broader issues raised by the use of web crawlers, with a focus on enforcing compliance with the Privacy Act through using the broad regulatory powers available.

Thanks

Felicity



Felicity Perera-Pillai

Senior Lawyer

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From: [PERERA-PILLAI,Felicity](#)
To: [WHIP,Caren](#); [MOORE,David](#)
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Monday, 19 August 2024 4:59:56 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image005.jpg](#)
[image004.jpg](#)

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Thanks Caren and David for reviewing – I've reviewed and don't have any issues either (and the terminology is consistent with the determination).

I'll revert to Carly this evening.

Thanks
Felicity



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From: WHIP,Caren <Caren.Whip@oaic.gov.au>
Sent: Monday, August 19, 2024 2:16 PM
To: MOORE,David <David.Moore@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Yep, looks fine to me.

Caren Whip (she/her)
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P +61 2 9942 4172 E caren.whip@oaic.gov.au

Note: I am not in the office on Fridays.

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From: MOORE,David <David.Moore@oaic.gov.au>

Sent: Monday, August 19, 2024 4:03 PM

To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Hello

I just had a quick look at this and it reads pretty well. I did not see issues with it.

Felicity, perhaps you could (or you could ask Bella to help you) have a quick look to ensure that the terminology used is consistent with the determination.

Otherwise, happy to discuss

David



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From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Monday, August 19, 2024 3:20 PM

To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Thanks Felicity. I've reworked your discussion points into a slightly longer statement that I am minded to issue (below). There is a journalist seeking an update on this matter so we'd be looking to share this as our response.

I'm sharing for visibility; feel free to highlight if you have any concerns. Could you also let me know the date that Clearview commenced proceedings in the AAT please?

Statement on Clearview AI

The Office of the Australian Information Commissioner (OAIC) has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, the Determination found that Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. In [insert month/year] Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached certain of the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations

contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview in the course of the Tribunal proceedings in 2023. Nevertheless, it gave rise to questions about whether Clearview was complying with the terms of the AIC's 2021 determination.

I have given extensive consideration to the question of whether the OAIC should invest further resources in scrutinising the actions of Clearview AI, a company that has already been investigated by the OAIC, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. Considering all the relevant factors, I am not satisfied that further action is warranted in the particular case of Clearview at this time.

However, the practices engaged in by Clearview AI at the time of the determination were troubling and are increasingly common due to the drive towards the development of generative AI models. In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information that is on their sites from unlawful data scraping.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

In the meantime, we reiterate that the determination against Clearview AI still stands.

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From: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Sent: Monday, August 12, 2024 1:36 PM

To: KIND, Carly <Carly.Kind@oaic.gov.au>

Cc: WHIP, Caren <Caren.Whip@oaic.gov.au>; MOORE, David <David.Moore@oaic.gov.au>; BOAG, Annan <Annan.Boag@oaic.gov.au>; LIM, Jennifer <Jennifer.Lim@oaic.gov.au>; MASO, Kylie <Kylie.Maso@oaic.gov.au>

Subject: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: High

OFFICIAL: Sensitive//Legal Privilege

Dear Carly and Annan

Further to the below and following our meeting, we have drafted some dot points for a public statement for your consideration. We note that:

1. To avoid any s 29 issues, we have set out only public facts about the case;
2. s42
[REDACTED]
3. As Carly requested, we have drafted the below as 'discussion points' rather than a complete statement at this stage;
4. We have avoided directly saying that entities should not engage with Clearview.
s42
[REDACTED]
[REDACTED]; and
5. We have adopted the format of the TikTok statement on our website ([TikTok preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

Discussion points for a public statement on the OAIC website:

- My office has been considering whether to take further action against Clearview which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**). That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.
- Notably, Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as

Clearview withdrew its application to have the Determination reviewed by the Administrative Appeals Tribunal, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia.

- After much consideration, I have concluded that there is insufficient evidence to satisfy me that further action is warranted. I have no evidence before me that Clearview is acting in breach of the Determination, and the limitations of current technology create significant challenges in determining whether Clearview is continuing to operate in Australia.
- I strongly urge APP entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, to closely consider any activities that involve indiscriminate mass-scale collection of Australians' sensitive and personal information, including from facial recognition search products that utilise web crawlers. There is a high risk that doing so will amount to a breach of the APPs under the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including making a Determination or commencing civil penalty proceedings under s 13G of the Privacy Act (which may result in the court's imposition of significant monetary penalties).

Annan - we will leave this with you, but please let us know if you require any further legal advice from us.

Kind regards
Felicity



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From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Wednesday, August 7, 2024 8:22 PM

To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;

MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Thanks David. I'm on leave the next two days so it would be great to see something on Monday.

From: MOORE,David <David.Moore@oaic.gov.au>

Sent: Tuesday, August 6, 2024 4:00 PM

To: BOAG,Annan <Annan.Boag@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;

MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Felicity has proposed a draft which is with Caren/me to review. Apologies for the delay.

I will aim to prioritise this, noting I am not working tomorrow.

Thanks

David



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From: BOAG,Annan <Annan.Boag@oaic.gov.au>

Sent: Tuesday, August 6, 2024 2:29 PM

To: KIND,Carly <Carly.Kind@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Given the views from legal about the lack of practical benefit in taking further action against Clearview, I had suggested that we finalise the matter and publish a statement (with reference to s 33B) outlining:

- our reasons for not further pursuing the matter
- the steps that we had taken to date in the AAT proceedings and related matters
- cautioning Australian entities against using Clearview's services in light of the concerns we have about their privacy protections

The next steps as I recall them were:

- David to provide dot points summarising steps taken and why we can't effectively proceed against Clearview (written in a way that could form a basis for later public communications)
- Carly to speak with Angelene about the desirability of the above outcome.

Carly, happy to join the conversation with Angelene and David happy to talk about what to include in the points.

Annan

From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Tuesday, August 6, 2024 2:23 PM
To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Just returning to this. Colleagues can you remind me what we agreed on this and next steps?

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Friday, July 12, 2024 3:56 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: Re: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi Annan

Thanks, we will have it pushed back.

s47F

but I will arrange a meeting for next week for us to discuss.

Cheers

David

From: BOAG,Annan <Annan.Boag@oaic.gov.au>
Sent: Friday, July 12, 2024 3:46:11 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi David

Thanks so much for following up. I think pushing this back is a good idea.

I can't recall if either of you were there for the part of the discussion at SRC this week that touched on Clearview? Carly summarised the meeting she had with us, and said that the most likely direction was to finalise with no further action. However, she said she wanted to speak with Angelene first before reaching a firm view and was going to reach out to her directly to talk about it outside the SRC.

I'm just copying Carly in for visibility and so she knows not to expect a Clearview item on the SRC agenda for 23 July.

Really happy to have a chat about what you are writing to help shape it before it's settled and reviewed by too many people. I could talk now – but if you're logging off shortly maybe next week would be better.

If we don't speak this afternoon have a great weekend!

Annan

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Friday, July 12, 2024 3:38 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi Annan

In the SRC meeting a few weeks back when Clearview was discussed, they asked for us to come back to them in a couple meetings time to report back on next steps. An update on Clearview has accordingly been set for the SRC meeting on 23 July.

Given our discussion with Carly a couple weeks ago, I suggest we push this back one meeting to the SRC on 6 August. Please let me know what you think. If you agree, we can arrange to have it pushed back.

As an update, Felicity and I have not yet completed the proposed wording and given there wasn't strict time pressure, decided we would wait for Caren to return from leave to give

her a chance to review before it comes to you.

Please let me know what you think – I will only be able to action on Monday as I have to log off pretty shortly.

Thanks

David



David Moore (he/him)

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From: [PERERA-PILLAI,Felicity](#)
To: [WHIP,Caren](#); [MOORE,David](#)
Subject: RE: [FOR URGENT CLEARANCE ON MONDAY] Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Monday, 12 August 2024 1:59:10 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image005.jpg](#)
[image003.jpg](#)

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Thanks Caren s47F

Thanks for your amendments – I've finalised the email and sent it off now (copying you in as well).

Many thanks
Felicity



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From: WHIP,Caren <Caren.Whip@oaic.gov.au>
Sent: Monday, August 12, 2024 10:37 AM
To: MOORE,David <David.Moore@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Subject: FW: [FOR URGENT CLEARANCE ON MONDAY] Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Importance: High

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Thanks Felicity,

(How are you? Hope you had a nice weekend. I feel like I have not spoken to you for ages!).

I suggest removing the parts which I have struck out below. Those other parts highlighted in green are suggested amendments.

s42



Happy to discuss.

Regards

Caren



Caren Whip (she/her)
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P +61 2 9942 4172 **E** caren.whip@oaic.gov.au

Note: I am not in the office on Fridays.

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From: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Sent: Friday, August 9, 2024 5:12 PM

To: WHIP, Caren <Caren.Whip@oaic.gov.au>

Cc: MOORE, David <David.Moore@oaic.gov.au>

Subject: [FOR URGENT CLEARANCE ON MONDAY] Clearview - SRC meeting on 23 July
[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: High

OFFICIAL: Sensitive//Legal Privilege

Hi Caren

Please find below a draft email to Carly and Annan, which includes some discussion points Carly requested as per our last meeting – Carly has requested that we revert on Monday, and so I would be grateful if you could please review and provide any amendments / your clearance as soon as possible before COB Monday so that I can finalise this and send it off.

Many thanks

Felicity

++++

Dear Carly and Annan

Further to the below and following our meeting, we have drafted some dot points for a public statement for your consideration. We note that:

1. To avoid any s 29 issues, we have set out only public facts about the case;
2. ~~We intentionally avoided delving into our learnings / current understandings as, in our view, that would only highlight our limitations in preventing scraping under the Privacy Act, although we emphasised our position that there is a high risk of breaching the Privacy Act if entities engage in scraping;~~
3. As Carly requested, we have drafted the below as 'discussion points' rather than a complete statement at this stage;
4. We have avoided directly saying that entities should not engage with Clearview. From a legal perspective, the risk is that doing so could indicate that we are of the view Clearview are continuing to breach the Privacy Act and we are not doing anything about this ~~= however, we will leave this with you to consider, and~~
5. We have adopted the format of the TikTok statement on our website ([TikTok](#))

[preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

Discussion points for a public statement on the OAIC website:

- My office has been considering whether to take further action against Clearview which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**). That Determination found that Clearview through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.
- Notably, Clearview's product utilised a web crawler (sometimes called a 'web spider') to indiscriminately collect (or 'scrape') images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as Clearview withdrew its application to have the Determination reviewed by the Administrative Appeals Tribunal, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia.
- After much consideration, I have concluded that there is insufficient evidence to satisfy me that further action is warranted. I have no evidence before me that Clearview is acting in breach of the Determination, and the limitations of current technology create significant challenges in determining whether Clearview is continuing to operate in Australia.
- I strongly urge APP entities, including organisations which fall within the jurisdiction of the Australian Privacy Act by way of carrying on business in Australia, to closely consider any activities that involve indiscriminate mass-scale collection of Australians' sensitive and personal information, including from facial recognition search products that utilise web crawlers. There is a high risk that doing so will amount to a breach of the Australian Privacy Principles under the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including making a Determination or commencing civil penalty proceedings under s 13G of the Privacy Act (which may result in the court's imposition of significant monetary penalties).
- Similarly, members of the public, organisations, agencies, and small businesses should also be very cautious when engaging entities that offer such products given their obligations under the Privacy Act.
- My office will also be considering its next steps to address broader issues raised by the use of web crawlers, with a focus on enforcing compliance with the Privacy Act through using the broad regulatory powers available.

Annan - we will leave this with you, but please let us know if you require any further legal

advice from us.

Kind regards

Felicity



Felicity Perera-Pillai

Senior Lawyer

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From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Wednesday, August 7, 2024 8:22 PM

To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;

MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <[\[Pillai@oaic.gov.au\]\(mailto:Pillai@oaic.gov.au\)>](mailto:Felicity.Perera-</p></div><div data-bbox=)

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Thanks David. I'm on leave the next two days so it would be great to see something on Monday.

From: MOORE,David <David.Moore@oaic.gov.au>

Sent: Tuesday, August 6, 2024 4:00 PM

To: BOAG,Annan <Annan.Boag@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;

MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <[\[Pillai@oaic.gov.au\]\(mailto:Pillai@oaic.gov.au\)>](mailto:Felicity.Perera-</p></div><div data-bbox=)

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Felicity has proposed a draft which is with Caren/me to review. Apologies for the delay.

I will aim to prioritise this, noting I am not working tomorrow.

Thanks

David



David Moore (he/him)

Principal Lawyer

Office of the Australian Information Commissioner

Sydney

P +61 2 9942 4131 **M** s47F **E** david.moore@oaic.gov.au

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To: KIND,Carly <Carly.Kind@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>
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s47F

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From: [KIND,Carly](#)
To: [PERERA-PILLAI,Felicity](#)
Cc: [WHIP,Caren](#); [MOORE,David](#); [BOAG,Annan](#); [LIM,Jennifer](#); [MASO,Kylie](#)
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Tuesday, 20 August 2024 2:37:26 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)
[image005.jpg](#)

OFFICIAL: Sensitive//Legal Privilege

Thanks Felicity.

OFFICIAL: Sensitive//Legal Privilege

From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Monday, August 19, 2024 5:08 PM
To: KIND,Carly <Carly.Kind@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Thanks Carly. We have reviewed the draft statement and do not have any concerns.

To answer your query, Clearview commenced proceedings in the AAT on 3 November 2021.

Kind regards
Felicity



Felicity Perera-Pillai
Senior Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0468 E felicity.perera-pillai@oaic.gov.au

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From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Monday, August 19, 2024 1:20 PM
To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Thanks Felicity. I've reworked your discussion points into a slightly longer statement that I am minded to issue (below). There is a journalist seeking an update on this matter so we'd be looking to share this as our response.

I'm sharing for visibility; feel free to highlight if you have any concerns. Could you also let me know the date that Clearview commenced proceedings in the AAT please?

Statement on Clearview AI

The Office of the Australian Information Commissioner (OAIC) has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, the Determination found that Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. In [insert month/year] Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached certain of the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals

in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview in the course of the Tribunal proceedings in 2023. Nevertheless, it gave rise to questions about whether Clearview was complying with the terms of the AIC's 2021 determination.

I have given extensive consideration to the question of whether the OAIC should invest further resources in scrutinising the actions of Clearview AI, a company that has already been investigated by the OAIC, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. Considering all the relevant factors, I am not satisfied that further action is warranted in the particular case of Clearview at this time.

However, the practices engaged in by Clearview AI at the time of the determination were troubling and are increasingly common due to the drive towards the development of generative AI models. In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information that is on their sites from unlawful data scraping.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

In the meantime, we reiterate that the determination against Clearview AI still stands.

From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Monday, August 12, 2024 1:36 PM
To: KIND,Carly <Carly.Kind@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>;
BOAG,Annan <Annan.Boag@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; MASO,Kylie
<Kylie.Maso@oaic.gov.au>
Subject: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Importance: High

OFFICIAL: Sensitive//Legal Privilege

Dear Carly and Annan

Further to the below and following our meeting, we have drafted some dot points for a public statement for your consideration. We note that:

1. To avoid any s 29 issues, we have set out only public facts about the case;
2. s42
[REDACTED]
3. As Carly requested, we have drafted the below as 'discussion points' rather than a complete statement at this stage;
4. We have avoided directly saying that entities should not engage with Clearview.
s42
[REDACTED]
5. We have adopted the format of the TikTok statement on our website ([TikTok preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

Discussion points for a public statement on the OAIC website:

- My office has been considering whether to take further action against Clearview which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**). That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.
- Notably, Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as Clearview withdrew its application to have the Determination reviewed by the

Administrative Appeals Tribunal, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia.

- After much consideration, I have concluded that there is insufficient evidence to satisfy me that further action is warranted. I have no evidence before me that Clearview is acting in breach of the Determination, and the limitations of current technology create significant challenges in determining whether Clearview is continuing to operate in Australia.
- I strongly urge APP entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, to closely consider any activities that involve indiscriminate mass-scale collection of Australians' sensitive and personal information, including from facial recognition search products that utilise web crawlers. There is a high risk that doing so will amount to a breach of the APPs under the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including making a Determination or commencing civil penalty proceedings under s 13G of the Privacy Act (which may result in the court's imposition of significant monetary penalties).

Annan - we will leave this with you, but please let us know if you require any further legal advice from us.

Kind regards
Felicity



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Senior Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
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Sent: Wednesday, August 7, 2024 8:22 PM
To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Pillai@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

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



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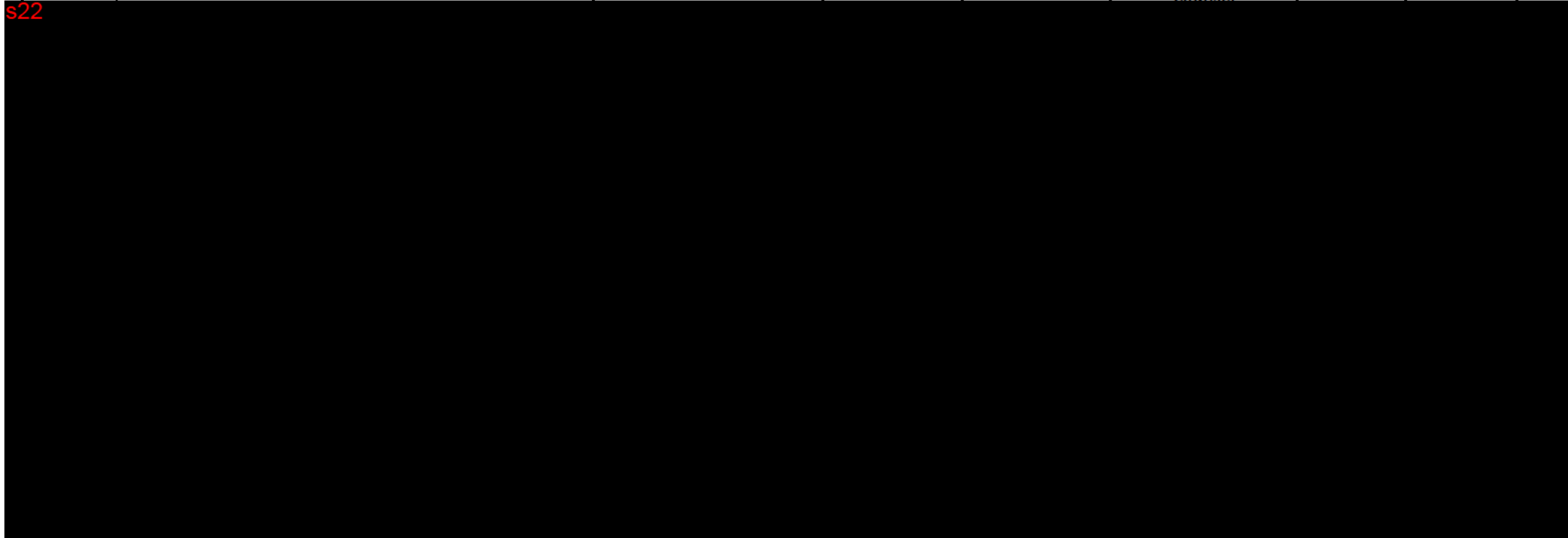
Strategic Regulatory Committee Meeting

Date:	25 June 2024
Time:	2:15 to 4:15pm AEST
Location:	Gawura Room or MS Teams
Present:	Information Commissioner Angelene Falk (Chair) Freedom of Information Commissioner Elizabeth Tydd Privacy Commissioner Carly Kind
Apologies	Rob Ghali, Assistant Commissioner Major Investigations
Secretariat:	Alicia Stewart
Attendees:	<p>Standing attendees:</p> <p>Melanie Drayton, a/g Deputy Commissioner Andre Castaldi, Assistant Commissioner Dispute Resolution Annan Boag, Assistant Commissioner Digital ID & Implementation Sarah Croxall, a/g Assistant Commissioner R&S Sarah Ghali, Assistant Commissioner R&S Annamie Hale, Assistant Commissioner Corporate Penny Ryder, a/g Chief Operating Officer Rocelle Ago, Assistant Commissioner FOI Caren Whip, General Counsel Kylie Maso, Executive Director Legal</p> <p>Attendees for one or more items:</p> <p>David Moore, Principal Lawyer Felicity Perera-Pillai, Senior Lawyer Natalie Le, Director, Dispute Resolution Fiona Grant, Director, Dispute Resolution Siobhan Bryan, a/g Director CDR Assessments Joseph Grenfell, Assistant Director, CDR Assessments Observer: Claire Noone, Nous Group</p>

Note: After the meeting opening, the order of business will run in the following order: item 7, item 8, item 9, item 6, item 10 onwards.

