



'IQ' and NRMA Insurance, Insurance Australia Limited [2016] AICmr 36 (27 June 2016)

Determination and reasons for determination of Acting Australian Privacy Commissioner, Timothy Pilgrim

Complainant:	'IQ'
Respondent:	NRMA Insurance, Insurance Australia Limited (ABN 11 000 016 722)
Decision date:	27 June 2016
Application number:	CP14/02775
Catchwords:	Privacy — Privacy Act — Australian Privacy Principles — <i>Privacy Act 1988</i> (Cth) s 52 — NPP 2 — Use or disclosure of personal information— NPP 4 — Security of personal information — Compensation awarded — Non-economic loss — Aggravated damages not awarded

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Findings

1. Insurance Australia Limited trading as NRMA Insurance (**NRMA**) interfered with the complainant's privacy by disclosing his personal information to third parties, in breach of National Privacy Principle (NPP) 2.1 under the *Privacy Act 1988* (Cth) (**Privacy Act**).
2. To redress the matter NRMA shall:
 - (a) within 6 weeks of this determination issue an apology to the complainant acknowledging its interference with the complainant's privacy, and
 - (b) pay the complainant \$2,000 for non-economic loss caused by the interference with the complainant's privacy.

I also recommend that NRMA:

- (c) review its staff training procedures in respect of its information handling policies, having specific regard to the dealing of enquiries made by family members.

Background

3. The complainant held a number of insurance policies with NRMA.
4. In November 2013 the complainant's spouse (**the spouse**) attended an NRMA office to inquire about compulsory third party (**CTP**) and comprehensive motor insurance for her car. She was accompanied by the complainant's daughter.¹
5. The complainant alleges that an NRMA staff member accessed the complainant's records and discussed details of the complainant's vehicle insurance policies with his spouse.²

¹ Complainant's complaint to the OAIC, 4 June 2014, 1.

² Complainant's complaint to the OAIC, 4 June 2014, 1.

6. The complainant also alleges that the NRMA staff member turned their computer monitor around so that it was visible to the spouse, daughter and other customers, and in the process disclosed details of the complainant's motor policies.³

Privacy Complaint and the remedy sought

7. On 4 June 2014 the complainant lodged a complaint against NRMA with the Office of the Australian Information Commissioner (**OAIC**) under s 36 of the Privacy Act.⁴
8. The complainant alleges that NRMA interfered with his privacy by improperly disclosing his personal information to third parties (i.e. his wife, daughter and other customers) and by not taking reasonable steps to protect his personal information from misuse and loss, and from unauthorised access, modification or disclosure. He said:

The staff member looked up my personal details on the computer and offered her [the complainant's spouse] the same no claim bonus as mine and proceeded to turn the monitor around and show her all my personal information, which was in full view for anyone present to see.⁵

9. The complainant states that the information disclosed was not connected to any policy which was jointly insured with his spouse or daughter. He said:

It was clear that the information being disclosed had nothing to do with anything that was of a joint insurance nature and was specific to my Brown vehicle which my wife is not privy to such information and had nothing to do with her.⁶

10. He also states that his spouse and daughter were not asked for any form of proof of identification before his personal information was disclosed.⁷

³ Complainant's complaint to the OAIC, 4 June 2014, 1.

⁴ Complainant's complaint to the OAIC, 4 June 2014, 1.

⁵ Complainant's complaint to the OAIC, 4 June 2014, 1.

⁶ Complainant's complaint to the OAIC, 4 June 2014, 1.

⁷ Complainant's complaint to the OAIC, 4 June 2014, 1.

11. NRMA has confirmed that the disclosure likely took place, but disputes the complainant's allegation that reasonable steps were not taken to verify the identity of the spouse:⁸

NRMA uses a 3 point (combination of name/address/date of birth/insured asset information) identification process to confirm that we are transacting with the insured. In respect of a spouse we allow limited information to be provided if the spouse can provide further identification information in respect to the policy and asset insured.⁹

12. On 15 October 2014, the OAIC opened an investigation into the complainant's allegations under s 40(1) of the Privacy Act. The written submissions provided by both the complainant and NRMA were considered.

