

Enforceable Undertaking

Given by Meta Platforms, Inc. under s 114 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth)

1. Background

- 1.1. This enforceable undertaking is given by Meta Platforms, Inc. (**Meta**) to the Australian Information Commissioner (**Commissioner**) under section 114 of the *Regulatory Powers (Standard Provisions) Act 2014* (**Regulatory Powers Act**) in conjunction with the discontinuance of Federal Court of Australia Proceeding No NSD 246 of 2020 (the **Civil Penalty Proceedings**) against all Respondents, on a without prejudice basis and without any admission of liability. The Civil Penalty Proceedings followed investigations by the OAIC concerning the Cambridge Analytica Incident, the facts of which are described below together with a background to the Civil Penalty Proceedings.
- 1.2. Meta offers this enforceable undertaking in its capacity as the provider of the Facebook service to users in Australia from 14 July 2018 onwards. Prior to 14 July 2018, and during the period in which the Cambridge Analytica Incident described below occurred, Meta Platforms Ireland Limited provided the Facebook service to users in Australia.

The Cambridge Analytica Incident

- 1.3. In April 2010, Meta launched the Graph Application Programming Interface (**Graph API**). The Graph API allowed third party apps to access, with permission from users who installed the third party app using the Facebook Login tool, certain information, e.g., their name, birthdate, etc., from installers of the app and their friends (if both users' privacy settings allowed it). Under the first version of Graph API (**Graph API Version 1**), which was in place from 21 April 2010 to 30 April 2015 for pre-existing apps, third party apps could request access to certain information (1) from the installing user's account; and (2) that the installing user's Facebook friends had chosen to share with the installing user. The Graph API would provide the information sought on an automated basis, so long as the installing user authorised the request, the user and their friends had not opted out of the Facebook platform (which would allow the user to opt out of providing access to information to third party apps), subject to the privacy and application settings of the user and their friends.
- 1.4. In November 2013, Dr Aleksandr Kogan, a professor at Cambridge University, launched a third party app relevantly known as "thisisyourdigitallife" (the **Life App**) using Graph API Version 1. Before doing so, Dr Kogan agreed to Meta's terms of service and its terms for developers of third party apps using the Facebook platform and the Graph API. The Life App, which presented itself to users as a quiz app, requested via a dialog box at the time of installation, installing users' permission to access certain categories of their information as well as certain categories of information that their Facebook friends shared with them.
- 1.5. In December 2015, upon learning from media reports that Dr Kogan and his company, Global Science Research Limited (**GSR**), may have been transferring user information to Cambridge Analytica (UK) Ltd, a British data analytics company, and its parent company, Strategic Communication Laboratories (together, **SCL**) (in contravention of contractual obligations owed to Meta), Meta launched an investigation and terminated the Life App's use of the Graph API and access to Facebook Login.
- 1.6. Based on this investigation, Meta concluded that Dr Kogan and GSR had violated its terms in several respects. Meta subsequently obtained certifications that Dr. Kogan, GSR, and other third parties (including SCL) with whom Dr Kogan had shared user information had deleted the information. The information that was transferred to SCL related primarily to users in the United States. Neither Meta, nor Meta Platforms Ireland Limited, are aware of any evidence that Dr Kogan provided SCL with information on Facebook users from Australia.

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The OAIC's Investigation and the Civil Penalty Proceedings

- 1.7. On 5 April 2018, the Commissioner initiated an investigation under section 40(2) of the Privacy Act 1988 (Cth) (**Privacy Act**) in relation to reports that Australian users' information may have been improperly shared with Cambridge Analytica (UK) Ltd via the Life App. During the investigation, which extended to Meta, Meta Platforms Ireland Limited and Facebook Australia Pty Ltd, the Commissioner raised concerns that Meta may have interfered with the privacy of Australian individuals in contravention of Australian Privacy Principles (**APPs**) 1.2, 5, 6, 10 and 11 of the Privacy Act (**Investigation**).
- 1.8. On 9 March 2020, the Commissioner commenced the Civil Penalty Proceedings and concluded the above investigation. In the Civil Penalty Proceedings, as further particularised in the Amended Statement of Claim dated 2 June 2023, the Commissioner alleged that Meta's systems and practices raised concerns about the protection of personal information of Australian Facebook users in relation to the Cambridge Analytica incident, and that, based on its Investigation, Meta and Meta Platforms Ireland Limited may have contravened section 13G of the Privacy Act through serious or repeated breaches of APPs 6.1 and 11.1. The Commissioner alleged that, throughout the time the Life App was available to Facebook users, approximately:
 - 1.8.1. 53 Facebook users located in Australia installed the Life App; and
 - 1.8.2. 311,074 Facebook users located in Australia could have had their personal information requested by the Life App as friends of installing Facebook users.