Item No	Matter	Available attendees	Paper/verbal	Requesting	Lead	Timing	Page(s)
Meeting Opening							
1.	Acknowledgement of Country					4 min	
2.	Apologies						
3.	Conflict of interest declarations			Noting	Secretariat		004-005
4.	Previous minutes			Approval	Secretariat		006-011
5.	Action items			Noting	Secretariat	2 min	012-013
Matters for Decision							
6.	Clearview *LPP	David Moore, Principal Lawyer Felicity Perera-Pillai, Senior Lawyer		Decision	Annamie Hale, Assistant Commissioner Corporate & Caren Whip, General Counsel	20 min	014-133

s22



s22





STRATEGIC REGULATORY COMMITTEE– 25 June 2024

Agenda Item 6 –Potential s55A Proceedings Against Clearview AI Inc

To	Angelene Falk, Australian Information Commissioner Carly Kind, Privacy Commissioner
From	David Moore, Principal Lawyer Felicity Perera-Pillai, Senior Lawyer
Through	Annamie Hale, Assistant Commissioner, Corporate Caren Whip, General Counsel
Copies	Kylie Maso, Executive Director, Legal
File ref	LIT21/00017 LEG23/00272
Date	19 June 2024
Subject	Strategic Regulatory Committee paper on potential s 55A enforcement proceedings against Clearview AI Inc

Purpose

The purpose of this Strategic Regulatory Committee (**SRC**) paper is to recommend that the legal and non-legal considerations are weighed carefully in deciding whether to commence enforcement proceedings under s 55A of the *Privacy Act 1988* (Cth) (**Privacy Act**) and to discuss the potential legal issues which may arise if the Australian Information Commissioner (the **Commissioner**) is minded to commence the proceedings.

Recommendation

s42
[Redacted]

s42
[Redacted]

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s42

However, there are non-legal factors that are also relevant to whether the Commissioner pursues the enforcement proceedings, which are set out in detail in **Attachment A**. This includes the reputational risks associated with both commencing the s 55A proceedings or pursuing other regulatory options. Notably, the Federal Court's recent decision in *eSafety Commissioner v X Corp* [2024] FCA 499 highlights the reputational impact of perceived regulatory overreach.

s42

However, if the Commissioner is minded to pursue the s 55A proceedings, and to minimise the litigation risks, this matter should be targeted and specific in the sense that it should only seek to constrain web scraping in Australia.

Attachments

Attachment A: Legal memorandum s42

Attachment B: Legal memorandum s42

Attachment C: Report from CyberCX dated 3 June 2024 [Privileged]

Attachment D: Supplementary advice s42

Attachment E: *eSafety Commissioner v X Corp* [2024] FCA 499

Attachment F: Costs spreadsheet from AGS dated 11 June 2024

Attachment G: Critical issues advice s42

Recommendations

As set out above

Agreed/Not agreed

Signature

Date

Comments:

[Redacted comment area]

FEDERAL COURT OF AUSTRALIA**eSafety Commissioner v X Corp [2024] FCA 499**

File number: NSD 474 of 2024

Judgment of: **KENNETT J**

Date of judgment: 13 May 2024

Date of publication of reasons: 14 May 2024

Catchwords: **PRACTICE AND PROCEDURE** – application for injunction under s 121 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (**RP Act**) – where respondent issued with removal notice pursuant to s 109 of the *Online Safety Act 2021* (Cth) (**OS Act**) – where interim injunction granted under s 122 of the RP Act requiring compliance with notice – whether interim injunction should be extended – whether real issue to be tried – validity of removal notice – whether removal of content identified in notice for all users on the respondent’s platform internationally a “reasonable step” required by ss 109 and 111 of the OS Act – where “comity of nations” considerations powerful – whether balance of convenience favours grant of injunction – where unenforceability of injunction has potential to bring administration of justice into disrepute

PRACTICE AND PROCEDURE – applications for suppression orders pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) – whether orders necessary to prevent prejudice to the proper administration of justice – whether orders necessary to protect the safety of any person

Legislation: *Acts Interpretation Act 1901* (Cth) ss 18A, 33
Administrative Appeals Tribunal Act 1975 (Cth) s 28
Administrative Decisions (Judicial Review) Act 1977 (Cth) s 13
Broadcasting Services Act 1992 (Cth)
Classification (Publications, Films and Computer Games) Act 1995 (Cth) ss 7, 9, 9A, 11
Federal Court of Australia Act 1976 (Cth) s 37AF
Online Safety Act 2021 (Cth) ss 3, 12, 106, 109, 111, 162
Regulatory Powers (Standard Provisions) Act 2014 (Cth) ss 79, 82, 111, 121, 122

National Classification Code (Cth) cl 3
Guidelines for the Classification of Films 2012 (Cth)
Explanatory Memorandum, Online Safety Bill 2021 (Cth)

Cases cited: *BHP Group Ltd v Impiombato* [2022] HCA 33; 96 ALJR 956
Bullock v Federated Furnishing Trades Society of Australasia (No 1) (1985) 5 FCR 464
Malek Fahd Islamic School Ltd v Minister for Education and Training (No 2) [2017] FCA 1377
Minister for Immigration and Multicultural Affairs v Bhardwaj [2002] HCA 11; 209 CLR 597
Minister for Immigration and Multicultural Affairs v Yusuf [2001] HCA 30; 206 CLR 323
Ousley v The Queen (1997) 192 CLR 69

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Counsel for the Applicant: T Begbie KC with CJ Tran

Solicitor for the Applicant: Australian Government Solicitor

Counsel for the Respondent: B Walker SC with S Hartford Davis and SJ Hoare

Solicitor for the Respondent: Ashurst

ORDERS**NSD 474 of 2024**

BETWEEN: **ESAFETY COMMISSIONER**
Applicant

AND: **X CORP**
Respondent

ORDER MADE BY: **KENNETT J**

DATE OF ORDER: **13 MAY 2024**

THE COURT ORDERS THAT:

1. The application to extend the interlocutory injunction granted on 22 April 2024 (as extended on 24 April 2024) is refused.
2. Costs of the application are reserved.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

KENNETT J:

- 1 On 16 April 2024 the applicant (**the Commissioner**) issued a notice (**the removal notice**) to the respondent (**X Corp**) under s 109 of the *Online Safety Act 2021* (Cth) (**the OS Act**). Under s 111 of the OS Act, a person must comply with a requirement under a removal notice “to the extent that the person is capable of doing so”. Section 111 specifies a civil penalty of 500 penalty units and is thus a “civil penalty provision” within the meaning of s 79(2) of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (**the RP Act**).
- 2 Section 162 of the OS Act provides that a civil penalty provision is enforceable under Part 4 of the RP Act (see also s 111 of that Act). Section 82 of the RP Act provides for an authorised person to apply to a relevant court for an order that a person who is alleged to have contravened a civil penalty provision is to pay a pecuniary penalty. Section 121 of the RP Act provides as follows.

121 Grant of injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of a provision enforceable under this Part, a relevant court may, on application by an authorised person, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court’s opinion, it is desirable to do so—requiring the person to do a thing.

Performance injunctions

- (2) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
 - (b) the refusal or failure was, is or would be a contravention of a provision enforceable under this Part;

the court may, on application by an authorised person, grant an injunction requiring the person to do that thing.

- 3 The Commissioner, who alleges that X Corp has not complied with the notice, seeks a declaration to that effect together with a pecuniary penalty under s 82 and an injunction under s 121(2). The proposed injunction is designed, in substance, to require X Corp to do that which (on the Commissioner’s case) the removal notice requires.

4 An application by the Commissioner for an urgent interim injunction came before me as duty judge on 22 April 2024. Section 122 of the RP Act confers an express power to make such an injunction.

5 Although counsel appearing by video link announced an appearance for X Corp, he had no formal instructions and had only just received the material. The hearing therefore proceeded on the basis that the Commissioner was applying for the interlocutory injunction *ex parte*. I granted an injunction, effective until 5.00 pm on 24 April 2024, and listed the matter for further hearing on that day. On 24 April both parties were represented; however, counsel for X Corp informed me that his client needed more time to assemble evidence and provide instructions on the question of interlocutory relief. I extended the injunction to 5.00 pm on 10 May 2024 and listed the matter for further hearing on that day. At the close of argument on 10 May, I extended the injunction until 5.00 pm on Monday 13 May 2024 so that I could consider my decision over the weekend.

6 On the morning of 13 May 2024 I made an order refusing the Commissioner's application for a further extension of the interim injunction. These reasons explain why I concluded that the injunction should not be extended further. I also set out below my reasons for suppression orders that I made during the hearing on 10 May 2024.

The removal notice

7 On the evening of 15 April 2024 Bishop Mar Mari Emmanuel (**Bishop Emmanuel**) was attacked and repeatedly stabbed by a lone assailant while giving a sermon at the Assyrian Christ the Good Shepherd Church in Wakeley, New South Wales. A short video of the attack exists (**the stabbing video**). The video runs for about 11 seconds. It shows, from a vantage point apparently near the back of the church, the lone assailant rushing at Bishop Emmanuel and attacking him. The assailant raises their right arm and strikes the Bishop several times with a downward motion; the Bishop falls backwards. It is not clear from the video that a knife is being used, although that can be inferred from the motions of the assailant. The shocked and distressed reactions of witnesses can be heard.

8 The Commissioner's officers became aware of social media posts containing the stabbing video. They reached the view that the video was of such a nature that it should be the subject of a removal notice under s 109 and approached major online service providers. Some providers removed URLs containing the stabbing video from their platforms altogether. X Corp did not.

9 The removal notice was issued by a delegate of the Commissioner (**the delegate**) on 16 April 2024. Relevantly for present purposes, the notice says:

This removal notice is given to you under section 109 of the Act and requires you to take all reasonable steps to ensure the removal of the class 1 material specified in **Attachment A**.

10 Attachment A identifies the relevant material by way of a list of 65 specified URLs, each of which designates a post on X Corp’s social media platform (**X**). There follows a “Description of material”, which consists of a description of the contents of the stabbing video followed by a statement:

The content is class 1 material under the *Online Safety Act 2021* (Cth), for depicting matters of crime, cruelty and real violence in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it would likely be classified RC.

11 The references in the removal notice to “class 1 material” and taking “all reasonable steps” to ensure removal come from s 109 of the OS Act. At this point, in order to identify the basis and the effect of the removal notice, it is useful to set out the relevant parts of s 109.

109 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - ...; and
 - (b) the Commissioner is satisfied that the material is or was class 1 material; and
 - (c) the material can be accessed by end-users in Australia; and
 - (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service;

the Commissioner may give the provider of the service a written notice, to be known as a *removal notice*, requiring the provider to:

- (e) take all reasonable steps to ensure the removal of the material from the service; and
- (f) do so within:
 - (i) 24 hours after the notice was given to the provider; or

(ii) such longer period as the Commissioner allows.

(2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

12 “Class 1 material” is defined by s 106. The only relevant aspect of the definition is s 106(1)(b), which is as follows.

(b) material where the following conditions are satisfied:

- (i) the material is a film or the contents of a film;
- (ii) the film has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
- (iii) if the film were to be classified by the Classification Board under that Act—the film would be likely to be classified as RC

13 Another important expression in s 109 that is affected by a definition in the OS Act is “removal”. The cognate expression “removed” is defined in s 12, as follows.

12 When material is removed from a social media service, relevant electronic service or designated internet service

For the purposes of this Act, material is *removed* from a social media service, relevant electronic service or designated internet service if the material is neither accessible to, nor delivered to, any of the end-users in Australia using the service.

14 As noted above, s 111 requires a person to comply with a requirement under a removal notice “to the extent that the person is capable of doing so”. How that qualification interacts with s 109(1)(e), pursuant to which a notice only requires “all *reasonable* steps”, may need to be explored at some stage but was not the subject of argument on this occasion.

15 The final injunction that the Commissioner seeks aligns, as noted above, with the Commissioner’s conception of what the removal notice required X Corp to do. It was framed in several alternative forms in the originating application, on the basis that the optimal form would depend on a fuller understanding of how X Corp’s systems work at a technical level. The prayer for relief is as follows.

3. An order under s 121(2) of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) requiring the respondent to do the following:

- (a) remove (in the ordinary sense of the word rather than the meaning in s 12 of the *Online Safety Act 2021* (Cth)) the material identified in the Notice from the respondent’s X service (previously known as Twitter);
- (b) alternatively, restrict the discoverability of the material identified in

the Notice to the author's profile so that only the author, and no other end-user, can view the material;

- (c) alternatively, hide the material identified in the Notice behind a notice such that an X user can only see the notice, not the material identified in the Notice, and cannot remove the notice to reveal the material or
- (d) alternatively, restrict the discoverability of the material to prevent the material identified in the Notice from appearing in any search results or any X feed on the X service.

The interim injunction

16 The injunction granted on 22 April and extended on 24 April was in the following terms.

There be an interim injunction under s 122(1)(b) of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) requiring the respondent, as soon as reasonably practicable and no later than within 24 hours, to hide the material identified in the Notice behind a notice such that an X user can only see the notice, not the material identified in the Notice, and cannot remove the notice to reveal the material.

17 The reference to hiding the material behind a notice was suggested by the Commissioner by reference to an online policy document, published by X Corp to its users, which describes X Corp's processes in relation to material posted on its platform that X Corp considers unsuitable.

Issues in relation to extension of the injunction

18 Consideration of interlocutory injunctions usually proceeds by reference to two issues: whether there is a real issue to be tried (sometimes put as whether the applicant has a *prima facie* case for the relief sought) and where the balance of convenience lies. The parties' arguments in this case proceeded in that way and my reasons will also. The fact that both the injunction sought by way of final relief and the interlocutory injunction are statutory, rather than granted as an exercise of equitable jurisdiction, does not change the issues in any fundamental way.

19 A real issue to be tried is at least ordinarily a *sine qua non* for the grant of an interlocutory injunction, but does not for that reason necessarily resolve into a binary yes/no question. That is because the two issues are not always independent of each other: the nature of the injunctive relief and the burden it would place on the respondent can make it appropriate to consider, as part of the balance of convenience, the strength of the *prima facie* case that is presented (see eg *Bullock v Federated Furnishing Trades Society of Australasia (No 1)* (1985) 5 FCR 464 at 472 (Woodward J, Sweeney J agreeing)).

Real issue to be tried

20 Although the power invoked to support the interim injunction in this case is statutory (s 122(1)(b) of the RP Act), it remains necessary to identify the prayer or prayers for final relief in support of which it is sought. There must be a real issue to be tried (or a *prima facie* case) in support of some form of final relief to which the interim injunction is connected. Here, the proposed interim injunction connects to the proposed final injunction that would require compliance with the requirements of the removal notice as interpreted by the Commissioner (although, being mandatory in form and effect, it does not so connect by preserving the *status quo* pending a final hearing). For the interim injunction to be continued, the Commissioner must show that she has a *prima facie* case for the final injunction that she seeks. So much was not controversial.

21 Two issues were agitated in this connection:

- (a) whether the removal notice was a valid exercise of power under s 109; and
- (b) whether, given that the notice only requires (and can only require) X to take “reasonable steps” to ensure removal of the material, the proposed final injunction goes further than what is required for compliance with the notice.

Validity of the removal notice

22 Section 109 of the OS Act, which is the source of power for the removal notice, has been set out above. If the notice was not authorised by s 109, it is of no legal effect and clearly cannot form the basis for the grant of an injunction under s 121 of the RP Act.

23 X Corp argues that, therefore, the issue of a valid removal notice is part of what the Commissioner must prove at a final hearing. The Commissioner has led no evidence at this interlocutory stage for the validity of the removal notice, other than the notice itself. Such evidence as has been adduced (by X Corp) concerning the delegate’s reasons for issuing the notice indicates, according to X Corp, that the Commissioner probably will not be able to establish the validity of the notice. That evidence will be considered shortly.

24 The argument that the Commissioner must prove the validity of the notice at the final hearing cannot be accepted at its highest. In *Ousley v The Queen* (1997) 192 CLR 69 at 130-131 (*Ousley*), Gummow J said:

The more appropriate principle is that the validity of an administrative act or decision and the legality of steps taken pursuant to it are presumed valid until the act or

decision is set aside in appropriate proceedings. Where “acts are of an official nature ... everything is presumed to be rightly and duly performed until the contrary is shown”.

(Citations omitted.)

25 *Ousley* was a case where listening device warrants were asserted to be invalid as a basis for objecting to the tender of evidence obtained under those warrants. In other words, it involved a collateral attack on the warrants rather than an administrative law proceeding seeking to have them set aside. The decision in *Ousley* predated *Minister for Immigration and Multicultural Affairs v Bhardwaj* [2002] HCA 11; 209 CLR 597 (*Bhardwaj*), and the reference by Gummow J to a presumption of validity needs to be read in the light of what was decided in that case. In *Bhardwaj* at [151], Hayne J said (referring to *Ousley*):

... administrative acts and decisions are subject to challenge in proceedings where the validity of that act or decision is merely an incident in deciding other issues. If there is no challenge to the validity of an administrative act or decision, whether directly by proceedings for judicial review or collaterally in some other proceeding in which its validity is raised incidentally, the act or decision may be presumed to be valid. But again, that is a presumption which operates, chiefly, in circumstances where there is no challenge to the legal effect of what has been done. *Where there is a challenge, the presumption may serve only to identify and emphasise the need for proof of some invalidating feature before a conclusion of invalidity may be reached.*

(Citations omitted; emphasis added.)