13. The matter was not resolved through conciliation and I decided to determine the matter under s 52 of the Privacy Act.

14. Section 52(1) provides that, after investigating the complaint, I may make a determination:

- dismissing the complaint (s 52(1)(a)); or
- finding the complaint substantiated and make a determination that includes one or more of the following declarations:
 - (i) that the respondent has engaged in conduct constituting an interference with privacy of an individual and must not repeat or continue such conduct (s 52(1)(b)(i)(B))
 - (ii) that the respondent must perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant
 - (iii) that the complainant is entitled to a specified amount by way of compensation for any loss or damage suffered by reason of the act or practice the subject of the complaint (s52(1)(b)(iii))
 - (iv) it would be inappropriate for any further action to be taken in the matter.

⁸ NRMA email to the OAIC, 18 November 2015.

⁹ NRMA email to the OAIC, 18 November 2015.

15. The complainant is seeking compensation in the form of insurance for his two vintage vehicles at their replacement value for the life of the vehicles.¹⁰

The Law

16. At the time of the alleged breaches, the NPPs were the standards for handling personal information which private sector organisations subject to the Privacy Act were obliged to uphold.
17. I have considered the complaint under the provisions of the Privacy Act including the NPPs in effect at the relevant time.
18. Section 13A of the Privacy Act held that an act or practice that breached an NPP in relation to personal information was for the purposes of the Act an interference with the privacy of the individual who the information was about. Section 16A required an organisation not do an act or engage in a practice that breaches the NPPs.
19. Personal information was defined in s 6 of the Privacy Act as:
- ... information or opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.¹¹
20. 'Organisation' was defined under s 6C of the Privacy Act to include:
- (a) an individual; or
 - (b) a body corporate; or
 - (c) a partnership; or
 - (d) any other unincorporated association; or
 - (e) a trust
- that is not a small business operator, a registered political party, an agency, a State or Territory authority or a prescribed instrumentality of a State or Territory.
21. NRMA is an 'organisation' within the meaning of s 6C(b) of the Privacy Act.

¹⁰ Complainant's complaint to the OAIC, 4 June 2014, 2.

¹¹ 'Personal information' under the post-12 March 2014 regime is defined to mean: information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

22. NPP 2.1 provided that:

An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless:

(a) both of the following apply:

- i. the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directed related to the primary purpose of collection;
- ii. the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose.

23. NPP 4 required organisations to take reasonable steps to protect an individual's personal information from misuse and loss and from unauthorised access, modification or disclosure.

Alleged breach of NPP 2

24. The complainant alleges a breach of NPP 2 on the basis that his personal information was improperly disclosed to his spouse and NRMA cannot rely on any exceptions to the prohibition of disclosure under the Act.¹²

25. NRMA does not dispute that it disclosed the complainant's personal information to his spouse:

In the absence of electronic records such as a call recording and using [the complainant's information] as to exact events, [NRMA has] ascertained that it disclosed information to the complainant's wife about his policies on the basis of the complainant's wife being his spouse and as having a financial interest in the vehicle and being listed on his motor policy.¹³

26. NRMA advises that it can only make an assumption of what may have been disclosed by the NRMA staff member in November 2013 to assist the enquiry made by the complainant's wife. This is because NRMA does not image the screens displayed or store these records.

¹² Complainant's complaint to the OAIC, 4 June 2014, 1.

¹³ NRMA email to the OAIC, 18 November 2014.

27. NRMA states that in its view, what the NRMA staff member may have potentially shown to the complainant's wife and daughter was:
- the customer 'list of businesses' screen, which lists the customer name, date of birth, address and a list of policies held (at the transaction date the complainant held a comprehensive motor policy and CTP policy), and/or
 - the comprehensive motor policy overview screen, which would have shown vehicle information, make, model, sum insured, and may have also indicated that the complainant's wife was a driver only, and/or
 - the CTP policy overview screen, which would have shown vehicle information, make, model, suburb garaged.¹⁴
28. Notwithstanding this, NRMA contends that there is no breach of the Act as the disclosure is permitted under NPP 2.1(a). It considers that the disclosure is within the reasonable expectations of how NRMA would deal with the complainant's personal information in respect of his spouse. NRMA claims the disclosure made was for a related secondary purpose and the complainant would reasonable expect NRMA to disclose his personal information for the purpose of calculating the no-claim bonus the complainant's spouse should be offered for her CTP insurance.¹⁵