2. Meta's Response to the Cambridge Analytica Incident

2.1. Meta acknowledges:

- 2.1.1. that under the Privacy Act, Meta must not do an act, or engage in a practice, that breaches an APP;
- 2.1.2. the Commissioner's concerns identified in paragraphs 1.7 and 1.8.

2.2. Meta represents, and the Commissioner acknowledges, that:

- 2.2.1. Meta no longer permits third party app developers to access from Meta an installing user's friend's information, unless that friend has also installed the app and authorised it to have access to that information;
- 2.2.2. since the period relevant to the Civil Penalty Proceedings, being 12 March 2014 to 1 May 2015 (**Relevant Period**), Meta has dedicated significant and increased resources to monitoring third party apps and enforcing Meta's terms and policies;
- 2.2.3. since the Relevant Period, Meta substantially reduced the number of information fields available that third party app developers (via Facebook Login) may request an installing user's permission to access, examples of information fields that have been removed include: (i) the installing user's friends' information, excluding the circumstances specified in paragraph 2.2.1; and (ii) the installing user's religion, political views and relationship details;
- 2.2.4. since the Relevant Period, Meta has continued to implement granular data permissions processes to allow a user who installs a third party app to decide which categories of certain information they will share with the third party app; and
- 2.2.5. Meta monitors the compliance of third party app developers of consumer apps with Meta's Platform Terms through measures including, but not limited to, ongoing manual reviews and automated scans, and regular assessments, audits, or other technical and operational testing at least once every 12 months.

3. Meta's Enforceable Undertaking to the Commissioner

- 3.1. Meta offers this enforceable undertaking to the Commissioner under section 114 of the Regulatory Powers Act, including to address the concerns in paragraphs 1.7 and 1.8.
- 3.2. This undertaking comes into effect when:

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- 3.2.1. it is executed by Meta; and
- 3.2.2. this undertaking, so executed, is accepted by the Commissioner (the **Commencement Date**).
- 3.3. This undertaking ceases to have effect upon the completion of the Payment Program (as defined at paragraph 4.1 below).

4. Undertaking to Establish Payment Program

- 4.1. Meta undertakes to implement a payment program open to Eligible Australian Users in recognition of the Commissioner's concern that those users may have suffered loss or damage as a result of interferences with their privacy arising from the conduct the subject of the Commissioner's concerns as identified in paragraphs 1.7 and 1.8 above in accordance with Parts 5 and 6 of this enforceable undertaking and fulfill each of its obligations set out in Parts 4 to 7 of this enforceable undertaking (**Payment Program**).
- 4.2. Meta undertakes to:
 - 4.2.1. engage an independent third party administrator (the **Administrator**);
 - 4.2.2. direct the Administrator to administer the Payment Program in accordance with:
 - 4.2.2.1. Parts 5 and 6 of this enforceable undertaking; and
 - 4.2.2.2. any instructions for the Payment Program given to the Administrator by Meta (**Scheme Instructions**); and
 - 4.2.3. complete the Payment Program within 2 years from the Commencement Date or such longer period as agreed between the Commissioner and Meta.