26 Many kinds of litigation would become very unwieldy if a party relying on the legal effect of an administrative decision could be put to proof of all factual matters going to its validity. Where an official notice (such as the removal notice here) is relied upon and is valid on its face, the starting point at least must be that it has the effect it purports to have unless “some invalidating feature” is proved. Even if that is not correct, and the Commissioner must prove the validity of the removal notice at a final hearing, it would in my view be incumbent on X Corp at least to identify clearly any asserted basis of invalidity. For the purpose of identifying a real issue to be tried at an interlocutory stage, it is appropriate to proceed on the basis that the removal notice is valid unless the evidence discloses a substantial basis for doubting that its validity will be established at trial. These observations have some relevance to how the evidence (such as it is) going to the delegate’s reasoning process is to be understood.

27 On 30 April 2024 the solicitors for X Corp wrote to the Commissioner’s solicitors requesting a statement of reasons, under s 13 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**the ADJR Act**) and s 28 of the *Administrative Appeals Tribunal Act 1975* (Cth) (**the AAT Act**), for the decision to issue the notice. The statement was requested as a matter of

urgency, although the legislation relied upon allows the decision maker a period of 28 days after a request for the provision of reasons. The Commissioner's solicitors responded to the effect that a statement of reasons had not been, but would be, prepared. Noting the timing of these proceedings, they enclosed a document signed by the delegate, dated 16 April 2024 and entitled "Statement of Reasons". They noted that this document (which I will refer to, neutrally, as **the decision record**) had not been prepared for the purposes of, or in accordance with, the ADJR Act or the AAT Act.

28 The decision record would likely be found not to comply with the requirements for a statement of reasons under the ADJR Act and the AAT Act. However, that is currently not to the point. The Commissioner's solicitors were presumably writing on instructions and I am therefore prepared, for present purposes, to proceed on the basis that the author of the decision record did not intend it to be a document that could be furnished in satisfaction of the duty to give reasons under those Acts. However, that also does not take matters very far. The document is signed by the delegate and purports to record her reasons for the decision. It is thus the only evidence, so far, of her reasoning process.

29 The decision record has the following relevant features.

- (a) It says expressly that it sets out the delegate's reasons for deciding to give the renewal notice to X Corp (at [2]).
- (b) It very briefly sketches the legislative framework and annexes the "relevant" sections of the Act in an appendix. Those sections are ss 106 and 109.
- (c) Under the heading "Material relied upon to make the decision", the decision record says:

I have taken the following information into account in making my decision:

- a. On 15 April 2024, the eSafety Commissioner received four complaints about violence and violence extremism on the platform known as X and twitter.com:

Complaints about violence:

- i. CYR- 0511323
- ii. CYR- 0511326
- iii. CYR - 0511328

Complaint about violent extremism:

- i. CYR- 0511327

- b. The content investigated in these complaints (the Material) is described in Appendix B and was found to depict matters of crime, cruelty or violence at the following URLs:

[redacted]
- c. The Material can be accessed by end-users in Australia.
- d. eSafety investigators identified further instances of the same material being accessible at different URLs on X. The URLs to the Material, including the URLs identified by eSafety investigators has been included in Appendix B.
- e. On 16 April 2024 an informal removal request for all of the U Rls included in Appendix B was sent to X via their Legal Request reporting portal at: <https://legalrequests.twitter.com/forms/landing-disclaimer>. The following ticket numbers were provided: 365937303 and 365941713, but no further response was received. The Material is still available at the time of giving the Notice.
- f. On 16 April 2024 the incident was described by the NSW Premier Chris Minns as an act of terrorism and the NSW Police Commissioner Karen Webb declared the incident a terrorist act.

(Footnotes omitted.)

- (d) Reference is then made to “documents” taken into account. These were the offending material, two policy documents issued by the Commissioner and the relevant sections of the OS Act.
- (e) Under the heading “Reasons for decision”, the decision record says:

I am satisfied that the requirements for giving a removal notice under section 109 have been met. Having considered the above documents and information, I am satisfied that:

- a. The Material is class 1 material as defined in section 106(b) of the Act, because:
 - i. the Material is a film or the contents of a film;
 - ii. the film has not been classified by the Classification Board under the Classification (Publications, Films and Computer Games) Act 1995; and
 - iii. if the film were to be classified, the film would likely to be classified RC (refused classification) by the Classification Board as it depicts matters of crime, cruelty and real violence in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it would likely be classified RC.
- b. The Material is provided on X which is a social media service as defined under section 13 of the Act because:
 - i. it is an electronic service that has the sole or primary purpose

- of enabling online social interaction between 2 or more end-users;
- ii. the service allows end-users to link to, or interact with, some all of the other end-users; and
- iii. the service allows end-users to post material on the service.
- c. X Corp. is the provider of the social media service, X.
- d. The Material is not provided on an exempt service as defined in section 5 of the Act.
- e. The Material can be accessed by end-users in Australia.

(f) The decision record also says:

In addition, I have considered the following circumstances:

- a. On 15 April 2024, X Corp. were notified by email at kreen@x.com of the Material being accessible on X. A representative from X Corp replied advising their teams were across the situation and for eSafety to report the material using their Legal Requests form.

30 I pause here to note that, while the decision record would be admissible on a final hearing as evidence of the delegate's thought process, the same might not be true of a statement of reasons prepared, in the shadow of this litigation, under the ADJR Act or the AAT Act. If the Commissioner sees a need to prove further facts concerning the delegate's reasons, it may be necessary for that to be done by way of an affidavit.

31 The view which I take as to where the onus of proof lies in relation to the validity of the notice means that the decision record supports X Corp's case to the extent that it provides evidence of a misconception of a relevant legal test or an extraneous consideration being taken into account. To the extent that the decision record merely fails to disclose the taking into account of a mandatory consideration, it advances X Corp's position only if that failure leads to an inference that the consideration was not taken into account. Such an inference can be readily drawn in the case of a statement of reasons produced in purported compliance with a provision such as s 13 of the ADJR Act, because compliance requires an explanation of the reasons and reference to the evidence relied on: see eg *Minister for Immigration and Multicultural Affairs v Yusuf* [2001] HCA 30; 206 CLR 323 at [5] (Gleeson CJ), [35] (Gaudron J), [69] (McHugh, Gummow and Hayne JJ). More caution is needed when reasons are given voluntarily: *Malek Fahd Islamic School Ltd v Minister for Education and Training (No 2)* [2017] FCA 1377 at [42] (Griffiths J). In effect, silences in a statement of reasons are meaningful only if it appears that the statement was intended to be comprehensive. The decision record in the present case does not appear to be of that kind.

32 The decision record indicates that some attention was given to the test posed by s 106(1) as to whether material is “class 1 material”. That test requires consideration of whether the material would be likely to receive an “RC” classification under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (**the Classification Act**); and [9(a)(iii)] of the decision record expresses itself in language taken from the relevant clause of the *National Classification Code* made under that Act (**the Code**). Neither the Code nor the *Guidelines for the Classification of Films 2012* (also determined under the Classification Act) is expressly referred to, and no reasoning process is set out. However, given the nature of the document, it is difficult to infer from this that there was no such reasoning process or that considerations necessary to the analysis were ignored. To the extent that things are not said in the decision record, therefore, this does not advance X Corp’s case that the notice is invalid. Further, if my conclusion above as to where the onus of proof lies on this issue is wrong, omissions from the decision record do not prevent the Commissioner from proving the delegate’s reasoning process in more detail (even though that might require the courageous step of calling evidence from the decision maker).

33 As to positive indications of error, X Corp relies on [7(f)] of the decision record, which notes that the incident shown in the stabbing video was “described as an act of terrorism” by the Premier of New South Wales and the NSW Police Commissioner. There is a strong argument that the characterisation of the attack depicted in the stabbing video as an act of terrorism, and the opinions of other persons as to this characterisation, are irrelevant to whether the video would be classified as RC. Briefly, the argument is as follows:

- (a) RC is the highest classification for films: Classification Act, s 7(2).
- (b) The matters to be taken into account in a classification decision, under s 11 of the Classification Act, “include”:
 - (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
 - (b) the literary, artistic or educational merit (if any) of the publication, film or computer game; and
 - (c) the general character of the publication, film or computer game, including whether it is of a medical, legal or scientific character; and
 - (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published

- (c) Films must be classified in accordance with the Code: Classification Act, s 9. Section 9A, which gives an automatic RC classification to a film that “advocates” a terrorist act, is not engaged by the mere depiction of such an act.
- (d) Relevantly to a depiction of an act of violence, cl 3 the Code calls for an RC classification for films that:
- depict, express or otherwise deal with matters of ... violence ... in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified ...
- (e) The Guidelines focus on what is termed an “impact test”. Material is to be classified as RC if its “impact” exceeds that of R 18+ material (which is not to exceed “high”). The Guidelines then add that films “will be refused classification” if they contain, relevantly:
- Gratuitous, exploitative or offensive depictions of:
- (i) violence with a very high degree of impact or which are excessively frequent, prolonged or detailed; [or]
 - (ii) cruelty or real violence which are very detailed or which have a high impact; ...
- (f) The classification regime is thus concerned with how an act of violence is depicted and whether the depiction is likely to offend standards of morality, decency and propriety. The language of the Classification Act, the Code and the Guidelines applies both to fictional works and to footage of real events. Material that *advocates* or provides instruction for terrorist acts is dealt with separately by specific provisions. Hence, whether a violent act has characteristics that attracts the label of terrorism is not relevant to how a film showing that act (and only the act) would be classified. *A fortiori*, whether the act has been described by others as an act of terrorism is also irrelevant.

34 However, while this argument has considerable force, it does not lead to the conclusion that the delegate erred. Section 109(1) is expressed in discretionary terms and, by force of s 33(2A) of the *Acts Interpretation Act 1901* (Cth) (**the Acts Interpretation Act**), is to be read as conferring a discretion as to whether or not to issue a removal notice once the conditions in paras (a) to (d) are satisfied. The fact that the incident shown in the stabbing video has been identified by persons in authority as a terrorist act may confer particular meaning on the video in the eyes of some viewers. It may make the video more likely to be used as a

recruiting tool or a means of intimidation by terrorist groups. This is at least potentially relevant to the exercise of the discretion in s 109(1). The decision record does not identify the particular stage of the decision-making process at which the description of the act as one of terrorism was given weight. Mere reference to the description as something that was taken into account therefore does not point to that matter having been erroneously considered as an aspect of the classification question.

35 Finally, X Corp submitted that the decision to issue the notice was vitiated by jurisdictional error in that it was unreasonable. The stabbing video, it was submitted, was simply not capable of being seen by a reasonable person as class 1 material. It is difficult to say much about this point without entering into the merits of the decision, which are not a matter for the Court. The decision is the subject of an application for merits review in the Administrative Appeals Tribunal, where those merits can be carefully weighed with the benefit of detailed submissions and potentially expert evidence.

36 The decision to be made under the Classification Act, the Code and the Guidelines is evaluative and involves identification and application of “the standards of morality, decency and propriety generally accepted by reasonable adults”. These things are highly debatable. While it is certainly arguable that the depiction of violence in the stabbing video is not sufficiently long, detailed or otherwise impactful to warrant an RC classification, it does not follow that the view taken by the delegate was not open.

37 For these reasons I have concluded that:

- (a) on the current evidence, there is not a substantial possibility that X Corp will be able to establish that the removal notice is invalid; and
- (b) if the Commissioner bears the onus to prove validity, there is not a sufficient reason at this stage to depart from the assumption that that onus can be met.

“All reasonable steps”

38 The source of the dispute between the parties on this issue is that, while X Corp has agreed to “geoblock” the 65 URLs specified in the removal notice (so that they are not accessible to users with IP addresses in Australia), the Commissioner contends that this is not sufficient to comply with the notice. A significant number of people in Australia use Virtual Private Networks (VPNs) to connect to the internet without using an IP address linked to an

Australian provider. These users, while physically in Australia, are not affected by the geoblocking X Corp has imposed and therefore still have access to the 65 URLs.

39 The Commissioner therefore seeks a final injunction that would require X Corp to remove the 65 URLs from its platform altogether or make them inaccessible to all users. There appears to be no dispute that, because of the use of VPNs, this is what it would take to prevent *all* users in Australia from going to one of the 65 URLs and viewing the stabbing video. The Commissioner argues that such action is within the “all reasonable steps” that the removal notice requires to be taken. X Corp argues that a requirement for worldwide removal or blocking of the material goes beyond what is “reasonable”.

40 The policy questions underlying the parties’ dispute are large. They have generated widespread and sometimes heated controversy. Apart from questions concerning freedom of expression in Australia, there is widespread alarm at the prospect of a decision by an official of a national government restricting access to controversial material on the internet by people all over the world. It has been said that if such capacity existed it might be used by a variety of regimes for a variety of purposes, not all of which would be benign. The task of the Court, at least at this stage of the analysis, is only to determine the legal meaning and effect of the removal notice. That is done by construing its language and the language of the Act under which it was issued. It is ultimately the words used by Parliament that determine how far the notice reaches.

41 Section 109(1), which is set out above, determines what a removal notice is and does. The only notice that may be given is a notice “requiring the provider” to “take all reasonable steps to ensure the removal of the material from the service”. The Commissioner chooses the material to which the notice is to apply (based on whether it is “class 1 material”) but does not have a discretion concerning how stringent or widespread the restrictions on access to that material are to be. The notice necessarily requires “all reasonable steps” to “ensure the removal” of the material.

42 “Removed”, as noted above, is defined by s 12 of the OS Act. Section 18A of the Acts Interpretation Act requires (as common sense would suggest) that other grammatical forms of the same word be given corresponding meanings. “Removal” of material from a social media platform is a process that results in the material being “removed” in the defined sense: that is, a state of affairs where “the material is neither accessible to, nor delivered to, any of the end-users in Australia using the service”.

- 43 The phrase “any of the end-users in Australia” must be read in context.
- (a) One aspect of the context is s 23, which provides that the OS Act extends to acts, omissions, matters and things outside Australia.
 - (b) A second aspect of the context is the objects of the OS Act, set out in s 3, which are to promote and improve “online safety for Australians”. The reference to “Australians” suggests that the Act directs its attention to all Australian residents, not only those who use Australian service providers to connect to the internet.
 - (c) A third aspect of the context is the Explanatory Memorandum to the Bill for the OS Act (the Online Safety Bill 2021 (Cth)). The Explanatory Memorandum does not cast any direct light on the intended scope of a removal notice under s 109 (other than by observing that the section was intended to apply whether or not the relevant service is provided from within Australia). It notes that the provisions in what became Part 9 of the OS Act were substantially a re-enactment of earlier provisions in Schedules 5 and 7 to the *Broadcasting Services Act 1992 (Cth)* (**the BS Act**). Within the time frame of an urgent interlocutory decision, the extent to which I have been able to do my own research on the legislative history is limited. With the parties (both represented by competent counsel) not having submitted that any part of the legislative history would assist me in resolving the constructional issues as to what a removal notice requires to be done, I have proceeded on the basis that analysis of the former provisions of the BS Act would not be illuminating.
- 44 The breadth with which the objects of the OS Act are expressed indicates that “any of the end-users in Australia” in s 12 should not be read narrowly. I was not taken to anything in the Act suggesting that the location of the IP address through which a person physically located in Australia connects with the internet was intended to make a difference as to whether they were to be denied access to class 1 material by operation of a removal notice. The Act does not use concepts derived from the structure of the internet, in lieu of ordinary geographical or territorial notions, to describe where people are. I have concluded that the phrase was intended to have its ordinary meaning and that “removal” therefore means making the material inaccessible to all users physically located in Australia. The original location of the relevant provisions in the BS Act, which regulates traditional broadcast media, tends (albeit not very strongly) to confirm this conclusion.

45 What the removal notice requires, therefore, is “all reasonable steps to ensure” that the 65 URLs are not accessible to any users physically in Australia. What is meant by “reasonable” steps is therefore critical.

46 I have no doubt that removing the 65 URLs from its platform altogether would be a reasonable step for X Corp to take, in the sense that a decision by X to take that step could readily be justified. There is uncontroversial evidence that this is what other social media platforms have done, and that X Corp would not be in breach of any United States law if it took this step. However, this is not the test. The OS Act pursues a policy. It is not bounded by the policies of service providers or their contractual relationships with their users. Section 109 imposes its requirements regardless of the wishes of providers and of individual users.

47 The qualifier “reasonable” should therefore be understood as limiting what must be done in response to a notice to the steps that it is reasonable to expect or require the provider to undertake. That understanding is consistent with how duties arising under the general law to take “reasonable” steps commonly work. Identification of the steps that are “reasonable” in this sense may involve consideration of expense, technical difficulty, the time permitted for compliance (which may be short: see s 109(2)) and the other interests that are affected. It is the last of these factors that is the focus of the parties’ disagreement.

48 The argument that making the 65 URLs inaccessible to all users of X Corp’s platform everywhere in the world is *not* a step that it is “reasonable” to require X Corp to perform in order to ensure that the URLs are inaccessible to Australian users (and therefore is not a step required by the removal notice) is powerful.

49 If s 109 of the OS Act provided for a notice imposing such a requirement, it would clash with what is sometimes described as the “comity of nations” in a fundamental manner. That concept, and the principle of statutory construction that arises from it, were recently discussed by reference to earlier cases in *BHP Group Ltd v Impiombato* [2022] HCA 33; 96 ALJR 956 at [23]-[32] (Kiefel CJ and Gageler J). It is not limited to the familiar presumption against the extraterritorial operation of statutes and is therefore not excluded here by the express provision for extraterritorial operation in s 23 of the OS Act. It is useful to set out their Honours’ recitation of the authorities at [27]-[31].

Exposition of the common law presumption in play in *Morgan v White* and in *Meyer Heine* can be traced in Australia to *Jumbunna Coal Mine, No Liability v Victorian Coal Miners’ Association*. There O’Connor J said:

Most Statutes, if their general words were to be taken literally in their widest sense, would apply to the whole world, but they are always read as being prima facie restricted in their operation within territorial limits. Under the same general presumption every Statute is to be so interpreted and applied as far as its language admits as not to be inconsistent with the comity of nations or with the established rules of international law: *Maxwell on Statutes*, 3rd ed, p 200.

Plainly, O'Connor J did not see the implied restriction on the territorial operation of a statute to which he referred in the first sentence as freestanding but rather as a reflection of the “general presumption” which he expressed in the second sentence with reference to *Maxwell on Statutes*. There, the presumption appeared in the precise terms adopted by O'Connor J under the heading “Presumption against a Violation of International Law”.

In *Barcelo v Electrolytic Zinc Co of Australasia Ltd*, Dixon J expressed the presumption in the same language drawn from *Maxwell on Statutes* as had been adopted by O'Connor J in *Jumbunna*. His Honour did so interchangeably with language drawn from 19th century English authority to the effect that “[i]t is always to be understood and implied that the legislature of a country is not intending to deal with persons or matters over which, according to the comity of nations, the jurisdiction properly belongs to some other sovereign or State”.

Dixon J returned to the presumption in *Wanganui-Rangitikei Electric Power Board v Australian Mutual Provident Society*. The “well settled rule of construction”, his Honour there explained, is that “an enactment describing acts, matters or things in general words, so that, if restrained by no consideration lying outside its expressed meaning, its intended application would be universal, is to be read as confined to what, according to the rules of international law administered or recognized in our Courts, it is within the province of our law to affect or control”.