Findings in relation to alleged NPP 2.1 breach

Related secondary purpose

29. The *Guidelines to the National Privacy Principles* issued by the then Office of the Federal Privacy Commissioner in September 2001 (**the NPP Guidelines**) state that '[t]o be related, the secondary purpose must be something that arises in the context of the primary purpose of collection.'¹⁶
25. NRMA's privacy policy in place at the time of the alleged improper disclosure in November 2013, NRMA's Privacy Charter, stated that the NPPs permit NRMA and its related entities to collect, hold, use and disclose personal information for the purpose of providing its customers with products and services, and subject to customers' consent, for marketing purposes. The Privacy Charter detailed a number of purposes for which it and its related entities may collect, store and use/disclose personal information including:

¹⁴ NRMA email to the OAIC, 16 December 2015.

¹⁵ Letter from NRMA to the OAIC, 1 June 2015.

¹⁶ Office of the Federal Privacy Commissioner, *Guidelines to the National Privacy Principles* (2001), 35.

- assessing applications for insurance or any subsequent applications
 - underwriting, pricing and issuing of any policy
 - calculating and offering discounts which may apply such as a multi-policy discount
 - administering the policy.¹⁷
30. I accept that calculating the no-claim bonus available to a customer is related to the primary purpose of providing that customer with a product or service. Nonetheless it is not clear that information contained in the complainant's motor policy was necessary to calculate the no-claim bonus on the spouse's motor policy. In any case, I am of the view that even if arguably the disclosure was made for the secondary related purpose of assessing the spouse's no-claim bonus, the complainant would not have reasonably expected the disclosure.

Reasonably expects

31. NRMA contends the disclosure was within the complainant's reasonable expectations as:

[The complainant and his wife] do hold a joint policy for a motor vehicle which was incepted in October 2013 on the basis of joint financial interest in the subject of cover.¹⁸

35. However the complainant argues that the information displayed to his spouse was in relation to a motor policy that was not held jointly with his spouse at the time.¹⁹ NRMA has since conceded that it is likely the screen information disclosed to the spouse was not in relation to any joint policy held, but rather in relation to the complainant's policies, although the complainant's spouse may have been listed as a driver.²⁰
36. I have examined the NRMA's Privacy Charter²¹ to determine whether or not the complainant would 'reasonably expect' the disclosure of information for that related secondary purpose.
37. The Privacy Charter aims to inform customers about the collection and use and disclosure of their personal information held by NRMA. Page 3 of the Privacy

¹⁷ NRMA, *Privacy and You*, Privacy Charter (2009), 3
https://web.archive.org/web/20130908152158/http://www.nrma.com.au/sites/default/files/NRMA-Documents/Privacy_charter_NRMA_2012.PDF.

¹⁸ NRMA letter to the OAIC, 1 June 2015.

¹⁹ Complainant's complaint to the OAIC, 4 June 2014, 1.

²⁰ Email from NRMA to the OAIC, 16 December 2015.

²¹ NRMA, *Privacy and You*, Privacy Charter (May 2009), 3
https://web.archive.org/web/20130908152158/http://www.nrma.com.au/sites/default/files/NRMA-Documents/Privacy_charter_NRMA_2012.PDF.

Charter under the heading '*Sharing and disclosing your information*' as it existed at November 2013 states:

We won't disclose information about you to a company which is not related entity or agent of ours, unless it's required or authorised by law, or you have consented to our disclosing the information about you.

Sometimes we may need to disclose your personal information to provide a product or service to you. For example, if you apply for an insurance policy, we may need to disclose your information to our related entities, our distributors such as agents and brokers, other insurers, and insurance reference bureaus so we can determine things such as your claims history. If we need to process a claim you've made, we may need to disclose your information to assessors, repairers, medical providers or other service providers.

We may also need to disclose your information to assessors, repairers, medical providers or other service providers.

But rest assured, that at all times, we'll respect and protect the privacy and confidentiality of your personal information.