5. Eligible Australian Users

- 5.1. A person is an "**Eligible Australian User**" if the person:
 - 5.1.1. held a Facebook Account at any time during the period of 2 November 2013 and 17 December 2015 (**Eligibility Period**);
 - 5.1.2. was located in Australia for 30 days or more during the Eligibility Period; and
 - 5.1.3. during the Eligibility Period, either:
 - 5.1.3.1. installed the Life App using Facebook Login; or
 - 5.1.3.2. did not install the Life App but was Facebook friends with another Facebook user who had installed the Life App using Facebook Login.
- 5.2. Subject to paragraphs 5.3 to 5.5, an Eligible Australian User can register with the Administrator as a "**Claimant**" under the Payment Program if they submit to the Administrator within the registration period prescribed by the Administrator (**Registration Period**) a valid Registration Form and evidence in such form as prescribed, verifying that the person:
 - 5.2.1. is an Eligible Australian User under paragraph 5.1;
 - 5.2.2. holds a genuine belief that as a direct consequence of the conduct the subject of the Commissioner's concerns identified in paragraphs 1.7 and 1.8, they have suffered loss or damage, being either:
 - 5.2.2.1. specific economic and/or non-economic loss and/or damage (beyond a generalised concern or embarrassment) (**Class 1**); or
 - 5.2.2.2. a generalised concern or embarrassment (**Class 2**).
- 5.3. The Registration Form will be prepared by the Administrator in consultation with Meta and may set the standard of verification and evidence that a Claimant must provide for each eligibility

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criterion by the end of the Registration Period, including by way of statutory declaration or identity verification as considered appropriate.

5.3.1. For paragraphs 5.1.3 and 5.2.2.2, Meta must direct the Administrator to not require more than a valid statutory declaration.

5.4. Notwithstanding paragraphs 5.2 and 5.3, the Administrator may, in its absolute discretion, determine that a person will not be:

5.4.1. an Eligible Australian User where the Administrator is unable to verify that the person meets the requirements of Part 5 of this enforceable undertaking based on the information available to the Administrator;

5.4.2. a Claimant where the Administrator determines that:

5.4.2.1. the person provided the Administrator with false information, or that the person's registration is otherwise fraudulent;

5.4.2.2. the person has previously registered as a Claimant;

5.4.2.3. if the person registered to receive payment from Meta, or any of its affiliated or related entities, in a proceeding, investigation or other legal action in any jurisdiction outside of Australia that relates to, or arose out of, the factual background detailed in paragraphs 1.3 to 1.6 of this enforceable undertaking, such as the US settlement of *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, Case No. 3:18-md-02843-VC (N.D. Cal.); or

5.4.2.4. the person is not otherwise eligible in accordance with the Scheme Instructions.

5.5. For the avoidance of any doubt, a person:

5.5.1. is not a Claimant if the person has not registered in accordance with paragraphs 5.2 and 5.3 during the Registration Period; and

5.5.2. cannot register as a Claimant in both Class 1 and Class 2.

6. Payment Program

6.1. Meta undertakes to, within 60 days of the Commissioner filing a Notice of Discontinuance in the Civil Penalty Proceedings, pay an amount of \$50 million (the **Contribution Amount**) to the Administrator for the Administrator to use to make payments to Claimants (**Payments**) in accordance with paragraphs 6.2 to 6.9.

6.2. Following the payment of the Contribution Amount by Meta in accordance with paragraph 6.1, Meta will:

6.2.1. notify the Commissioner that the Contribution Amount has been paid to the Administrator;

6.2.2. direct the Administrator to make information available on a website established by the Administrator regarding the Payment Program, including how Eligible Australian Users can register with the Administrator as a Claimant;

6.2.3. use reasonable best efforts to:

6.2.3.1. identify, based on Meta's available records, persons that may be Eligible Australian Users; and

6.2.3.2. facilitate electronic notice of the Payment Program to those persons;

6.2.4. direct the Administrator to take reasonable steps to publicise the Payment Program within Australia.

6.3. The Payment that a Claimant receives will depend on whether the Administrator determines that the Claimant is a Class 1 or Class 2 Claimant.