In *R v Foster; Ex parte Eastern and Australian Steamship Co Ltd*, Dixon CJ expressed the presumption yet again. He did so, more pithily, in terms which he said were appropriate to be applied to a Commonwealth statute after the Statute of Westminster Adoption Act. He described it as “a presumption which assumes that the legislature is expressing itself only with respect to things which internationally considered are subject to its own sovereign powers”.

(Footnotes omitted.)

50 If given the reach contended for by the Commissioner, the removal notice would govern (and subject to punitive consequences under Australian law) the activities of a foreign corporation in the United States (where X Corp’s corporate decision-making occurs) and every country where its servers are located; and it would likewise govern the relationships between that corporation and its users everywhere in the world. The Commissioner, exercising her power under s 109, would be deciding what users of social media services throughout the world were allowed to see on those services. The content to which access may be denied by a removal notice is not limited to Australian content. In so far as the notice prevented content being available to users in other parts of the world, at least in the circumstances of the present case, it would be a clear case of a national law purporting to apply to “persons or matters over

which, according to the comity of nations, the jurisdiction properly belongs to some other sovereign or State”. Those “persons or matters” can be described as the relationships of a foreign corporation with users of its services who are outside (and have no connection with) Australia. What X Corp is to be permitted to show to users in a particular country is something that the “comity of nations” would ordinarily regard as the province of that country’s government.

51 The potential consequences for orderly and amicable relations between nations, if a notice with the breadth contended for were enforced, are obvious. Most likely, the notice would be ignored or disparaged in other countries. (The parties on this application tendered reports by experts on US law, who were agreed that a US court would not enforce any injunction granted in this case to require X Corp to take down the 65 URLs.)

52 Section 23(2) of the OS Act extends the operation of its provisions to “acts, omissions, matters and things outside Australia”. It confirms that X Corp is in breach of the removal notice if it fails to take some “reasonable step” notwithstanding that the act or omission constituting that failure occurs overseas. However, s 23(2) does not control the meaning of “all reasonable steps”. A clear expression of intention would be necessary to support a conclusion that Parliament intended to empower the Commissioner to issue removal notices with the effect for which she contends.

53 The result is that, read in context and in the light of normal principles of statutory construction, the “reasonable steps” required by a removal notice issued under s 109 do not include the steps which the Commissioner seeks to compel X Corp to take in the present case.

Conclusions

54 For these reasons I have come to the view, based on the arguments advanced at this interlocutory stage, that the Commissioner will not succeed in establishing that compliance with the removal notice entails blocking access to the 65 URLs by all users of X Corp. It follows that there is not a *prima facie* case for the grant of a final injunction in the terms sought.

Balance of Convenience

55 The conclusion reached in the previous paragraph makes it unnecessary to express any detailed view as to the balance of convenience.

56 If the considerations relating to the comity of nations (discussed at [48]–[51] above) had not led me to the view that the Commissioner has not made out a *prima facie* case, the same considerations would have led me to conclude that the balance of convenience does not favour extending the interlocutory injunction in its current (or any similar) form.

57 On the one hand the injunction, if complied with or enforced, has a literally global effect on the operations of X Corp, including operations that have no real connection with Australia or Australia's interests. The interests of millions of people unconnected with the litigation would be affected. Justifying an interlocutory order with such a broad effect would in my view require strong prospects of success, strong evidence of a real likelihood of harm if the order is not made, and good reason to think it would be effective. At least the first and the third of these circumstances seem to be largely absent. The first is discussed above. As to the third, it is not in dispute that the stabbing video can currently be viewed on internet platforms other than X. I was informed that the video is harder to find on these platforms. The interim injunction is therefore not wholly pointless. However, removal of the stabbing video from X would not prevent people who want to see the video and have access to the internet from watching it.

58 On the other hand, there is uncontroversial expert evidence that a court in the US (where X Corp is based) would be highly unlikely to enforce a final injunction of the kind sought by the Commissioner; and it would seem to follow that the same is true of any interim injunction to similar effect. This is not in itself a reason why X Corp should not be held to account, but it suggests that an injunction is not a sensible way of doing that. Courts rightly hesitate to make orders that cannot be enforced, as it has the potential to bring the administration of justice into disrepute.

59 It was suggested that an injunction, even if not enforceable, could have an educative or deterrent effect. X Corp's amenability to education and deterrence might be thought to be open to doubt. In any event, while these are sometimes important considerations in the framing of final relief, I doubt whether they have a proper role in the making of interlocutory orders.

A further issue: material non-disclosure

60 X Corp also submitted that the Commissioner's failure to disclose the decision record at the initial hearing (which proceeded as if it was an *ex parte* application) required the interlocutory injunction to be dissolved. In oral submissions it was stressed that no allegation

of deliberate concealment or anything professionally improper was being made. It was also accepted that the point only affected the period between the initial grant of the injunction and the orders made two days later that extended it. The extension followed a further hearing at which X Corp was represented.

61 It may be theoretically possible to dissolve the interim injunction, *nunc pro tunc*, only in so far as it had effect during a particular period. However, the point seems to be largely academic in the light of the difficulties attending the enforcement of the injunction.

62 In any event, while disclosure of the decision record at the first hearing might have lengthened that hearing, I am not persuaded that it would have led to the injunction being refused. I have explained above why I do not consider that the decision record points to error in the decision to issue the removal notice.

Disposition of the application to extend the injunction

63 The application to extend the interlocutory injunction will be refused. I will reserve the question of costs.

Suppression orders

64 At the hearing on 10 May 2024 I made orders under s 37AF of the *Federal Court of Australia Act 1976* (Cth) (**the Federal Court Act**) prohibiting disclosure of certain evidence. The orders were not opposed by any party. However, because orders of this kind involve a departure from the principle of open justice (the importance of which is affirmed by s 37AE of the Federal Court Act), such orders should not go unnoticed and some brief reasons should be given for making them.

65 Order 1 of the orders made on 10 May prohibits disclosure of:

- (a) the particular URLs which contain the stabbing video; and
- (b) the names and contact details of employees of the Australian Communications and Media Authority who work to the Commissioner.

66 Disclosure of the URLs containing the stabbing video would advertise where the stabbing video can be viewed on X and facilitate access to the video by any user of the platform who is able to circumvent X Corp's geoblocking. This would undermine what the Commissioner is seeking to achieve by bringing the proceeding and compromise the utility of the injunction that the Commissioner is seeking. I was satisfied that an order preventing disclosure of this

information before the proceeding is determined was justified on the ground set out in s 37AG(1)(a) of the Federal Court Act: that the order is necessary “to prevent prejudice to the proper administration of justice”.

67 The evidence supporting the suppression of the names and details of the Commissioner’s officers was contained in an affidavit affirmed by Mr Toby Dagg which I was also satisfied should be suppressed. That evidence persuaded me that, in the heated political environment surrounding the removal order and its enforcement, disclosure of the names of individual officers could be prejudicial to their safety. The same is true of the details of communications which are recited in Mr Dagg’s affidavit. I was satisfied that the suppression of this information was justified on the ground set out in s 37AG(1)(c): the order is “necessary to protect the safety of any person”. I was asked to make this order effective for a period of two years or until further order and agreed that that was appropriate.

68 Order 8 of the orders made on 10 May 2024 prohibits disclosure of an annexure and an exhibit to the affidavit of Mr Michael Anderson affirmed on 1 May 2024 and one sentence of an affidavit of Mr Nicholas Perkins affirmed on 8 May 2024. These parts of the evidence involved technical information about the operation of X Corp’s platform and usage data which, I was satisfied, was commercially sensitive and potentially useful to competitors. The order was only proposed to have effect until the determination of the proceeding or further order (although I expect an application will in due course be made to extend its operation). I was satisfied that this order should be made under the ground set out in s 37AG(1)(a). It would be undesirable if the conduct of proceedings in the Court were to have as a by-product the disclosure of commercially sensitive material, or if fear of that outcome were to deter parties from presenting relevant evidence.

I certify that the preceding sixty-eight (68) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Kennett.

Associate:

Dated: 14 May 2024

Please refer to separate excel document titled "SRC250624 Agenda Item 6 Attachment F – 20240606 Clearview – estimate planning", distributed with this meeting papers package.

CM ref: [D2024/019041](#)

s22


From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Tuesday, June 25, 2024 8:10 AM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Cc: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>
Subject: Legal costs - Clearview [SEC=OFFICIAL]

Hi Angelene – I was just reading the SRC papers and in particular Clearview. I recall (and can see from the papers too) that in April you and I asked for a full estimate of costs to run the s 55A matter to its conclusion; - confirmation as to what further expert evidence (if any) will likely be required and an outline of the feasibility, cost, and timing of securing such evidence; and an indicative timeline of key dates if the s 55A proceedings were commenced.

s47E(c)


Carly Kind (she/her)
Privacy Commissioner
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0431 **E** carly.kind@oaic.gov.au

Executive assistants: isla.gibson@oaic.gov.au; lucy.roberts@oaic.gov.au

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

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From: [KIND,Carly](#)
To: [FALK,Angelene \(EXPIRED\)](#); [TYDD,Liz](#)
Subject: FW: Articles of note - Thursday 27 June 2024
Date: Thursday, 27 June 2024 10:53:08 AM
Attachments: [image004.png](#)
[image003.png](#)
[Senate.pdf](#)
[house_program.pdf](#)
[Media clips 27 June.docx](#)

Note the Mandarin article in the attached about the eSafety injunction decision, as relevant to the Clearview discussion.

s47E(d)

The content of this block is redacted with black bars. It appears to be a list of names or identifiers, with the first one being 's47E(d)'.

From: OAIC - Media <media@oaic.gov.au>

Sent: Thursday, June 27, 2024 9:46 AM

To: OAIC Executive Group <DL_OAIC_ExecutiveGroup@oaic.gov.au>; OAIC Leadership <DL_OAIC_Leadership@external.dese.gov.au>; OAIC - Strategic Communications <DL_OAIC_Strategic_Communications@oaic.gov.au>; ADAMS,Shane <Shane.Adams@oaic.gov.au>; GONZALEZ,Adriana <Adriana.Gonzalez@oaic.gov.au>; CONLON,Alexandra <Alexandra.Conlon@oaic.gov.au>; HODGES,Amanda <Amanda.Hodges@oaic.gov.au>; BEN-PELECH,Rachel <Rachel.Ben-Pelech@oaic.gov.au>; LAI,Bernie <Bernie.Lai@oaic.gov.au>; HARLOW,Bianca <Bianca.Harlow@oaic.gov.au>; BOOTH,Brett <Brett.Booth@oaic.gov.au>; LOCKYER,Brett <Brett.Lockyer@oaic.gov.au>; BRIGGS,Casey <Casey.Briggs@oaic.gov.au>; BURKE,Cassandra <Cassandra.Burke@oaic.gov.au>; BURNS,Shania <Shania.Burns@oaic.gov.au>; CAHILL,Isabella <Isabella.Cahill@oaic.gov.au>; WOLNIZER,Carla <Carla.Wolnizer@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; CALANDRA-ZAMECNIK,Carmela <Carmela.Calandra-Zamecnik@oaic.gov.au>; WOO,Caroline <Caroline.Woo@oaic.gov.au>; CHENG,Caroline <Caroline.Cheng@oaic.gov.au>; PETRIE,Claire <Claire.Petrie@oaic.gov.au>; DE PALMA,Claire <Claire.dePalma@oaic.gov.au>; SMITH,Delaney <Delaney.Smith@oaic.gov.au>; DELFS,Heather <Heather.Delfs@oaic.gov.au>; KORMAS,Dimitrios <Dimitrios.Kormas@oaic.gov.au>; LOH,Elaine <Elaine.Loh@oaic.gov.au>; MCPHEE,Emily <Emily.McPhee@oaic.gov.au>; ANNETTS,Fiona <Fiona.Annetts@oaic.gov.au>; DRUC,Galina <Galina.Druc@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; GILLBERG,Sally <Sally.Gillberg@oaic.gov.au>; GOSAL,Nehal <Nehal.Gosal@oaic.gov.au>; HANAEE,Thomas <Thomas.Hanaee@oaic.gov.au>; HARRAR,Jasmina <Jasmina.Harrar@oaic.gov.au>; HUGGONSON,Sarah <Sarah.Huggonson@oaic.gov.au>; VAYZER,Iris <Iris.Vayzer@oaic.gov.au>; SCOLYER,Jackie <Jackie.Scolyer@oaic.gov.au>; CORBETT,Jason <Jason.Corbett@oaic.gov.au>; JEFFRESON,Oscar <Oscar.Jefferson@oaic.gov.au>; ESLICK,Jessica <Jessica.Eslick@oaic.gov.au>; JANG, Ji <Ji.Jang@oaic.gov.au>; STEWART,Jo <Jo.Stewart@oaic.gov.au>; GRENFELL,Joseph <Joseph.Grenfell@oaic.gov.au>; TULLOCH,Karen <Karen.Tulloch@oaic.gov.au>; THORPE,Kate <Kate.Thorpe@oaic.gov.au>; KWONG,Katie <Katie.Kwong@oaic.gov.au>; SNODGRASS,Kristy <Kristy.Snodgrass@oaic.gov.au>; LAFFERTY,Leah <Leah.Lafferty@oaic.gov.au>; HILLIKER,Lauren <Lauren.Hilliker@oaic.gov.au>; JOVEVSKI,Lisa <Lisa.Jovevski@oaic.gov.au>; TYDD,Liz

<Elizabeth.Tydd@oaic.gov.au>; LY,Barbara <Barbara.Ly@oaic.gov.au>; SHUEY,Madeleine <Madeleine.Shuey@oaic.gov.au>; SUI,Margaret <Margaret.Sui@oaic.gov.au>; BLOWES,Matthew <Matthew.Blowes@oaic.gov.au>; MAXFIELD,Chris <Chris.Maxfield@oaic.gov.au>; KURISHINGAL,Melissa <Melissa.Kurishingal@oaic.gov.au>; FOOT,Michael <Michael.Foot@oaic.gov.au>; LAMPE,Naomi <Naomi.Lampe@oaic.gov.au>; HEDGES,Nathan <Nathan.Hedges@oaic.gov.au>; LOORHAM,Nathaniel <Nathaniel.Loorham@oaic.gov.au>; PULS,Nicola <Nicola.Puls@oaic.gov.au>; BILAC,Nicole <Nicole.Bilac@oaic.gov.au>; DL_OAIC_Legal Services Team <LegalServicesTeam@external.dese.gov.au>; OAIC - Media <media@oaic.gov.au>; PARAJULI,Shree <Shree.Parajuli@oaic.gov.au>; PENN,Kayla <Kayla.Penn@oaic.gov.au>; MATHISON,Rachel <Rachel.Mathison@oaic.gov.au>; MOHAN,Ritu <Ritu.Mohan@oaic.gov.au>; ROBERTS,Lucy <Lucy.Roberts@oaic.gov.au>; ROWSE,Lucy <Lucy.Rowse@oaic.gov.au>; YEEND,Ruth <Ruth.Yeend@oaic.gov.au>; MARIA,Sara <Sara.Maria@oaic.gov.au>; LOH,Sarah <Sarah.Loh@oaic.gov.au>; GOVIL,Shantanu <Shantanu.Govil@oaic.gov.au>; WATSON,Shona <Shona.Watson@oaic.gov.au>; BRYAN,Siobhan <Siobhan.Bryan@oaic.gov.au>; SMITH,Ashleigh <Ashleigh.Smith@oaic.gov.au>; ALEXANDROU,Soulla <Soulla.Alexandrou@oaic.gov.au>; OTOREPEC,Stephanie <Stephanie.Otorepec@oaic.gov.au>; SPILIOTOPOULOS,Steven <Steven.Spiliotopoulos@oaic.gov.au>; TJONDRO,Eleanor <Eleanor.Tjondro@oaic.gov.au>; TODOROFF,Zoe <Zoe.Todoroff@oaic.gov.au>; MACKIE, Tom <Tom.Mackie@oaic.gov.au>; ASH,Travis <Travis.Ash@oaic.gov.au>; QUAN,Trish <Trish.Quan@oaic.gov.au>; TIAN,Wendy <Wendy.Tian@oaic.gov.au>

Cc: OAIC - Media <media@oaic.gov.au>

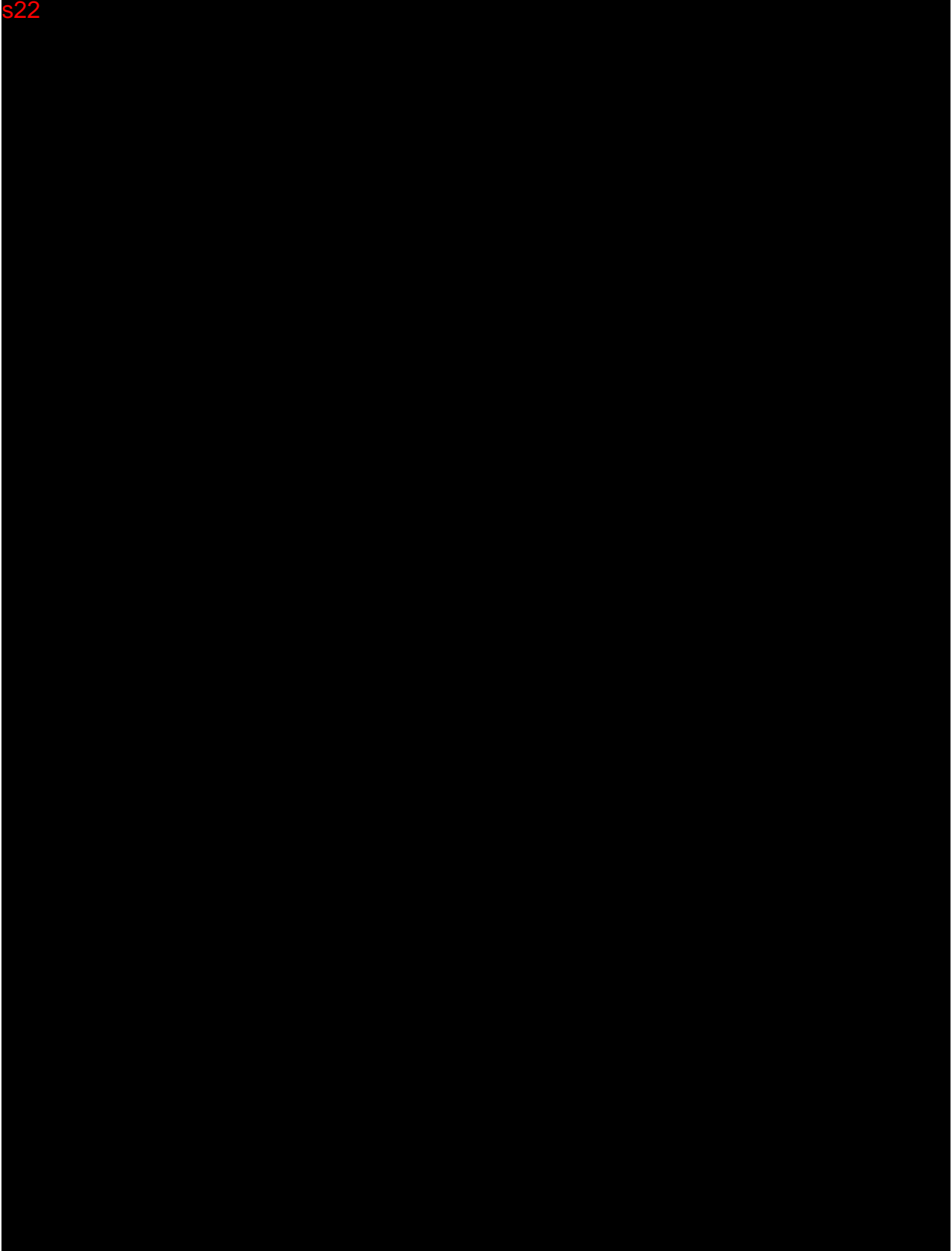
Subject: Articles of note - Thursday 27 June 2024

Good morning,

s22



s22

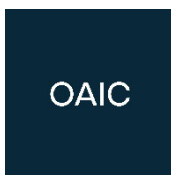
**Social media**

[The Mandarin](#) (in attachment) An article about the e-safety commissioner's discontinuance in proceedings against X Corp, which argues that 'Online content takedown orders do little to address the surveillance capitalist model Big Tech thrives on'.

s22

Have a great day

Jasmine



Jasmine Woolcott (she/her)
Communications Adviser, Strategic Communications
Office of the Australian Information Commissioner
E Jasmine.Woolcott@oaic.gov.au

Note: I work part time and am not available each Wednesday.