38. There is no information within the Privacy Charter which specifically provides that customer information may be disclosed to family members. There is no information before me to suggest that the complainant in any way consented to his information being disclosed to his spouse or that he was made aware through any medium of the possible disclosure by NRMA of his personal information to family members for the purpose of calculating the no-claim bonus on their policies.

39. NRMA's Motor Insurance Premium, Excess and Discounts Guide NSW (**the PED Guide**) for the relevant period provided at page 3 under '*No Claim Discount*':

We reward your good driving history with a No Claim Discount which ranges from 0% to 65% so you can save on your Comprehensive Motor Insurance premium. We calculate your Policy's No Claim Discount level based on:

- number of years driving experience of you and any listed driver, and
- claims and incident experience of you and any listed driver.

40. This suggests that if the complainant was listed as a driver on his spouse's policy, NRMA may require access to the complainant's information to ascertain his claims and incident experience for the purposes of calculating his spouse's no claim discount. There is no information before me however to suggest that NRMA discloses the personal information of listed drivers to the policy holders.

There is no information in the PED Guide to suggest that if you are listed as a driver on a motor vehicle policy held by someone else your information may be disclosed to that someone else.

41. Even if such a disclosure is arguable for a related secondary purpose, it is not commensurate with a customer's reasonable expectations.
42. NRMA made significant revisions to its privacy policy in early 2014 prior to the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* coming into effect on 12 March 2014. The current privacy policy stipulates that customer information may be disclosed to 'family members – for example, if they contact us with your authority' for a number of purposes including 'pricing a policy and calculating and offering discounts'.²² I must however assess the act or practice at the time it occurred, and in this case, it was the Privacy Charter that was in place at the relevant time.
43. I am therefore of the view that NRMA improperly disclosed the complainant's information when it discussed his motor policies with his spouse and daughter, thereby breaching NPP 2.1. I do not consider any other exception in NPP 2 permitted disclosure of the complainant's personal information.

Alleged Breach of NPP 4.1

44. The complainant alleges a breach of NPP 4.1 by failing to take reasonable steps to protect his personal information from misuse and loss and from unauthorised access, modification or disclosure.
45. What constitutes 'reasonable steps' is described in the NPP Guidelines:

What are reasonable steps to secure personal information will depend on the organisation's particular circumstances. Some relevant factors include:

- the sensitivity of the personal information the organisation holds
- the harm that is likely to result to people if there is a breach of security
- how the organisation stores, processes, and transmits the personal information (for example, paper-based or electronic records), and
- the size of the organisation (the larger the organisation, the greater the level of security likely to be needed).²³

²² NRMA, *Privacy Policy* (11 January 2014) <http://www.nrma.com.au/sites/default/files/NRMA-Documents/NRMA_Privacy_Policy_11Jan2014.pdf>.

²³ *Guidelines to the National Privacy Principles* (2001), 44-45.

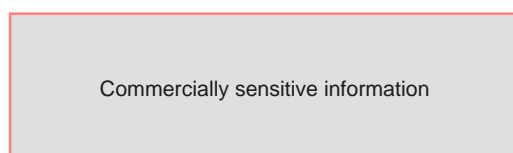
46. The complainant alleges that NRMA did not take adequate security measures when it:
- failed to ask his spouse for proof of identification before discussing the complainant's policies with her;²⁴ and
 - turned the monitor around towards his spouse and daughter, such that the screen was visible to passers-by in NRMA's Blacktown office.²⁵
47. NRMA claims that reasonable steps were taken to protect the complainant's information. It advises that during a customer enquiry it uses a three-point identification process to confirm who it is transacting with. NRMA says that this involves collecting a combination of information from the enquirer, such as name, address, date of birth, or information about the insured asset.²⁶
48. According to NRMA in the event that the enquirer is not the insured, but rather a spouse or de facto partner, information about the policy and/or the insured asset would not be provided unless the partner could confirm certain details (outlined at paragraph 49 below).²⁷

Findings in relation to alleged breach of NPP 4.1

Identification Process

49. NRMA explains that its staff have access (and had access at the relevant time) to 'Online Help' which is a tool utilised by staff to confirm the verification process that should be used.²⁸ NRMA's internal 'Online Help' guidelines²⁹, set out the process to be undertaken when dealing with third parties and spouses:

A spouse or de facto (not noted on the policy) is required to have verbal or written permission or a Third Party Authority form lodged by the insured to gain full authority to make any enquiries or requests. If any of the above has not been received, limited information can be disclosed provided that the spouse or de facto can confirm the following:



²⁴ Complainant's complaint to the OAIC, 4 June 2014,1.