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- 6.4. In performing its obligations under Parts 5 and 6, the Administrator will apply any Scheme Instructions, including any cap to apply to Payments made to Claimants and the principle that all Class 2 Claimants be paid the same amount.
- 6.5. Subject to the Scheme Instructions, following the end of the Registration Period, the Administrator will:
 - 6.5.1. evaluate and determine, using evidence available to the Administrator at that time, in the Administrator's absolute discretion whether:
 - 6.5.1.1. a person is an Eligible Australian User (in accordance with Part 5); and
 - 6.5.1.2. if a person registers as a Claimant in Class 1, the person has provided sufficient supporting evidence to substantiate their claim that they have suffered loss or damage in Class 1;
 - 6.5.2. determine the number of Claimants in each of Class 1 and Class 2;
 - 6.5.3. commence the process for determining the Payment that each Class 1 and Class 2 Claimant is entitled to receive, in accordance with this Part 6; and
 - 6.5.4. notify Meta that the process referred to in paragraph 6.5.3 above has begun, at which point Meta will within 24 hours notify the Commissioner thereof.
- 6.6. The Scheme Instructions will provide for the Administrator to include a timely internal review avenue for:
 - 6.6.1. any decision by the Administrator to reject a Claimant's Class 1 registration and allocate the Claimant to Class 2; and
 - 6.6.2. assessment of any Payment amount that is to be made to a Claimant in Class 1.
- 6.7. Following the conclusion of the process in 6.5, in accordance with paragraphs 6.3 and 6.4, the Administrator will:
 - 6.7.1. finalise its determination including any internal review of any Payment that is to be made to a Claimant in either Class 1 or Class 2;
 - 6.7.2. once all determinations are completed in accordance with paragraph 6.7.1, notify Meta of:
 - 6.7.2.1. the total number of Claimants; and
 - 6.7.2.2. the aggregated amount to be distributed to all Claimants; and
 - 6.7.3. make a timely Payment to each such Claimant.
- 6.8. Following receipt of the notification set out at paragraph 6.7.2, Meta will within 24 hours notify the Commissioner thereof.
- 6.9. If the total aggregate sum of Payments made to Claimants under paragraph 6.7 is less than the Contribution Amount, Meta will direct the Administrator to pay the residual amount to the Australian Government's Consolidated Revenue Fund.

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- 6.10. If, when performing its obligations under Parts 5 and 6 of this enforceable undertaking, the Administrator informs Meta that it will not be able to comply with any deadline specified in this undertaking, Meta will:
- 6.10.1. promptly inform the Commissioner, and the OAIC, of the extent and reasons for the delay;
 - 6.10.2. in consultation with the Administrator, determine a date by which the Administrator will reasonably be able to complete the actions specified;
 - 6.10.3. propose the modified date(s) to the Commissioner and seek to agree any necessary extension; and
 - 6.10.4. cause the Administrator to notify Claimants of the delay and the amended date(s) agreed with the Commissioner (if applicable).

7. Compliance

- 7.1. Subject to any confidentiality obligations owed by Meta, the OAIC may request in writing from time to time and Meta will provide to it, documents and information that are reasonably necessary for the purpose of assessing Meta's compliance with Parts 4 to 6 of this enforceable undertaking.
- 7.2. Meta will use its best endeavours to provide documents and information in response to any request under paragraph 7.1 within 14 days of the request.

8. Other matters

- 8.1. Meta acknowledges that the Commissioner:
- 8.1.1. will publish this enforceable undertaking as well as a summary of the undertaking, on the OAIC website;
 - 8.1.2. may issue a statement on acceptance of this enforceable undertaking referring to its terms and to the circumstances which led to the Commissioner's acceptance of the undertaking; and
 - 8.1.3. may from time to time publicly refer to this enforceable undertaking, including any breach of this enforceable undertaking by Meta.
- 8.2. Meta acknowledges that:
- 8.2.1. The Commissioner's acceptance of this enforceable undertaking does not preclude the Commissioner's power to investigate, power not to investigate further, or the exercise of any of the Commissioner's functions under the Privacy Act in relation to: (i) the representative investigation opened by the Commissioner under sub-section 40(1) of the Privacy Act on 21 October 2019 (referred to by the Commissioner using the reference number CP18/01262); or (ii) any contravention that concerns conduct that is outside the scope of the Civil Penalty Proceedings or Investigation.
 - 8.2.2. If the Commissioner considers that Meta has breached this enforceable undertaking, the Commissioner may apply to the Federal Court or Federal Circuit Court to enforce the undertaking under s 115 of the Regulatory Powers Act.
- 8.3. The Commissioner's acceptance of this enforceable undertaking is not a finding that Meta has contravened the Privacy Act or the APPs.