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

From: [ATTARD,Brenton](#)
To: [CASTALDI,Andre](#); [FALK,Angelene \(EXPIRED\)](#); [GIBSON,Isla](#); [GHALI,Sarah](#); [KIND,Carly](#); [OTOREPEC,Stephanie](#)
Cc: [TYDD,Liz](#); [DRAYTON,Melanie](#); [RYDER,Penny](#); [NURNEY,Lorraine](#)
Subject: RE: [For AIC clearance] Hearing and written QoNs due for submission on Friday 5 July 2024 [SEC=OFFICIAL]
Date: Wednesday, 3 July 2024 2:05:01 PM

Thanks all, the attached version of Clearview will be submitted.

Regards,

Brenton

From: CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>
Sent: Wednesday, July 3, 2024 12:14 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; ATTARD,Brenton <Brenton.Attard@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; GHALI,Sarah <Sarah.Ghali@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; OTOREPEC,Stephanie <Stephanie.Otorepec@oaic.gov.au>
Cc: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>
Subject: RE: [For AIC clearance] Hearing and written QoNs due for submission on Friday 5 July 2024 [SEC=OFFICIAL]

Thanks Angelene

Steph has actioned your comments and Steph and Sarah don't have any further changes (neither do I).

Brenton over to you. Clearview with Angelene's changes is attached.

Kind regards

Andre

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Tuesday, July 2, 2024 7:25 PM
To: ATTARD,Brenton <Brenton.Attard@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; GHALI,Sarah <Sarah.Ghali@oaic.gov.au>; CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Cc: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>
Subject: RE: [For AIC clearance] Hearing and written QoNs due for submission on Friday 5 July 2024 [SEC=OFFICIAL]

Brenton please see approvals below.

Sarah and Andre: please check highlighted matters below.

Carly: FYI I have made a change to Clearview in the attached.

Regards
Angelene

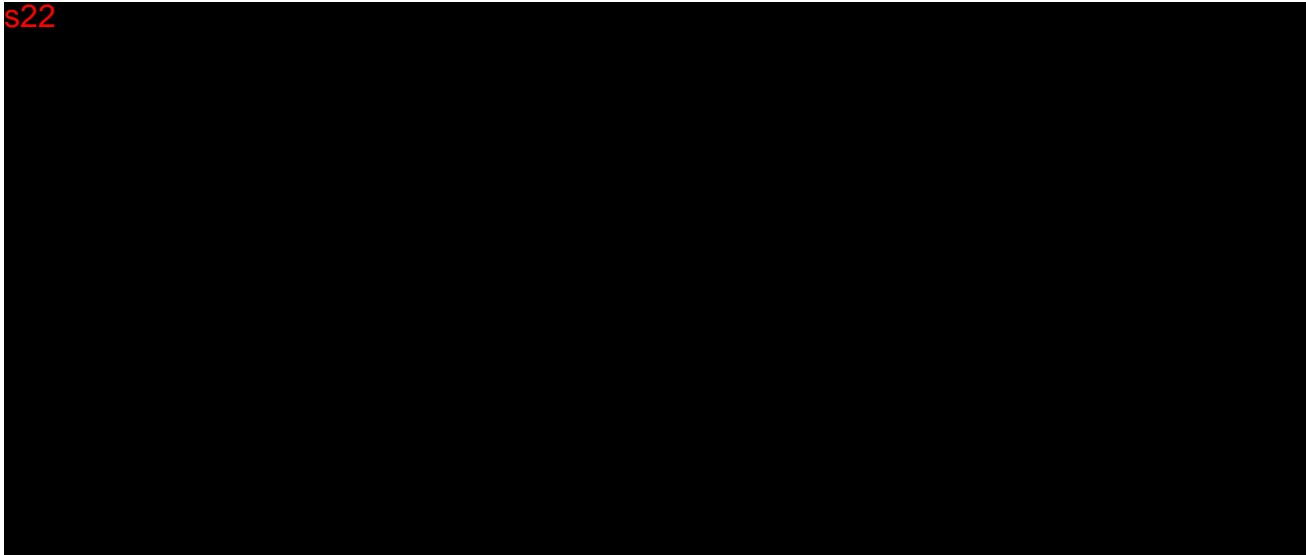
From: ATTARD,Brenton <Brenton.Attard@oaic.gov.au>
Sent: Friday, June 28, 2024 7:05 PM

To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>
Cc: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>
Subject: [For AIC clearance] Hearing and written QoNs due for submission on Friday 5 July 2024 [SEC=OFFICIAL]

Dear Commissioner

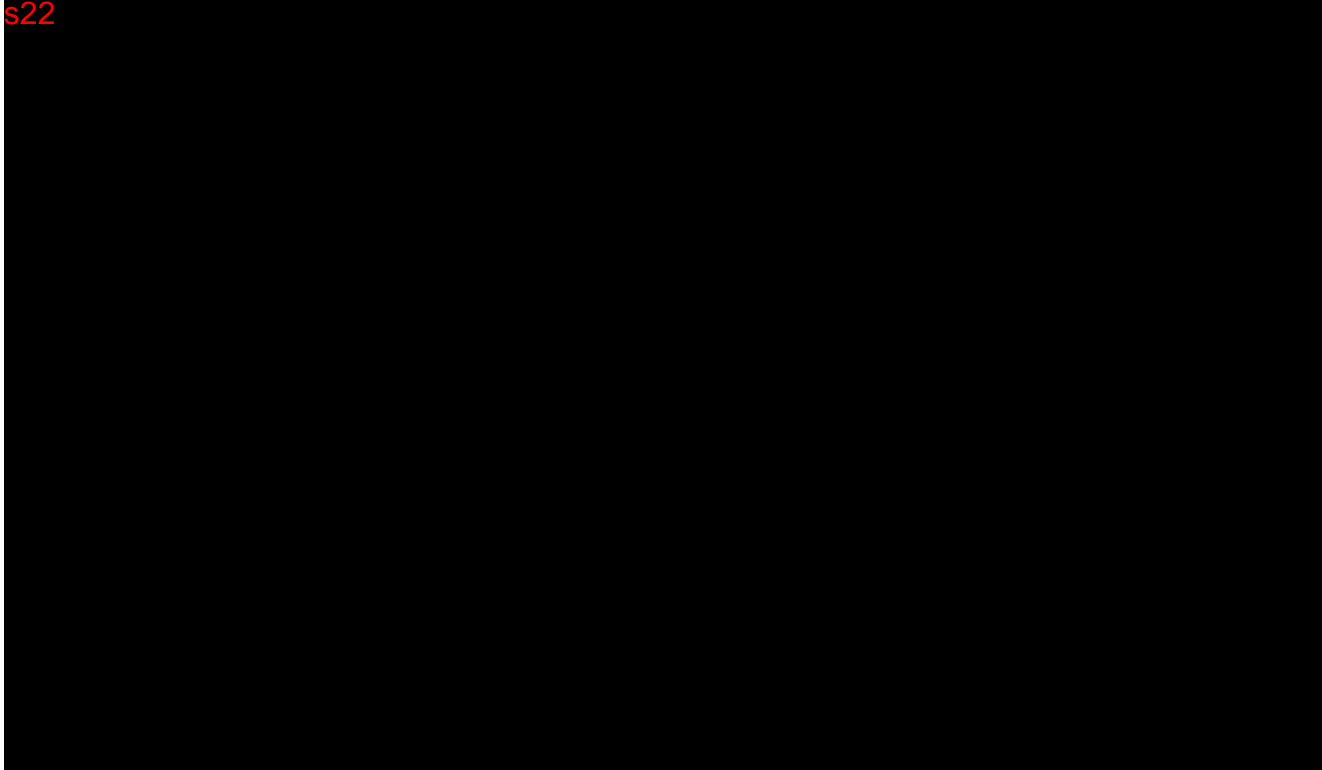
The below QoNs are from the Budget Estimates Hearing of 29 May and written QoNs following the Hearing. The FOI and Privacy QoNs have received the FOI Commissioner’s and Privacy Commissioner’s clearance and are referred to you for your clearance as Agency Head.

s22



PRIVACY

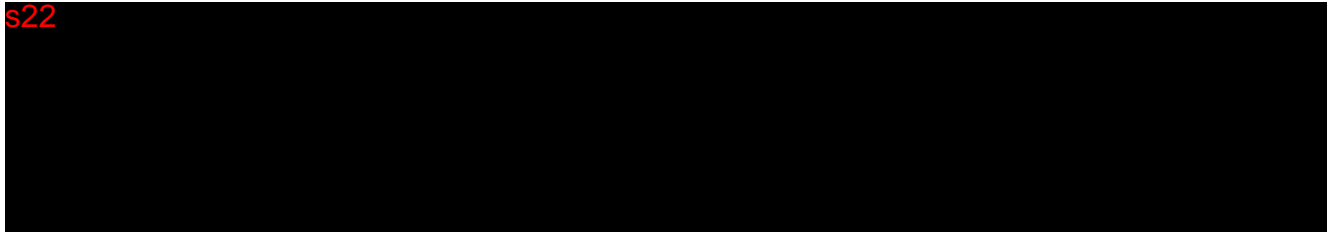
s22



BE24-005	Clearview AI	Annamie Hale	D2024/018566	Ready for clearance	Document is checked
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				out to Annamie. Please use the attached document with track changes.
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s22



It would be appreciated if your clearance could be given by COB Wednesday 3 July. [@GIBSON,Isla](#)
please schedule clearance time.

Regards,

Brenton



Strategic Regulatory Committee Meeting

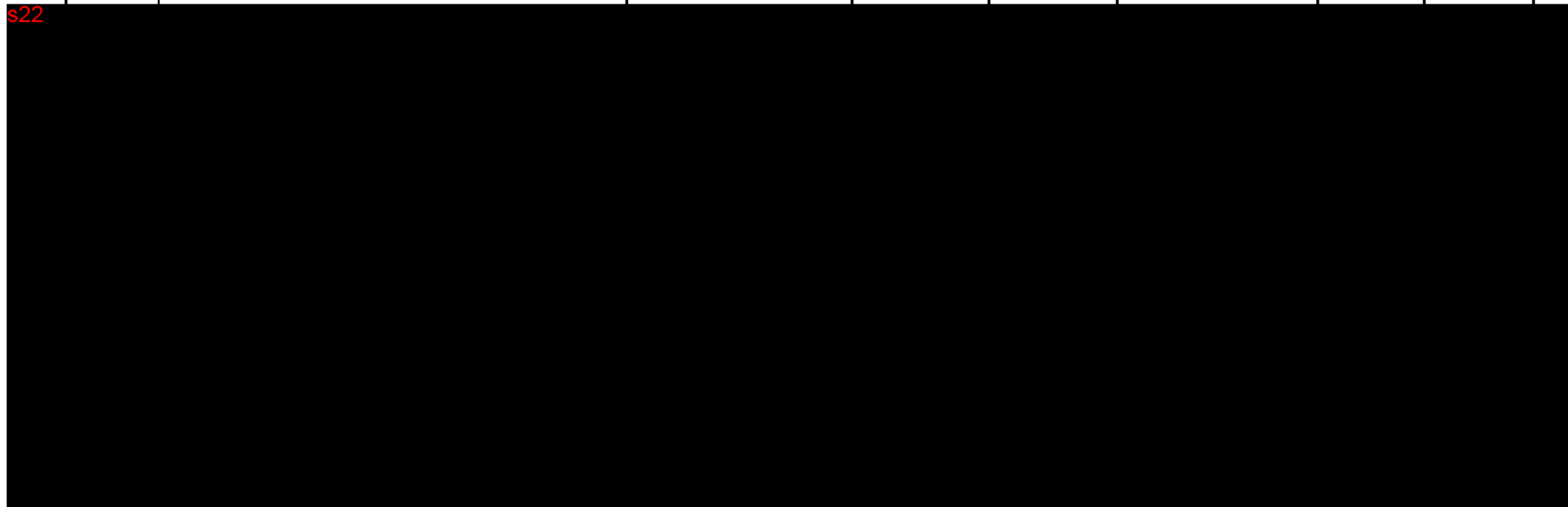
Date:	9 July 2024
Time:	1:30pm to 4:00pm AEST
Location:	Gawura Room or MS Teams
Present:	Information Commissioner Angelene Falk (Chair) Freedom of Information Commissioner Elizabeth Tydd Privacy Commissioner Carly Kind
Apologies	
Secretariat:	Lucy Roberts
Attendees:	<p>Standing attendees:</p> <p>Melanie Drayton, a/g Deputy Commissioner Andre Castaldi, Assistant Commissioner Dispute Resolution Annan Boag, a/g Assistant Commissioner Digital ID Sarah Croxall, a/g Assistant Commissioner R&S Sarah Ghali, Assistant Commissioner R&S Rob Ghali, Assistant Commissioner Major Investigations Annamie Hale, Assistant Commissioner Corporate Penny Ryder, a/g Chief Operating Officer Rocelle Ago, Assistant Commissioner FOI Caren Whip, General Counsel Kylie Maso, Executive Director Legal Toni Pirani, Special Adviser FOI Decisions</p> <p>Attendees for one or more items:</p> <p>Hannah Holswilder, Director FOI Intake Team Wendy Tian, Assistant Director Sarah Huggonson, Assistant Director Warren Jacobs, Director Elanor Tjondro, Assistant Director Cristina Rodriguez, Assistant Director Sam Hartridge, Senior Lawyer Sara Peel, Director, FOI Monitoring, Guidance and Engagement David Moore, Principal Lawyer Jennifer Lim, Principal Lawyer Suvradip Maitra, Lawyer Stephanie Otorepec, Director</p>



Australian Government
Office of the Australian Information Commissioner

Agenda

Item No	Matter	Available attendees	Paper/verbal	Requesting	Lead	Timing	Page(s)
Meeting Opening							
1.	Acknowledgement of Country					4 min	
2.	Apologies						
3.	Conflict of interest declarations			Noting	Secretariat		
4.	Previous minutes			Approval	Secretariat		



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STRATEGIC REGULATORY COMMITTEE– 9 July 2024

Agenda Item 4 – Previous minutes

Responsible Executive Member:	Penny Ryder, a/g Chief Operating Officer
Prepared by:	Lucy Roberts (Secretariat)

Purpose

The purpose of this paper is to provide proposed minutes of the previous Strategic Regulatory Committee meeting for consideration and approval.

Recommendation(s)

That the Strategic Regulatory Committee:

1. **Approves** the minutes of Strategic Regulatory Committee meeting 9 July 2024.

Background

1. The Secretariat records minutes at each meeting as a complete record in accordance with record management requirements and confidentiality about the contents of minutes. The minutes contain a record of outcomes or decisions from each agenda item, a statement of action to be taken including the committee member or senior executive officer responsible and a timeline for completion.
2. The proposed minutes of the previous meeting are presented to the Strategic Regulatory Committee for approval.

Attachments

Attachment A: Minutes of previous meeting 25 June 2024.



Strategic Regulatory Committee Meeting Minutes

Date: 25 June 2024 **Location:** Gawura Room or MS Teams

Start: 2:15 pm **Finish:** 4:19pm

Attendees:

Committee Members:

Information Commissioner Angelene Falk (Chair)	Privacy Commissioner Carly Kind	FOI Commissioner Liz Tydd
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Standing attendees:

Melanie Drayton, a/g Deputy Commissioner
 Annan Boag, Assistant Commissioner, DI
 Andre Castaldi, Assistant Commissioner, DR
 Sarah Ghali, Assistant Commissioner, R&S
 Sarah Croxall, Assistant Commissioner, R&S
 Annamie Hale, Assistant Commissioner, Corporate
 Penny Ryder, a/g Chief Operating Officer
 Rocelle Ago, Assistant Commissioner, FOI
 Rob Ghali, Assistant Commissioner, MI
 Caren Whip, General Counsel
 Kylie Maso, Executive Director Legal

Alicia Stewart Secretariat

Present for one or more item at meeting

David Moore, Principal Lawyer
 Felicity Perera-Pillai, Senior Lawyer
 Natalie Le, Director, Dispute Resolution
 Fiona Grant, Director, Dispute Resolution
 Siobhan Bryan, a/g Director CDR Assessments
 Joseph Grenfell, Assistant Director, CDR Assessments
 Sam Hartridge, Senior Lawyer
 Observer: Claire Noone, Nous Group
 Observer: Larissa Butler, EA to Deputy Commissioner
 Observer: Toni Pirani, Special Adviser FOI Decisions
 Observed: Isla Gibson, Executive Assistant to the Information Commissioner

Apologies

Nil

1. Acknowledgement of Country
2. Welcome and Apologies

Discussion Chair gave an acknowledgement of country.
No apologies.

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6. Clearview (LPP)

Note, this item was considered by the SRC after item 9 due to attendance by external observer Claire Noone from Nous Group. Discussion and outcomes presented in the minutes the order of the agenda.

David Moore and Felicity Perera-Pillai present.

Discussion	<p>Caren Whip, General Counsel, spoke to the paper.</p> <p>Caren updated the Strategic Regulatory Committee on progress since the last update to Commissioners in March 2024, noting the receipt of legal advice and recent relevant court decisions that informed the paper's recommended approach to concluding the matter.</p> <p>Members discussed the jurisdictional limitations associated with the matter and likely future matters and if these could be communicated in a paper to the Attorney General.</p> <p>Members discussed strategies for concluding the matter and resolved not to proceed with enforcement action and further consider concluding the matter by other means, such as public letter.</p>
Decision/outcome	<p>Strategic Regulatory Committee agreed with the paper's recommendation to not proceed with enforcement proceedings under section 55A of the Privacy Act.</p> <p>Strategic Regulatory Committee requested an out of session meeting, chaired by Commissioner Kind, to be convened for further consideration of options for concluding the matter by other means (and the application of section 29 of the Privacy Act to those options).</p>
Action Item	<p>Commissioner Kind to convene an out of session meeting to consider options for concluding the Clearview matter.</p>

David Moore and Felicity Perera-Pillai exited the meeting.