²⁵ Complainant's complaint to the OAIC, 4 June 2014, 1.

²⁶ NRMA email to the OAIC, 18 November 2015.

²⁷ Letter from NRMA to the OAIC, 1 June 2015.

²⁸ NRMA letter to the OAIC, 1 June 2015.

²⁹ The version of these guidelines in place at the time of the alleged breaches is no longer available, however NRMA advises that although the wording may have been slightly different, the approach taken to third party and spousal enquiries would have essentially been the process in place today.

Commercially sensitive information

50. Though there is no evidence that the above process was adhered to (or not adhered to) at the time the complainant's spouse made her enquiry, it seems clear that at least some identification was asked of her, sufficient to associate the spouse with the complainant's policy. There is no other information before me which indicates what was said or not said to the complainant's spouse.
51. Notwithstanding this, it is evident that NRMA had a policy in place that set out the steps staff should take when an enquiry is made by a spouse or de facto partner about an insured's policy. This constitutes a reasonable step in protecting customers' personal information. The practice of making the identification verification process available to staff online so staff can confirm the steps that need to be taken is another reasonable step by NRMA to protect the personal information it holds.
52. Given the steps NRMA had in place, I find that NRMA has met its obligation under NPP 4.1 in this respect.

Turning around monitor screen

53. NRMA admits to the practice of turning monitors around so the screens are visible to customers to assist them in understanding the information which it holds about them.³¹
54. It claims that this practice is only undertaken after the three-point identification check detailed at paragraph [49] above, and would not be done if the screen provided unauthorised access to other customers or members of the public.³²

³⁰ NRMA letter to the OAIC, 1 June 2015, Appendix A.

³¹ NRMA email to the OAIC, 18 November 2015.

³² NRMA email to the OAIC, 18 November 2015.

55. NRMA claims that its staff are trained to ensure adequate care is taken when sharing computer screens with customers.³³ In particular it claims:

staff are cognisant of the proximity of other customers within the distance from the waiting queue to the customer at the counter. Further at some locations the set-up is kiosk style with self-serve computers and open-plan workstations which staff and customers use as required. In these instances, the computers may face outwards also, but we monitor the distance from waiting area to screen [to ensure privacy protections are in place].³⁴

56. In this case, there is no information before me to suggest third parties, other than the complainant's spouse and daughter were in a position to access the complainant's personal information on screen.
57. In any case, I accept that NRMA had training in place to make staff aware of what they must consider when providing customers with access to the monitor screens. This practice is a reasonable step by NRMA to secure the personal information it holds.
58. Given the training NRMA had in place, I find that NRMA has met its obligations under NPP 4.1, and there is no interference with the complainant's privacy in this regard.

Finding on damages

58. I have the discretion under s 52(1)(b)(iii) of the Privacy Act to award compensation for 'any loss or damage suffered by reason of' the interference with privacy'. Section 52(1A) states that loss or damage can include 'injury to the complainant's feelings or humiliation suffered by the complainant'.
59. The complainant has stated he has experienced 'huge stress and anxiety' at the disclosure of his personal information to his spouse and daughter.³⁵ He claims the incident has raised concerns about the security of his vehicles.³⁶ In particular he states:

Since this has happened I am paranoid that my information has been acquired by a complete stranger and that this has made me over protective over my vehicles that I have insured with the NRMA. I am always on the alert to the extent that even when I am at home and hear a noise in the night, I have to check my vehicles even though they are locked away and secured on my property.³⁷

³³ NRMA email to the OAIC, 18 November 2015.

³⁴ Letter from NRMA to the OAIC, 1 June 2015, 2.

³⁵ Complainant's complaint to the OAIC, 4 June 2014, 1.