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8.4. Meta gives this enforceable undertaking on a without prejudice basis, and without any admission of liability as to the matters raised in the Investigation or Civil Penalty Proceedings. Any representations made or acknowledgments given by Meta in this enforceable undertaking, whether express or implied, are made without prejudice or admission of liability. In giving this enforceable undertaking, neither Meta nor any of its affiliated or associated entities are precluded from taking any position or relying on any facts or factual statements in any legal or regulatory proceedings in Australia or in any other jurisdiction in relation to any matter that was within the scope of the Commissioner's investigations referred to in paragraphs 1.7 and 8.2.1, the Civil Penalty Proceedings or which otherwise relate to the Cambridge Analytica Incident described at paragraphs 1.3 to 1.6.

9. Confidentiality

9.1. The Commissioner acknowledges that information provided by Meta, or the Administrator, to the Commissioner and OAIC in accordance with this enforceable undertaking may contain sensitive commercial information (**Commercial-in-confidence Information**).

9.2. The Commissioner acknowledges that any such Commercial-in-confidence Information is provided by Meta, or the Administrator, in confidence.

9.3. The Commissioner:

9.3.1. will only publish or otherwise disclose any Commercial-in-confidence Information with Meta's written agreement, unless otherwise required by law; and

9.3.2. will only use any Commercial-in-confidence Information for the purpose of exercising the Commissioner's powers, or performing functions or duties in the Privacy Act.

Offered by META PLATFORMS, INC. in the presence of:

s47F

Signature of witness

s47F

Name of witness (block letters)

s47F

Signature of authorised signatory

s47F

Name of authorised signatory (block letters)

Date Offered:

December 12, 2024

Accepted by the AUSTRALIAN INFORMATION COMMISSIONER under s 114 of the Regulatory Powers (Standard Provisions) Act 2014 (Cth):

s47F

Date Accepted: 17 December 2024



Our reference: CP18/01262

s47F

Partner
Johnson Winter & Slattery
Level 25, 20 Bond Street
SYDNEY NSW 2000

Representative complaint about Meta Platforms, Inc

Dear s47F

I refer to your client's representative complaint about Meta Platforms, Inc. (**Meta**), made under s 36 of the *Privacy Act 1988* (Cth) (the Privacy Act) on 26 April 2018. On **24 April 2025**, I wrote to you advising of my preliminary view that further investigation into alleged contraventions of the Australian Privacy Principles (APPs) by Meta is not warranted because Meta is adequately dealing with the Representative Complaint pursuant to section 41(2)(a), and having regard to all the circumstances, pursuant to s 41(1)(da) (**Preliminary View**).

For convenience, this letter adopts the same definitions as those used in the Preliminary View and all references to statutory provisions are to provisions in the Privacy Act unless otherwise stated.

When I provided my Preliminary View, I offered your client and Meta the opportunity to comment on my Preliminary View by **16 May 2025**. I received submissions from Meta on 16 May 2025, and confirmation from you that your client did not intend to provide submissions on 22 May 2025. The information that I have received has not materially changed my view of the matter. However, as will become apparent below, in deciding to not further investigate the Representative Complaint I do not exercise my discretion pursuant to s 41(2).

I am closing this matter on the basis that further investigation of your client's Representative Complaint is not warranted. I outline my reasons below.

The Representative Complaint

In November 2013, Dr Aleksander Kogan developed and launched The Life App used Meta's Graph API, which allowed the Life App to access certain information (including name and birthdate) from people who installed the App and their friends. In December 2015, Meta launched an investigation into Dr Hogan and his company, GSR, after allegations were made

that Dr Hogan and GSR had sold the information collected by the Life App to SCL Group Limited, which is the parent company of Cambridge Analytica (UK) Limited.

On 26 April 2018, the Commissioner received a representative complaint from your client s47F, the lead complainant, against Meta on behalf of the other users of Facebook *'who suffered an interference with their privacy due to the improper use of Facebook data by Cambridge Analytica'* pursuant to s 38(1).