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CK 03.07.24

Summary

Meta has begun using the personal information it holds of Facebook and Instagram users to train its generative AI models, Llama and Emu. This practice is getting increasing attention worldwide, and may be in contravention of APP 6. This note sets out options for a potential case approach.

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From a privacy perspective, there are two key trends of concern:

1. The use of web crawlers by entities to access publicly available third party personal information to train models. The OAIC has already taken action with respect to this practice:

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- In *Clearview* the AIC made a determination against Clearview for using web crawlers to obtain personal information of Australians; and
- In collaboration with peer regulators, the OAIC issued a statement on the obligations of social media organisations to protect personal information from third party data scraping.

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From: [KIELY,Amy](#)
To: [KIND,Carly](#)
Cc: [STOKES,Andrew](#)
Subject: RE: Statement on Clearview AI [SEC=OFFICIAL]
Date: Tuesday, 20 August 2024 3:54:08 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

Great, thanks for the speedy response.



Amy Kiely (she/her)
Assistant Director, Strategic Communications
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From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Tuesday, August 20, 2024 3:53 PM
To: KIELY,Amy <Amy.Kiely@oaic.gov.au>
Cc: STOKES,Andrew <Andrew.Stokes@oaic.gov.au>
Subject: RE: Statement on Clearview AI [SEC=OFFICIAL]

This looks good, thanks Amy. Legal has cleared so we're good to go.

From: KIELY,Amy <Amy.Kiely@oaic.gov.au>
Sent: Tuesday, August 20, 2024 3:52 PM
To: KIND,Carly <Carly.Kind@oaic.gov.au>
Cc: STOKES,Andrew <Andrew.Stokes@oaic.gov.au>
Subject: RE: Statement on Clearview AI [SEC=OFFICIAL]

Hi Carly

This is what I have prepared in the website backend to publish tomorrow. We have attributed some of the statement to you where it switches to first person. I also added the AAT info you passed on.

Are we expecting any further changes from Legal?

Statement on Clearview AI

Published 21 August 2024

The Office of the Australian Information Commissioner (OAIC) has been considering whether to take further action against Clearview AI, Inc., which was the subject of a

determination under s 52(1A) of the *Privacy Act 1988* (Cth) issued on 14 October 2021. That determination found that Clearview AI, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (APPs) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, the determination found that Clearview AI indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the determination, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. **On 3 November 2021, Clearview AI commenced proceedings in the Administrative Appeals Tribunal (AAT) to challenge the determination.** After the AAT found that Clearview AI had breached certain of the APPs, Clearview AI withdrew from the proceedings in August 2023, before the AAT could make orders regarding steps Clearview AI must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview AI must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview AI was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview AI in the course of the AAT proceedings in 2023. Nevertheless, it gave rise to questions about whether Clearview AI was complying with the terms of the Australian Information Commissioner's 2021 determination.

Privacy Commissioner Carly Kind said, "I have given extensive consideration to the question of whether the OAIC should invest further resources in scrutinising the actions of Clearview AI, a company that has already been investigated by the OAIC and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. Considering all the relevant factors, I am not satisfied that further action is warranted in the particular case of Clearview AI at this time.

"However, the practices engaged in by Clearview AI at the time of the determination were troubling and are increasingly common due to the drive towards the development of generative artificial intelligence (AI) models. In August 2023, alongside 11 other data protection and privacy regulators, the OAIC [issued a statement](#) on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information that is on their sites from unlawful data scraping.

"All regulated entities, including organisations that fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting,

using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act. The OAIC will soon be issuing guidance for entities seeking to develop and train generative AI models, including how the APPs apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots.

“In the meantime, we reiterate that the determination against Clearview AI still stands.”



Amy Kiely (she/her)
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From: STOKES,Andrew <Andrew.Stokes@oaic.gov.au>
Sent: Tuesday, August 20, 2024 9:26 AM
To: KIELY,Amy <Amy.Kiely@oaic.gov.au>
Subject: FW: Statement on Clearview AI [SEC=OFFICIAL]

Fyi, I think we will have something on this today or tomorrow.

From: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>
Sent: Monday, August 19, 2024 5:41 PM
To: KIND,Carly <Carly.Kind@oaic.gov.au>; PIRANI,Toni <Toni.Pirani@oaic.gov.au>
Cc: BOAG,Annan <Annan.Boag@oaic.gov.au>; STOKES,Andrew <Andrew.Stokes@oaic.gov.au>
Subject: RE: Statement on Clearview AI [SEC=OFFICIAL]

Dear Carly

Looks good and s33B is powerful as we agreed. Only one suggestion re:

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

Can you commence with the second sentence and make a statement about the regulatory communicating expectations from which we will measure compliance then you don't need

to go into coming weeks you can just call out announced and publicised via the OAIC website.

Hope that assists

Kind regards

Liz

From: KIND, Carly <Carly.Kind@oaic.gov.au>

Sent: Monday, August 19, 2024 4:53 PM

To: TYDD, Liz <Elizabeth.Tydd@oaic.gov.au>; PIRANI, Toni <Toni.Pirani@oaic.gov.au>

Cc: BOAG, Annan <Annan.Boag@oaic.gov.au>; STOKES, Andrew <Andrew.Stokes@oaic.gov.au>

Subject: Statement on Clearview AI [SEC=OFFICIAL]

Hi Liz and Toni – for your visibility, below is a statement on Clearview AI that I am proposing we put up on our website this week, and draw it to the attention of a journalist who is seeking an update on the Clearview AI case. With thanks to Annan and Andrew for their input. Legal is also reviewing for any residual concerns on their end. You will recall this relates to a July SRC decision not to pursue enforcement action against Clearview AI at this stage.

On Annan's suggestion, I have satisfied myself that making this information public is in the public interest in accordance with s33B of the Privacy Act, not least because it reassures the public we are giving due attention to issues of community concern, and that it provides a context for forthcoming guidance.

Statement on Clearview AI

The Office of the Australian Information Commissioner (OAIC) has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, the Determination found that Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the

Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. In [insert month/year] Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached certain of the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview in the course of the Tribunal proceedings in 2023. Nevertheless, it gave rise to questions about whether Clearview was complying with the terms of the AIC's 2021 determination.

I have given extensive consideration to the question of whether the OAIC should invest further resources in scrutinising the actions of Clearview AI, a company that has already been investigated by the OAIC, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. Considering all the relevant factors, I am not satisfied that further action is warranted in the particular case of Clearview at this time.

However, the practices engaged in by Clearview AI at the time of the determination were troubling and are increasingly common due to the drive towards the development of generative AI models. In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information that is on their sites from unlawful data scraping.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

In the meantime, we reiterate that the determination against Clearview AI still stands.



Carly Kind (she/her)
Privacy Commissioner
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0431 **E** carly.kind@oaic.gov.au

Executive assistants: isla.gibson@oaic.gov.au; lucy.roberts@oaic.gov.au

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From: [QAIC - Secretariat](#)
 To: [AGO Rosalie](#); [QAIC Annam](#); [CASTALDI Andre](#); [CROVALL Sarah](#); [DRAYTON Melanie](#); [FALK Angelene \(EXPIRED\)](#); [GHALL Bob](#); [GHALL Sarah](#); [HALE Annamie](#); [KIND Carly](#); [PIRANI Toni](#); [RYDER Penny](#); [TYDD Liz](#)
 Cc: [QAIC - Secretariat](#)
 Subject: SRC 060824 - Action Items
 Date: Wednesday, 14 August 2024 1:37:00 PM
 Attachments: [image001.png](#)

OFFICIAL: Sensitive/Legal Privilege

Good afternoon all

Please see below action items as recorded in the meeting on 06/08/2024.

I understand that the Committee will be providing updates to the Secretariat on some Action items prior to the meeting. To assist the Secretariat with this, I have included a column that identifies whether an item is to be reported back to the committee as a future agenda item, or whether it is to be acquitted out of session. I would be really grateful if you could note this in the meeting when setting action items, for our records.



Where it is to be acquitted out of session, you can advise the Secretariat ahead of the meeting that the item has been actioned. I would be grateful if you could provide the following details to the Secretariat to ensure that we can record on the actions item register with sufficient detail for the Committee to accept its closure:

- Meeting ID
- Agenda ID
- Action item title
- Status
- Details of closure (eg. meeting date, reason no item is no longer required, identify if work is being progressed by branch but committee no longer requires monitoring etc)

Where it is to be reported back, you do not need to provide the Secretariat with an update. It will be listed on the Agenda for the due date, unless you advise the Secretariat otherwise.

Items with no due date will remain on the register as open-ongoing until the Secretariat is provided with the details of its closure, either in the meeting verbally or by email prior to the meeting, such that the Secretariat can note it in the action items register for the subsequent meeting.

Kind regards

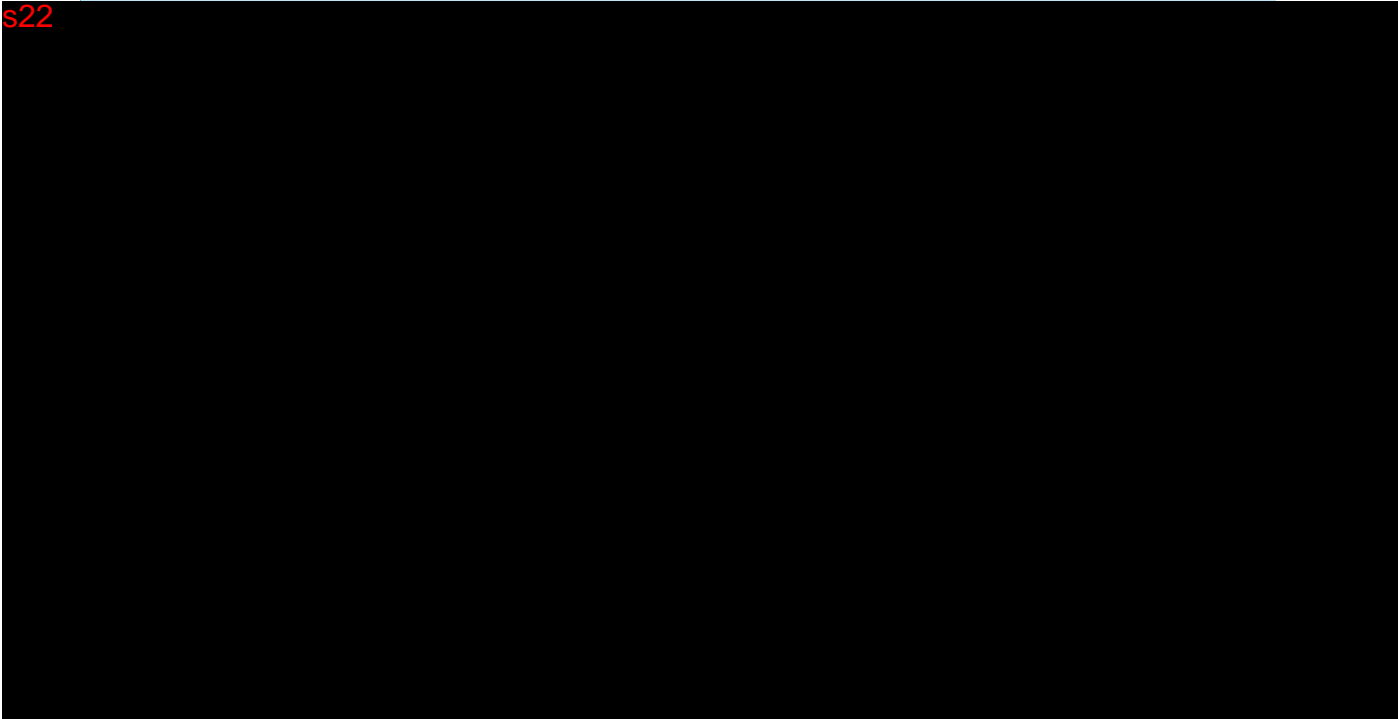
 **Isla Gibson** (she/her)
 Senior Executive Assistant to the Australian Information Commissioner
 Office of the Australian Information Commissioner
 Sydney | GPO Box 5288 Sydney NSW 2001
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Meeting ID	Agenda ID	Title	Assigned Responsibility	Due date	Report back /acquit out of session	Status	Comments (extracted from minutes)
		Commissioner Kind to convene an out of session meeting to consider options	Commissioner Kind and Annamie Hale, AC		Acquit out of session and advise	Open -	060724 - Commissioner Kind noted the meeting has occurred and that Commissioner Falk will be updated on this matter following SRC. 060824 - Commissioner Kind to provide an update to Commissioner Tydd

s22



OFFICIAL: Sensitive/Legal Privilege

From: [PIRANI, Toni](#)
To: [KIND, Carly](#); [TYDD, Liz](#)
Cc: [BOAG, Annan](#); [STOKES, Andrew](#)
Subject: RE: Statement on Clearview AI [SEC=OFFICIAL]
Date: Monday, 19 August 2024 5:15:35 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

Thanks Carly – appreciate the visibility. I found it very persuasive as a reader with little previous knowledge of what has occurred.

Regards

Toni

From: KIND, Carly <Carly.Kind@oaic.gov.au>
Sent: Monday, August 19, 2024 4:53 PM
To: TYDD, Liz <Elizabeth.Tydd@oaic.gov.au>; PIRANI, Toni <Toni.Pirani@oaic.gov.au>
Cc: BOAG, Annan <Annan.Boag@oaic.gov.au>; STOKES, Andrew <Andrew.Stokes@oaic.gov.au>
Subject: Statement on Clearview AI [SEC=OFFICIAL]

Hi Liz and Toni – for your visibility, below is a statement on Clearview AI that I am proposing we put up on our website this week, and draw it to the attention of a journalist who is seeking an update on the Clearview AI case. With thanks to Annan and Andrew for their input. Legal is also reviewing for any residual concerns on their end. You will recall this relates to a July SRC decision not to pursue enforcement action against Clearview AI at this stage.

On Annan's suggestion, I have satisfied myself that making this information public is in the public interest in accordance with s33B of the Privacy Act, not least because it reassures the public we are giving due attention to issues of community concern, and that it provides a context for forthcoming guidance.

Statement on Clearview AI

The Office of the Australian Information Commissioner (OAIC) has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, the Determination found that Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. In [insert month/year] Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached certain of the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

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I have given extensive consideration to the question of whether the OAIC should invest further resources in scrutinising the actions of Clearview AI, a company that has already been investigated by the OAIC, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. Considering all the relevant factors, I am not satisfied that further action is warranted in the particular case of Clearview at this time.

However, the practices engaged in by Clearview AI at the time of the determination were troubling and are increasingly common due to the drive towards the development of generative AI models. In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information that is on their sites from unlawful data scraping.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots.

These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

In the meantime, we reiterate that the determination against Clearview AI still stands.



Carly Kind (she/her)
Privacy Commissioner
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
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Executive assistants: jsla.gibson@oaic.gov.au; lucy.roberts@oaic.gov.au

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From: [KIND,Carly](#)
To: [PERERA-PILLAI,Felicity](#)
Cc: [WHIP,Caren](#); [MOORE,David](#); [BOAG,Annan](#); [LIM,Jennifer](#); [MASO,Kylie](#)
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Tuesday, 20 August 2024 2:37:00 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)
[image005.jpg](#)

Thanks Felicity.

From: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Sent: Monday, August 19, 2024 5:08 PM
To: KIND,Carly <Carly.Kind@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Thanks Carly. We have reviewed the draft statement and do not have any concerns.

To answer your query, Clearview commenced proceedings in the AAT on 3 November 2021.

Kind regards
Felicity



Felicity Perera-Pillai
Senior Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
P +61 2 9246 0468 **E** felicity.perera-pillai@oaic.gov.au

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From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Monday, August 19, 2024 1:20 PM
To: PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>; LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Thanks Felicity. I've reworked your discussion points into a slightly longer statement that I am minded to issue (below). There is a journalist seeking an update on this matter so we'd be looking to share this as our response.

I'm sharing for visibility; feel free to highlight if you have any concerns. Could you also let me know the date that Clearview commenced proceedings in the AAT please?

Statement on Clearview AI

The Office of the Australian Information Commissioner (OAIC) has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, the Determination found that Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. In [insert month/year] Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached certain of the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview in the

course of the Tribunal proceedings in 2023. Nevertheless, it gave rise to questions about whether Clearview was complying with the terms of the AIC's 2021 determination.

I have given extensive consideration to the question of whether the OAIC should invest further resources in scrutinising the actions of Clearview AI, a company that has already been investigated by the OAIC, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. Considering all the relevant factors, I am not satisfied that further action is warranted in the particular case of Clearview at this time.

However, the practices engaged in by Clearview AI at the time of the determination were troubling and are increasingly common due to the drive towards the development of generative AI models. In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information that is on their sites from unlawful data scraping.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

In the meantime, we reiterate that the determination against Clearview AI still stands.

OFFICIAL: Sensitive//Legal Privilege

From: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Sent: Monday, August 12, 2024 1:36 PM

To: KIND, Carly <Carly.Kind@oaic.gov.au>

Cc: WHIP, Caren <Caren.Whip@oaic.gov.au>; MOORE, David <David.Moore@oaic.gov.au>; BOAG, Annan <Annan.Boag@oaic.gov.au>; LIM, Jennifer <Jennifer.Lim@oaic.gov.au>; MASO, Kylie <Kylie.Maso@oaic.gov.au>

Subject: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: High

OFFICIAL: Sensitive//Legal Privilege

Dear Carly and Annan

Further to the below and following our meeting, we have drafted some dot points for a public statement for your consideration. We note that:

1. To avoid any s 29 issues, we have set out only public facts about the case;

§
4
2

[REDACTED]

[REDACTED]

[REDACTED]
3. As Carly requested, we have drafted the below as 'discussion points' rather than a complete statement at this stage;
4. s42 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] and
5. We have adopted the format of the TikTok statement on our website ([TikTok preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

Discussion points for a public statement on the OAIC website:

- My office has been considering whether to take further action against Clearview which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**). That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.
- Notably, Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as Clearview withdrew its application to have the Determination reviewed by the Administrative Appeals Tribunal, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia.
- After much consideration, I have concluded that there is insufficient evidence to satisfy me that further action is warranted. I have no evidence before me that Clearview is acting in breach of the Determination, and the limitations of current technology create significant challenges in determining whether Clearview is

continuing to operate in Australia.

- I strongly urge APP entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, to closely consider any activities that involve indiscriminate mass-scale collection of Australians' sensitive and personal information, including from facial recognition search products that utilise web crawlers. There is a high risk that doing so will amount to a breach of the APPs under the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including making a Determination or commencing civil penalty proceedings under s 13G of the Privacy Act (which may result in the court's imposition of significant monetary penalties).

Annan - we will leave this with you, but please let us know if you require any further legal advice from us.

Kind regards

Felicity



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

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OFFICIAL: Sensitive//Legal Privilege

From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Wednesday, August 7, 2024 8:22 PM

To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;

MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Thanks David. I'm on leave the next two days so it would be great to see something on Monday.