The Representative Complaint is made on behalf of, at least, 311,127 Australian Users of Facebook who have allegedly suffered an interference with their privacy due to the improper use of Facebook data by Cambridge Analytica.

s47F alleges that he did not directly access the Life App, however, one or more of his Facebook friends did, and as a consequence s47F private information was provided to Dr Hogan and/or GSR and subsequently acquired by Cambridge Analytica.

s47F and the class members are seeking:

- (a) that the Information Commissioner enquire into the circumstances that lead to the privacy breach;
- (b) that the Information Commissioner identify to what extent there has been a breach of the APPs regarding the information relating to s47F and the class members;
- (c) a determination be made under s 52(1), with certain declarations (including that Meta should apologise to the class members); and
- (d) compensation in the amount of \$10,000 per class member.

My Preliminary View

In my Preliminary View, I informed your client of my view that further investigation of the Representative Complaint was not warranted for the following reasons:

- (a) Meta is adequately dealing with the Representative Complaint (s 41(2)(a)); and
- (b) having regard to all of the circumstances (s 41(1)(da)).

I relied on the following reasons to exercise my discretion under both of ss 41(2)(a) 41(1)(da):

- (a) Meta has undertaken steps to redress the conduct complained of in the Representative Complaint;
- (b) there would be a lack of practical utility in pursuing the Representative Complaint Investigation further; and
- (c) further investigation would not be an efficient allocation of the Commissioner's resources and powers.

Meta's response to my Preliminary View

In my Preliminary View, I informed you of my view that further investigation of the Representative Complaint was not warranted having regard to all the circumstances. On this basis I informed you of my view that s 41(1)(da) was enlivened.

In its submission received on 16 May 2026, Meta supported my view that further investigation of the Representative Complaint is not warranted having regard to all the circumstances. Meta also submitted that when considering "all the circumstances" for the purpose of s 41(1)(da), the Commissioner can take into account how Meta has dealt, or is dealing, with the Representative Complaint. I accept Meta's submission.

In its submission, Meta also submitted that it "*considers that the Commissioner's power to decide not to investigate the Representative Complaint further pursuant to section 41(2) may not be enlivened*".

Section 41(2) relevantly states that:

(2) The Commissioner may decide not to investigate, or not to investigate further, an act or practice about which a complaint has been made under section 36 if the Commissioner is satisfied that the complainant has complained to the respondent about the act of practice and either:

(a) the respondent has dealt, or is dealing, adequately with the complaint...

Section 41(2) requires that a decision maker must be satisfied that "*the complainant has complained to the respondent about the act or practice*" in addition to other matters.

There is no evidence before me that your client directly complained to Meta prior to, or after, lodging the Representative Complaint. On this basis, I accept Meta's submission.

Decision

Section 41(1)(da) of the Privacy Act confers a discretion on the Commissioner to decide not to investigate, or not to investigate further, an act or practice about which a complaint has been made under s 36 of the Privacy Act if satisfied that further investigation of that act or practice is not warranted having regard to all of the circumstances.

I am satisfied that, under s 41(1)(da) of the Privacy Act, it is not warranted in all of the circumstances to further investigate the Representative Complaint for the following reasons:

1. Meta is adequately dealing with the acts or practices that are the subject of the Representative Complaint, including by implementing the commitments it provided in the Enforceable Undertaking entered into with the Australian Information Commissioner on 17 December 2024;

2. There would be a lack of practical utility in pursuing the Representative Complaint Investigation further; and
3. Further investigation would not be an efficient allocation of the Commissioner's resources and powers.

On this basis, I have exercised the discretion under s 41(1)(da) to decide not to investigate the complaint further.

The file is now closed.

As the matter is now closed, there is no need to return to whether a decision should be made under s 41(2).

Information about your review rights is outlined below.

Yours sincerely

s47F

Ashleigh McDonald
Executive General Manager, Information Rights Division

27 June 2025

Your review rights

Applying for a judicial review

You may apply to the Federal Court of Australia or the Federal Circuit Court for a review of our decision not to investigate or not to investigate further your complaint, if you think our decision is not legally correct under the *Privacy Act 1988* (Privacy Act).

You must apply to the court within 28 calendar days of us sending you our decision or determination. If we posted it to you, the 28 calendar days starts from the date we posted the decision to you.