From: MOORE,David <David.Moore@oaic.gov.au>

Sent: Tuesday, August 6, 2024 4:00 PM

To: BOAG,Annan <Annan.Boag@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Felicity has proposed a draft which is with Caren/me to review. Apologies for the delay.

I will aim to prioritise this, noting I am not working tomorrow.

Thanks

David



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From: BOAG,Annan <Annan.Boag@oaic.gov.au>

Sent: Tuesday, August 6, 2024 2:29 PM

To: KIND,Carly <Carly.Kind@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Given the views from legal about the lack of practical benefit in taking further action against Clearview, I had suggested that we finalise the matter and publish a statement (with reference to s 33B) outlining:

- our reasons for not further pursuing the matter
- the steps that we had taken to date in the AAT proceedings and related matters
- cautioning Australian entities against using Clearview's services in light of the concerns we have about their privacy protections

The next steps as I recall them were:

- David to provide dot points summarising steps taken and why we can't effectively proceed against Clearview (written in a way that could form a basis for later public communications)
- Carly to speak with Angelene about the desirability of the above outcome.

Carly, happy to join the conversation with Angelene and David happy to talk about what to include in the points.

Annan

From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Tuesday, August 6, 2024 2:23 PM
To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Just returning to this. Colleagues can you remind me what we agreed on this and next steps?

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Friday, July 12, 2024 3:56 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: Re: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi Annan

Thanks, we will have it pushed back.

s47F

but I will arrange a meeting for next week for us to discuss.

Cheers

David

From: BOAG,Annan <Annan.Boag@oaic.gov.au>
Sent: Friday, July 12, 2024 3:46:11 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi David

Thanks so much for following up. I think pushing this back is a good idea.

I can't recall if either of you were there for the part of the discussion at SRC this week that touched on Clearview? Carly summarised the meeting she had with us, and said that the most likely direction was to finalise with no further action. However, she said she wanted to speak with Angelene first before reaching a firm view and was going to reach out to her directly to talk about it outside the SRC.

I'm just copying Carly in for visibility and so she knows not to expect a Clearview item on the SRC agenda for 23 July.

Really happy to have a chat about what you are writing to help shape it before it's settled and reviewed by too many people. I could talk now – but if you're logging off shortly maybe next week would be better.

If we don't speak this afternoon have a great weekend!

Annan

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Friday, July 12, 2024 3:38 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi Annan

In the SRC meeting a few weeks back when Clearview was discussed, they asked for us to come back to them in a couple meetings time to report back on next steps. An update on Clearview has accordingly been set for the SRC meeting on 23 July.

Given our discussion with Carly a couple weeks ago, I suggest we push this back one meeting to the SRC on 6 August. Please let me know what you think. If you agree, we can arrange to have it pushed back.

As an update, Felicity and I have not yet completed the proposed wording and given there wasn't strict time pressure, decided we would wait for Caren to return from leave to give her a chance to review before it comes to you.

Please let me know what you think – I will only be able to action on Monday as I have to log off pretty shortly.

Thanks

David



David Moore (he/him)

Principal Lawyer

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From: [OAIC - Secretariat](#)
To: [FALK,Angelene](#); [TYDD,Liz](#); [KIND,Carly](#)
Cc: [GIBSON,Isla](#); [STEWART,Jo](#); [ROBERTS,Lucy](#); [OAIC - Secretariat](#)
Subject: Strategic Regulatory Committee meeting 25 June 2024 — Agenda and Papers
Date: Friday, 21 June 2024 1:18:18 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[SRC250624 Agenda Item 6 Attachment F - 20240606 Clearview - estimate planning\(51658528.2\).xlsx](#)
[SRC250624 Agenda Item 12 High Risk NDBs Critical Matters Report 19 June 2024.xlsx](#)
[SRC250624 Agenda and Meeting Papers \(privileged\).pdf](#)
[image003.jpg](#)

OFFICIAL: Sensitive//Legal Privilege

Dear Commissioners

The agenda and combined papers for the Strategic Regulatory Committee meeting to be held on 25 June 2024 are available at: [D2024/019597](#) A copy is also attached to this email. The papers have not been added to the calendar invitation because they contain Legal Professional Privilege material. For this same reason, a separate package of papers has been circulated to the standing attendees with the agenda item marked *LPP removed.

The following papers have not been collated with the PDF package due to their format and size, and are attached separately to this email:

- Item 6: Clearview: Attachment F: Clearview estimate planning
- **s22** [Redacted]

s22 [Redacted]
 [Redacted]

s22 [Redacted]
 [Redacted]

- [Redacted]
- [Redacted]

The agenda includes invisible hyperlinks attached to agenda item titles to assist navigation of the papers.

Kind regards



Alicia Stewart (she/her)
 Director | Governance and Risk
 Office of the Australian Information Commissioner
 Adelaide
P +61 2 9942 4098 **M** **s47F** [Redacted] **E** alicia.stewart@oaic.gov.au

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	Clearview non-participation		Clearview participation		Notes			
	AGS Time (Hours)	Counsel Time (Hours)	AGS Time (Hours)	Counsel Time (Hours)				
Commencement of matter								
Preparation and lodgement of originating process					we anticipate most of the work will occur in the new financial year, and have quoted for AGS time at our revised rates			
Application for service out					including preparation of both originating application and statement of claim			
Updating evidence matrix and review of evidence								
Interlocutory steps								
Any Interlocutory dispute over jurisdiction								
Tribunal application re Harman obligation								
Application for discovery								
Review of documents, if discovery granted								
Other Interlocutory disputes								
Preparation of evidence								
Briefing expert witness								
Preparation of evidence and submissions								
Preparation of reply evidence and submissions								
Hearing attendance and preparation								
Substantive hearing					Clearview participates, we would anticipate liability and penalty be heard separately			
Separate hearing on relief					assume 2 day hearing if Clearview don't participate; assume 4-5 day hearing if Clearview do participate.			
Post-hearing work and review of judgment					assume 1 day hearing on relief.			
General administration								
Day-to-day correspondence and administration					Rs assumes the matter proceeds to judgement within 12 months			
Client meetings					Rs assumes client meetings occur no more frequently than each fortnight			
Total hours	215	140	77	108				
Total fees								
	\$47,300.00	\$87,400.00	\$29,183.00	\$23,600.00	\$184,500.00	\$133,250.00	\$75,800.00	\$57,000.00
Sum of counsel and AGS fees								
Disbursements								
Filing fee		\$1,635				\$1,635		
Hearing fee		\$6,540				\$22,890.00		Calculated on the basis of \$3,270 per day
Expert witness		\$50,000				\$75,000		
Total disbursements ex. Counsel fees		\$58,175				\$99,525		
Total fees and disbursements			Non-participation	\$213,658.00	Participation	\$550,075.00		

s47G

From: [FALK,Angelene](#)
To: [MOORE,David](#)
Cc: [WHIP,Caren](#); [PERERA-PILLAI,Felicity](#)
Subject: RE: SRC paper [SEC=OFFICIAL]
Date: Tuesday, 25 June 2024 1:39:00 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.jpg](#)

Thank you David, that's very helpful.
How much was the CyberX report?
Regards
Angelene

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Tuesday, June 25, 2024 1:29 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>
Subject: RE: SRC paper [SEC=OFFICIAL]

Hi Angelene

The answers are primarily contained on page 10 of Attachment A.

In summary:

- a full estimate of costs to run the s 55A matter to its conclusion;
 - Para 23 - For a hearing that Clearview contests, the estimate is **\$550,000**. For an uncontested hearing, this was **\$210,000**
 - This includes AGS fees, most expert fees and Counsel disbursements, **s42**

s42

- an indicative timeline of key dates if the s 55A proceedings were commenced.
 - Para 26:
 - Statement of claim could be prepared by AGS within 3 weeks of receiving instructions. We would then have to work through our internal processes to approve this before it could be filed.
 - Application for service outside of jurisdiction could be prepared within another 2 weeks (noting that in Meta, this issue proved contentious and I understand took around 2 months)
 - Beyond this, the timeline will really depend on whether Clearview chooses to participate. If they do participate, AGS suggested that it may take at least 1 to 2 years to receive judgment.

These factors were all considered in making our recommendation.

I look forward to discussing at the SRC meeting however please let me know if you have any further questions.

Thanks

David



David Moore (he/him)

Principal Lawyer

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From: FALK,Angelene <Angelene.Falk@oaic.gov.au>

Sent: Tuesday, June 25, 2024 1:09 PM

To: MOORE,David <David.Moore@oaic.gov.au>

Subject: SRC paper [SEC=OFFICIAL]

David thank you for the SRC paper on CV.

Does it contain the answer to the questions sought by Commissioners on 3 April, noted at point 2 of the Background section?

Regards

Angelene

From: [FALK,Angelene](#)
To: [TYDD,Liz](#); [KIND,Carly](#)
Cc: [DRAYTON,Melanie](#)
Subject: RE: Legal costs - Clearview [SEC=OFFICIAL]
Date: Tuesday, 25 June 2024 1:42:00 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Colleagues answers to the three questions posed by Carly and I in April as set out at item 2b, of the paper, are neatly set out by David Moore (Legal) below at my request.

This may assist:

The answers are primarily contained on page 10 of Attachment A.

In summary:

- a full estimate of costs to run the s 55A matter to its conclusion;
 - o Para 23 - For a hearing that Clearview contests, the estimate is **\$550,000**.
For an uncontested hearing, this was **\$210,000**
 - o This includes AGS fees, most expert fees and Counsel disbursements,

s42

s42

- an indicative timeline of key dates if the s 55A proceedings were commenced.

- o Para 26:
 - Statement of claim could be prepared by AGS within 3 weeks of receiving instructions. We would then have to work through our internal processes to approve this before it could be filed.
 - Application for service outside of jurisdiction could be prepared within another 2 weeks (noting that in Meta, this issue proved contentious and I understand took around 2 months)
 - Beyond this, the timeline will really depend on whether Clearview chooses to participate. If they do participate, AGS suggested that it may take at least 1 to 2 years to receive judgment.

These factors were all considered in making our recommendation.

I look forward to discussing at the SRC meeting however please let me know if you have any further questions.

Thanks

David

Regards

Angelene

From: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>

Sent: Tuesday, June 25, 2024 1:08 PM

To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>

Subject: RE: Legal costs - Clearview [SEC=OFFICIAL]

That's very helpful thanks Angelene and I'm grateful for Mel's expertise here – my omission in not including her re same.

Kind regards

Liz

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>

Sent: Tuesday, June 25, 2024 12:44 PM

To: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>

Subject: RE: Legal costs - Clearview [SEC=OFFICIAL]

Liz and Carly, can I bring Melanie into this conversation as she can assist in having data pulled by Simon and Legal?

As a next step on your point Liz, I agree we ask at SRC to have a paper brought forward on projected costs (internal and external) for all CIIs remaining. The paper should also set out anticipated time to completion and recommended outcome (no further action, seek an EU, determination or civil penalties). Melanie, Rob, Annan and Andre met yesterday and I understand agreed Annan would take Andre's CII program to deliver this, subject to Commissioner's views. Rob will need to complete for MIs.

s22



s22

From: KIND,Carly <Carly.Kind@oaic.gov.au>
Sent: Tuesday, June 25, 2024 8:10 AM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Cc: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>
Subject: Legal costs - Clearview [SEC=OFFICIAL]

Hi Angelene – I was just reading the SRC papers and in particular Clearview. I recall (and can see from the papers too) that in April you and I asked for a full estimate of costs to run the s 55A matter to its conclusion; - confirmation as to what further expert evidence (if any) will likely be required and an outline of the feasibility, cost, and timing of securing such evidence; and an indicative timeline of key dates if the s 55A proceedings were commenced. I'm a bit confused because it seems as if the legal team then went ahead to obtain the further expert evidence – perhaps this was necessary to underpin the other analysis – but also further advice from counsel about reasonable grounds. I just wondered if this felt like a reasonable diversion from instructions from where you stand or if it's indicative of a problem

here? Appreciate your views as I'm still feeling my way.



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Executive assistants: isla.gibson@oaic.gov.au; lucy.roberts@oaic.gov.au

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From: [CASTALDI,Andre](#)
To: [FALK,Angelene](#); [ATTARD,Brenton](#); [GIBSON,Isla](#); [GHALI,Sarah](#); [KIND,Carly](#); [OTOREPEC,Stephanie](#)
Cc: [TYDD,Liz](#); [DRAYTON,Melanie](#); [RYDER,Penny](#); [NURNEY,Lorraine](#)
Subject: RE: [For AIC clearance] Hearing and written QoNs due for submission on Friday 5 July 2024 [SEC=OFFICIAL]
Date: Wednesday, 3 July 2024 12:15:38 PM
Attachments: [D2024.018566.BE24-005 - Clearview AI.docx](#)

Thanks Angelene

Steph has actioned your comments and Steph and Sarah don't have any further changes (neither do I). Brenton over to you. Clearview with Angelene's changes is attached.

Kind regards

Andre

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Tuesday, July 2, 2024 7:25 PM
To: ATTARD,Brenton <Brenton.Attard@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>; GHALI,Sarah <Sarah.Ghali@oaic.gov.au>; CASTALDI,Andre <Andre.Castaldi@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Cc: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>
Subject: RE: [For AIC clearance] Hearing and written QoNs due for submission on Friday 5 July 2024 [SEC=OFFICIAL]

Brenton please see approvals below.

Sarah and Andre: please check highlighted matters below.

Carly: FYI I have made a change to Clearview in the attached.

Regards

Angelene

From: ATTARD,Brenton <Brenton.Attard@oaic.gov.au>
Sent: Friday, June 28, 2024 7:05 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; GIBSON,Isla <Isla.Gibson@oaic.gov.au>
Cc: TYDD,Liz <Elizabeth.Tydd@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; RYDER,Penny <Penny.Ryder@oaic.gov.au>; NURNEY,Lorraine <Lorraine.Nurney@oaic.gov.au>
Subject: [For AIC clearance] Hearing and written QoNs due for submission on Friday 5 July 2024 [SEC=OFFICIAL]

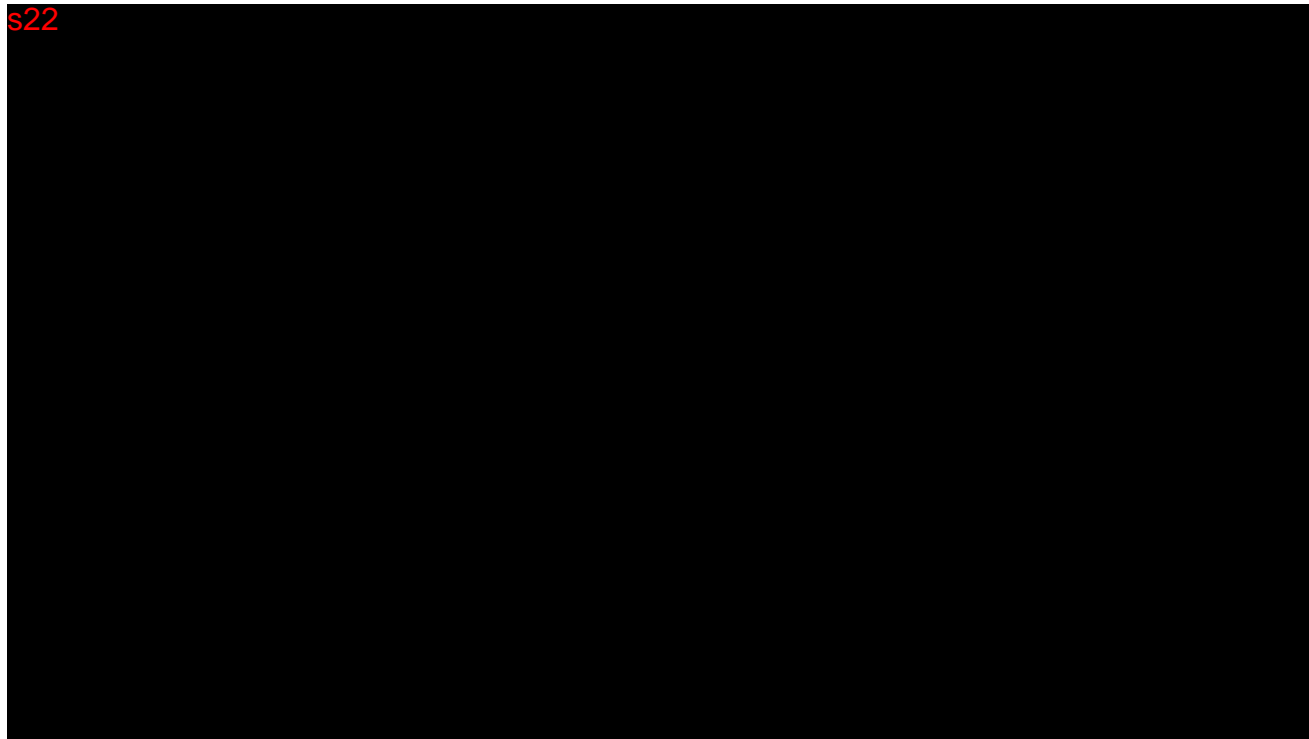
Dear Commissioner

The below QoNs are from the Budget Estimates Hearing of 29 May and written QoNs following the Hearing. The FOI and Privacy QoNs have received the FOI Commissioner's and Privacy Commissioner's clearance and are referred to you for your clearance as Agency Head.

s22

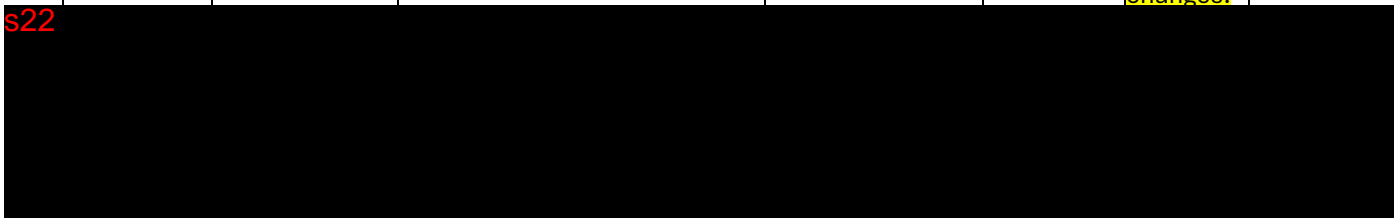
QoN No.	QoNs	Responsible officer	Template Link	Status	AIC note
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s22



BE24-005	Clearview AI	Annamie Hale	D2024/018566	Ready for clearance	Document is checked out to Annamie. Please use the attached document with track changes.
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s22



please schedule clearance time.

Regards,

Brenton

From: [FALK, Angelene](#)
To: [KIND, Carly](#); [BOAG, Annan](#)
Cc: [STOKES, Andrew](#)
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Wednesday, 14 August 2024 6:25:00 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

Hi Carly and Annan

On balance I think its better to keep this simple. s47E(d)

Suggestions below for you to take or leave as you consider appropriate. The first is a possible short version. The second, longer based on your and Annan's with some suggestions.

Thank you for the opportunity to consider.

Angelene

Possible short version for journalist:

Statement on Clearview AI

The Office of the Australian Information Commissioner (OAIC) has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, the Determination found that Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. In [insert month/year] Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached certain of the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

Considering all of the circumstances including the range of proceedings occurring around the world in relation to Clearview, the OAIC is not intending to take further action in relation

to Clearview at this time. We are focusing our attention on the broader issues of responsibilities on publicly accessible sites and on entities seeking to develop and train generative AI models.

In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information that is on their sites from unlawful data scraping.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

Annan's version with my suggestions in red, strikethrough and green highlight.

Statement on Clearview AI

~~My office~~ **The Office of the Australian Information Commissioner (OAIC)** has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, **the Determination found that** Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. **In [insert month/year]** Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached **certain of** the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview in the course of the Tribunal proceedings in 2023. **(I haven't fact checked that: I do recall an article about the AFP using CV via international contacts: Fiona should be able to assist.)** Nevertheless, it gave rise to questions about whether Clearview was complying with the terms of the AIC's

2021 determination.

I have given extensive consideration to the question of whether ~~my office~~ **the OAIC** should invest further resources in scrutinising the actions of Clearview AI, a company that has already been ~~under investigation~~ **investigated** by the OAIC for more than four years, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. ~~I have considered the vital public interest in protecting privacy, particularly in the online realm, and the intrusive nature of facial recognition systems of the type developed by Clearview AI, as well as the expectations of the Australian community to take clear action to deter the proliferation of illegitimate~~ **(suggest "unlawful")** data scraping practices. I have also considered the challenges of giving effect to my regulatory powers across jurisdictional borders; the technological limitations on protecting Australians' personal information outside of Australia's borders; and the reluctance of the courts to issue injunctive relief where it is unlikely that it can be enforced outside of Australia: **I think this poses risks given current matters in the court and opens up a number of complex questions. I suggest keeping it simple.**

s47E(d)
[Redacted text block]

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

s47E(d)
[Redacted text block]

s47E(d)

From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Wednesday, August 14, 2024 4:38 PM

To: BOAG,Annan <Annan.Boag@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>

Cc: STOKES,Andrew <Andrew.Stokes@oaic.gov.au>

Subject: Re: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Thanks for the quick reply Annan. Happy with 2, 3 and 4 of your points - on 1, would be good to know why you think this is necessary (for my own understanding) given we didn't open new PIs or a CII? Angelene looking forward to hearing your views.

OFFICIAL: Sensitive//Legal Privilege

From: BOAG,Annan <Annan.Boag@oaic.gov.au>

Sent: Wednesday, August 14, 2024 4:21:58 PM

To: KIND,Carly <Carly.Kind@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>

Cc: STOKES,Andrew <Andrew.Stokes@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Hi Carly

Thanks for pushing this forward to a statement. I think this would be a good outcome. I would just suggest that you:

1. issue the statement in accordance with [s 33B](#) to ensure we are not breaching our secrecy provisions. A cautious approach would be to do prepare 1-2 page memo that steps through the relevant matters set out in s 33B for you to sign. I could ask someone in the CII team to prepare this. An expedited approach would be for you to turn your mind to all the elements in s 33B, and note that you have done that when you instruct us to publish the statement and finalise the matter.
2. Amend the yellow highlighted paragraph below. I'm not sure 'sufficient evidence' is a good summary of the reasons for not proceeding further – the issues in the previous para point to wider practical considerations.
3. s47E(d)

[Redacted content]

s47E(d)

4. I would suggest running the text below one final time past someone with good familiarity of the facts before this is finalised. I came into this late and am not entirely confident about the factual accuracy of the below.

Let me know if there's anything I or the CII team can do to help get this over the line!

Annan

Statement on Clearview AI

My office has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview in the course of the Tribunal proceedings in 2023. Nevertheless, it gave rise to questions about whether Clearview was complying with the terms of the AIC's 2021 determination.

I have given extensive consideration to the question of whether my office should invest further resources in scrutinising the actions of Clearview AI, a company that has already been under investigation by the OAIC for more than four years, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. I have considered the vital public interest in protecting privacy, particularly in the online realm, and the intrusive nature of facial recognition systems of the type developed by Clearview AI, as well as the expectations of the Australian community to take clear action to deter the proliferation of illegitimate data scraping practices. I have also considered the challenges of giving effect to my regulatory powers across jurisdictional borders; the technological limitations on protecting Australians' personal information outside of Australia's borders, and the reluctance of the courts to issue injunctive relief where it is unlikely that it can be enforced outside of

Australia.

Considering all these factors, I am not satisfied that further action is warranted in the particular case of Clearview. However, the practices engaged in by Clearview AI are troubling and increasingly common due to the drive towards the development of generative AI models. In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information from unlawful data scraping. It may be that new policies and laws are required to arrest emerging cross-jurisdictional challenges to the protection of Australians' personal information.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act. In the meantime, we reiterate that the determination against Clearview AI still stands.

s47E(d)

OFFICIAL: Sensitive//Legal Privilege

From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Wednesday, August 14, 2024 1:59 PM

To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>

Cc: STOKES,Andrew <Andrew.Stokes@oaic.gov.au>

Subject: FW: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: High

OFFICIAL: Sensitive//Legal Privilege

Hello Angelene and Annan –

I've been thinking about the best strategy for externalising decision-making on Clearview AI with a view to closing down the open question of whether to take enforcement proceedings (as discussed at the SRC on 25 June 2024). I've chatted with Angelene about this this morning. There has been some renewed media interest in the matter and we expect any statement we issue may get media coverage. I'm seeking views on framing and any risks a statement might create for us. Annan I know you had firm views about the best course of action so I'd appreciate your reflections on below, as well as Angelene and Andrew's.

Statement on Clearview AI

My office has been considering whether to take further action against Clearview AI, which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy**

Act) issued on 14 October 2021. That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Notably, Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia. Clearview challenged that determination in the Administrative Appeals Tribunal. After the AAT found that Clearview had breached the APPs, Clearview withdrew from the proceedings in August 2023, before the Tribunal could make orders regarding steps Clearview must take to remedy the breach. The original determination therefore still stands, as do the declarations contained therein, including that Clearview must not collect images from individuals in Australia and must delete all images it had previously collected from individuals in Australia.

In early 2024, there was some media reporting alleging that Clearview was continuing to collect images from individuals in Australia. That media reporting was not based on new information, but rather referenced statements made by Clearview in the course of the Tribunal proceedings in 2023. Nevertheless, it gave rise to questions about whether Clearview was complying with the terms of the AIC's 2021 determination.

I have given extensive consideration to the question of whether my office should invest further resources in scrutinising the actions of Clearview AI, a company that has already been under investigation by the OAIC for more than four years, and which has found itself the subject of regulatory investigations in at least three jurisdictions around the world as well as a class action in the United States. I have considered the vital public interest in protecting privacy, particularly in the online realm, and the intrusive nature of facial recognition systems of the type developed by Clearview AI, as well as the expectations of the Australian community to take clear action to deter the proliferation of illegitimate data scraping practices. I have also considered the challenges of giving effect to my regulatory powers across jurisdictional borders; the technological limitations on protecting Australians' personal information outside of Australia's borders, and the reluctance of the courts to issue injunctive relief where it is unlikely that it can be enforced outside of Australia.

At this point in time, there is insufficient evidence to satisfy me that further action is warranted in the particular case of Clearview. However, the practices engaged in by Clearview AI are troubling and increasingly common due to the drive towards the development of generative AI models. In August 2023, alongside ten other data protection and privacy regulators, the OAIC issued a statement on the need to address data scraping, articulating in particular the obligations on social media platforms and publicly accessible sites to take reasonable steps to protect personal information from unlawful data scraping. It may be that new policies and laws are required to arrest emerging cross-

jurisdictional challenges to the protection of Australians' personal information.

In the coming weeks, the OAIC will be issuing guidance for entities seeking to develop and train generative AI models, including how the Australian Privacy Principles apply to the collection and use of personal information. We will also issue guidance for entities using commercially available AI products, including chatbots. These materials will make it clear that all regulated entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, which engage in the practice of collecting, using or disclosing personal information in the context of artificial intelligence are required to comply with the Privacy Act.

In the meantime, we reiterate that the determination against Clearview AI still stands.

OFFICIAL: Sensitive//Legal Privilege

From: PERERA-PILLAI, Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Sent: Monday, August 12, 2024 1:36 PM

To: KIND, Carly <Carly.Kind@oaic.gov.au>

Cc: WHIP, Caren <Caren.Whip@oaic.gov.au>; MOORE, David <David.Moore@oaic.gov.au>;

BOAG, Annan <Annan.Boag@oaic.gov.au>; LIM, Jennifer <Jennifer.Lim@oaic.gov.au>; MASO, Kylie <Kylie.Maso@oaic.gov.au>

Subject: Clearview - SRC meeting on 23 July [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: High

OFFICIAL: Sensitive//Legal Privilege

Dear Carly and Annan

Further to the below and following our meeting, we have drafted some dot points for a public statement for your consideration. We note that:

1. To avoid any s 29 issues, we have set out only public facts about the case;
2. s42 [REDACTED]
3. As Carly requested, we have drafted the below as 'discussion points' rather than a complete statement at this stage;
4. s42 [REDACTED] and
7. We have adopted the format of the TikTok statement on our website ([TikTok preliminary enquiries](#)). As you will see, that statement was a few short paragraphs and was written from Carly's perspective (i.e. first person POV) as the Privacy Commissioner.

Discussion points for a public statement on the OAIC website:

- My office has been considering whether to take further action against Clearview which was the subject of a Determination under s 52(1A) of the *Privacy Act 1988* (Cth) (**Privacy Act**). That Determination found that Clearview, through its collection of facial images and biometric templates from individuals in Australia using a facial

recognition technology, contravened the Privacy Act, and breached several Australian Privacy Principles (**APPs**) in Schedule 1 of the Act, including by collecting the sensitive information of individuals without consent in breach of APP 3.3 and failing to take reasonable steps to implement practices, procedures and systems to comply with the APPs.

- Notably, Clearview indiscriminately collected images of individuals' faces from publicly available sources across the internet (including social media) to store in a database on the organisation's servers. In the Determination, which still stands as Clearview withdrew its application to have the Determination reviewed by the Administrative Appeals Tribunal, the Australian Information Commissioner made several declarations, including for the organisation to cease collecting images from individuals in Australia.
- After much consideration, I have concluded that there is insufficient evidence to satisfy me that further action is warranted. I have no evidence before me that Clearview is acting in breach of the Determination, and the limitations of current technology create significant challenges in determining whether Clearview is continuing to operate in Australia.
- I strongly urge APP entities, including organisations which fall within the jurisdiction of the Privacy Act by way of carrying on business in Australia, to closely consider any activities that involve indiscriminate mass-scale collection of Australians' sensitive and personal information, including from facial recognition search products that utilise web crawlers. There is a high risk that doing so will amount to a breach of the APPs under the Privacy Act. This may then result in the Australian Information Commissioner utilising the suite of regulatory powers available, including making a Determination or commencing civil penalty proceedings under s 13G of the Privacy Act (which may result in the court's imposition of significant monetary penalties).

Annan - we will leave this with you, but please let us know if you require any further legal advice from us.

Kind regards

Felicity



Felicity Perera-Pillai

Senior Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

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From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Wednesday, August 7, 2024 8:22 PM

To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;

MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <Felicity.Perera-Pillai@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Thanks David s47F

From: MOORE,David <David.Moore@oaic.gov.au>

Sent: Tuesday, August 6, 2024 4:00 PM

To: BOAG,Annan <Annan.Boag@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;

MASO,Kylie <Kylie.Maso@oaic.gov.au>; PERERA-PILLAI,Felicity <[\[Pillai@oaic.gov.au\]\(mailto: Pillai@oaic.gov.au\)>](mailto:Felicity.Perera-</p></div><div data-bbox=)

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Felicity has proposed a draft which is with Caren/me to review. Apologies for the delay.

I will aim to prioritise this, noting I am not working tomorrow.

Thanks

David



David Moore (he/him)

Principal Lawyer

Office of the Australian Information Commissioner

Sydney

P +61 2 9942 4131 **M** s47F **E** david.moore@oaic.gov.au

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From: BOAG,Annan <Annan.Boag@oaic.gov.au>

Sent: Tuesday, August 6, 2024 2:29 PM

To: KIND,Carly <Carly.Kind@oaic.gov.au>; MOORE,David <David.Moore@oaic.gov.au>

Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>

Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi all

Given the views from legal about the lack of practical benefit in taking further action against Clearview, I had suggested that we finalise the matter and publish a statement (with reference to s 33B) outlining:

- our reasons for not further pursuing the matter
- the steps that we had taken to date in the AAT proceedings and related matters
- cautioning Australian entities against using Clearview's services in light of the concerns we have about their privacy protections

The next steps as I recall them were:

- David to provide dot points summarising steps taken and why we can't effectively proceed against Clearview (written in a way that could form a basis for later public communications)
- Carly to speak with Angelene about the desirability of the above outcome.

Carly, happy to join the conversation with Angelene and David happy to talk about what to include in the points.

Annan

From: KIND,Carly <Carly.Kind@oaic.gov.au>

Sent: Tuesday, August 6, 2024 2:23 PM

To: MOORE,David <David.Moore@oaic.gov.au>; BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Just returning to this. Colleagues can you remind me what we agreed on this and next steps?

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Friday, July 12, 2024 3:56 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: Re: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi Annan

Thanks, we will have it pushed back.

Unfortunately I have to pick up my daughter (dreaded daycare pick up call two Fridays in a row) but I will arrange a meeting for next week for us to discuss.

Cheers

David

From: BOAG,Annan <Annan.Boag@oaic.gov.au>
Sent: Friday, July 12, 2024 3:46:11 PM
To: MOORE,David <David.Moore@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>; KIND,Carly <Carly.Kind@oaic.gov.au>
Subject: RE: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi David

Thanks so much for following up. I think pushing this back is a good idea.

I can't recall if either of you were there for the part of the discussion at SRC this week that touched on Clearview? Carly summarised the meeting she had with us, and said that the most likely direction was to finalise with no further action. However, she said she wanted to speak with Angelene first before reaching a firm view and was going to reach out to her directly to talk about it outside the SRC.

I'm just copying Carly in for visibility and so she knows not to expect a Clearview item on the SRC agenda for 23 July.

Really happy to have a chat about what you are writing to help shape it before it's settled and reviewed by too many people. I could talk now – but if you're logging off shortly maybe next week would be better.

If we don't speak this afternoon have a great weekend!

Annan

From: MOORE,David <David.Moore@oaic.gov.au>
Sent: Friday, July 12, 2024 3:38 PM
To: BOAG,Annan <Annan.Boag@oaic.gov.au>
Cc: LIM,Jennifer <Jennifer.Lim@oaic.gov.au>
Subject: Clearview - SRC meeting on 23 July [SEC=OFFICIAL]

Hi Annan

In the SRC meeting a few weeks back when Clearview was discussed, they asked for us to come back to them in a couple meetings time to report back on next steps. An update on Clearview has accordingly been set for the SRC meeting on 23 July.

Given our discussion with Carly a couple weeks ago, I suggest we push this back one

meeting to the SRC on 6 August. Please let me know what you think. If you agree, we can arrange to have it pushed back.

As an update, Felicity and I have not yet completed the proposed wording and given there wasn't strict time pressure, decided we would wait for Caren to return from leave to give her a chance to review before it comes to you.

Please let me know what you think – I will only be able to action on Monday as I have to log off pretty shortly.

Thanks

David



David Moore (he/him)

Principal Lawyer

Office of the Australian Information Commissioner

Sydney

P +61 2 9942 4131 **M** S47F **E** david.moore@oaic.gov.au

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From: [OAIC - Secretariat](#)
To: [FALK,Angelene](#); [KIND,Carly](#); [TYDD,Liz](#); [DRAYTON,Melanie](#)
Cc: [OAIC - Secretariat](#)
Subject: [FOR CLEARANCE] - draft agenda for Strategic Regulatory Committee 20 August 2024
Date: Wednesday, 14 August 2024 5:30:05 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[SRC20082024 Strategic Regulatory Committee \(SRC\) - Agenda.docx](#)
[image004.jpg](#)

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Clearance Snapshot	
Due date	COB 15 August
Fixed or flexible	Fixed
If fixed, why?	Agenda and papers due to be circulated on 15 August 2024
Topic for clearance	Draft Agenda for Strategic Regulatory Committee
Product (include CM link)	Draft Agenda: D2024/024854
Length / no. of pages	2 pages
External parties	N/A
Clearance & consultation	Nil
Responsible director	
Final Clearance by	Information Commissioner (SRC Chair)

Dear Information Commissioner

As Chair of the Strategic Regulatory Committee, the Secretariat seeks your approval of the proposed agenda for the Strategic Regulatory Committee meeting scheduled for 20 August 2024: [D2024/024854](#) (and attached).

Please be advised that we have not received any papers for SRC20082024 to date. I have followed up with the Corporate Branch to confirm whether the following papers will be available prior to the next meeting (noting that each of these papers were held over from SRC23072024):

- Clearview Update
- LPP Guidance
- Section 44 Templates

We anticipate that we will have received the updated and consolidated CII, Rep Complaint, and High Risk NDB reports tomorrow.

I welcome your feedback and clearance by COB 15 August 2024. If we have not received these papers by COB tomorrow, they will be excluded from the PDF pack and sent through as soon as they are available.

Kind regards

Lucy



Lucy Roberts (she/her)
 Executive Assistant to the Privacy Commissioner
 Office of the Australian Information Commissioner
P +61 2 9942 4198 **E** lucy.roberts@oaic.gov.au

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Strategic Regulatory Committee Meeting

Date:	20 August 2024
Time:	2:00pm – 4:00pm
Location:	OAIC-NSW-Level 10 Meeting Room Conference Room - Gawura Room (MS Teams Room); Microsoft Teams
Present:	[Redacted]
Apologies	[Redacted]
Secretariat:	[Redacted]
Attendees:	Melanie Drayton, a/g Deputy Commissioner [Redacted] Rob Ghali, Assistant Commissioner Major Investigations Annamie Hale, Assistant Commissioner Corporate Penny Ryder, a/g Chief Operating Officer Rocelle Ago, Assistant Commissioner FOI Caren Whip, General Counsel Kylie Maso, Executive Director Legal Toni Pirani, Special Adviser FOI Decisions Attendees for one or more items: David Moore, Principal Lawyer Shantanu Govil, Principal Lawyer Natalie Le, Director DR Fiona Grant, Director DR Felicity Perera-Pillai, Senior Lawyer



Agenda

Item No	Matter	Available attendees	Paper/verbal	Requesting	Lead	Timing	Page(s)
Meeting Opening							
1.	Acknowledgement of Country					4 min	
2.	Apologies						
3.	Conflict of interest declarations			Noting	Secretariat		
4.	Previous minutes			Approval	Secretariat		
5.	Action items			Noting	Secretariat	2 min	
s22							
10.	Clearview Update	David Moore, Felicity Perera-Pillai		Discussion	Annamie Hale	15 min	
s22							
14.	Forward agenda – call for items					1 min	
15.	Meeting Finalisation					2 min	



Australian Government

Office of the Australian Information Commissioner

Next Meeting Scheduled 3 September 2024