The court won't review the merits of your complaint, but they may refer the matter back to us to reconsider — if they find our decision or determination was wrong in law or we didn't exercise our powers properly.

For more information about a judicial review, visit the Federal Court of Australia's website: <https://www.fedcourt.gov.au/>

Lodging a complaint with the Commonwealth Ombudsman

You may lodge a complaint with the Commonwealth Ombudsman if you think we've treated you unfairly, because the Commonwealth Ombudsman can investigate the administrative actions of an Australian Government agency.

If the Commonwealth Ombudsman finds your complaint is justified, they can recommend we reconsider or change our actions or decision, or take any other action they think is appropriate.

For more information about making a complaint, visit the Commonwealth Ombudsman's website: <http://www.ombudsman.gov.au/>



Australian Government

Office of the Australian Information Commissioner

Our reference: CP20/02231

s47F

By email: s47F

Your complaint about Facebook (Meta Platforms)

Dear s47F

I refer to your complaint to the Office of the Australian Information Commissioner (OAIC) about Facebook.

On 8 June 2023, I wrote to advise you of my intention to exercise the Commissioner's discretion under s 41(1) of the *Privacy Act 1988* (Cth) (Privacy Act) not to investigate your complaint further because I was inclined to be satisfied that the respondent's acts and practices did not interfere with your privacy.

I have carefully considered your emails of 8 June 2023. In summary, you:

- maintain the view that the respondent published your full legal name on its social media site
- dispute that you were afforded the option to register an 'ad disclaimer' under the name of an organisation
- cite the fact that Australian electoral laws do not require the publication of an authorising individual's full legal name for the purpose of political advertising.

While I acknowledge your submissions, I remain of the view that the respondent's acts and practices did not interfere with your privacy for the reasons outlined in my letter of 8 June 2023.

In particular, I note that:

- when making your complaint to the OAIC, you provided a screenshot you had taken from the respondent's website which explicitly stated that "When creating disclaimers to appear on ads and in the Ad Library, you'll choose to use either the name of the responsible organisation, or your name as it appears in official documents." This supports the respondent's submission that individuals have the option to register a disclaimer under the name of an organisation.

- the respondent stated that while you created an 'ad disclaimer' for your social media page, you never proceeded to run an advertisement (with that disclaimer or at all). In the absence of any evidence to the contrary, it does not appear that your personal information was published on an advertisement disclaimer or the respondent's Ad Library. Consequently, the respondent cannot be said to have breached APP 6 or 10 as alleged.
- while the respondent's requirements may differ from Australian electoral laws (in this case, the respondent's requirement that an 'ad disclaimer' registered in the name of an individual will reflect the individual's name as it appears in official documents), that of itself is not sufficient to establish a breach of the Privacy Act.

Consequently, I have determined to exercise the Commissioner's discretion under s 41(1) of the Privacy Act to decide not to investigate your complaint further.

Your review rights are outlined in the attachment to this letter.

Thank you for bringing this matter to our attention. I will now close our file.

Your sincerely

s47F



s47F



Director Determinations

26 July 2023

Your review rights

Applying for judicial review

You may apply to the Federal Circuit and Family Court of Australia or the Federal Court of Australia for a review of our decision not to investigate your complaint, or not to investigate further, if you think our decision is not legally correct under the *Privacy Act 1988* (Privacy Act).

You must apply to the court within 28 calendar days of us sending you our decision or determination. If we sent our decision to you by post, the 28 calendar days starts from the date we posted the decision to you.

The court will not review the merits of your complaint, but they may refer the matter back to us to reconsider if it finds our decision or determination was wrong in law or that we did not exercise our powers properly.

For more information about the judicial review process, visit the Federal Court of Australia's website: <https://www.fedcourt.gov.au/>

Lodging a complaint with the Commonwealth Ombudsman

The Commonwealth Ombudsman can investigate the administrative actions of an Australian Government agency. You may lodge a complaint with the Commonwealth Ombudsman if you think we have treated you unfairly.

If the Commonwealth Ombudsman finds your complaint is justified, he can recommend we reconsider or change our actions or decision or take any other action he considers appropriate.

For more information about making a complaint, visit the Commonwealth Ombudsman's website: <http://www.ombudsman.gov.au>