³⁶ Complainant's complaint to the OAIC, 4 June 2014, 2.

³⁷ Complainant's complaint to the OAIC, 4 June 2014, 2.

60. The complainant has not submitted any other evidence to support his claim that he suffered anxiety and distress as a result of NRMA's conduct. Nonetheless I accept that the stress and anxiety the complainant claims to have suffered falls within the ambit of 'injury to feelings'.
61. It has long been established that damages should be assessed on tort-based principles³⁸, while on the other hand, damages awards compensating for injured feelings should not be so low as to diminish respect for the public policy to which the legislation gives effect.³⁹
62. I am guided by the following principles on awarding compensation, summarised by the Administrative Appeals Tribunal (AAT) (Full Tribunal) in *Rummery and Federal Privacy Commissioner*:⁴⁰
- where a complaint is substantiated and loss or damage is suffered, the legislation contemplates some form of redress in the ordinary course
 - awards should be restrained but not minimal
 - in measuring compensation, the principles of damages applied in tort law will assist, although the ultimate guide is the words of the statute
 - in an appropriate case, aggravated damages may be awarded
 - compensation should be assessed having regard to the complainant's reaction and not to the perceived reaction of the majority of the community or of a reasonable person in similar circumstances.
63. I have considered and given weight to the statement made by the complainant, and I am satisfied that the manner in which NRMA has handled the complainant's personal information has caused the complainant some distress and that an award of damages is consequently appropriate.
64. References to other cases can be useful in providing a guide for an appropriate sum for damages awarded for breaches of the Privacy Act. I have consequently considered amounts awarded in previous [Privacy Act](#) determinations, as well as amounts awarded or settled on in discrimination cases as outlined in *Federal Discrimination Law Online*⁴¹ and the Conciliation Register of the Australian Human Rights Commission.⁴²

³⁸ *Haines v Bendall* [1991] HCA 15; (1991) 172 CLR 60.

³⁹ *Hall & Ors v Sheiban Pty Ltd & Ors* [1989] FCA 72 per Wilcox J, adopting as a statement of principle May J's observation in *Alexander v Home Office* (1988) 1 WLR 968, 975.

⁴⁰ [2004] AATA 1221 [32] (*Rummery*).

⁴¹ Australian Human Rights Commission, *Federal Discrimination Law* (2011) www.hreoc.gov.au/legal/FDL/index.html, ch 7 at 20 March 2014.

⁴² Australian Human Rights Commission, *Conciliation Register*, <http://www.humanrights.gov.au/complaints/conciliation-register>

65. In the case of *'S' and Veda Advantage Information Services and Solutions Limited*⁴³ I awarded \$2000 for the stress and anxiety caused to the complainant by reason of Veda's failure to take reasonable steps to ensure that the information contained in the complainant's credit file was accurate, up-to-date, complete and not misleading.
66. In *'A', Complainant and the Secretary, Department of Defence*⁴⁴, 'A' was awarded \$2500 when he suffered 'considerable humiliation and embarrassment' as a result of an improper disclosure of his Army record to his new employer.
67. In *'CP' v Department of Defence*⁴⁵ I awarded the complainant \$5000 general damages to compensate for the heightened anxiety and stress he suffered as a result of Defence's unauthorised disclosure of a psychologist's report to the complainant's treating doctors.
68. In *'BO' v Aerocare Pty Ltd*⁴⁶, I awarded \$8500 to a complainant who suffered distress and humiliation after Aerocare had collected and disclosed his health information in an airport departure lounge.
69. In *'DK' and Telstra Corporation Limited*⁴⁷ I awarded \$18,000 to a complainant who, because of threats to his (and his partner's) personal safety, was forced to move interstate when Telstra published his personal information in the White Pages directory and online.
70. While I am mindful that any award should not be minimal because it would tend to trivialise or diminish respect for public policy, I am satisfied that the matter does not fall towards the more serious end of privacy breaches. In my view, while distressing for the complainant, the breach does not command damages in the higher range. The breach was constituted by a 'one-off' incident, it was not intended to upset either the complainant or the complainant's wife, and based on the information before me the disclosure was in all likelihood limited to the complainant's wife and daughter. Although there is ongoing anxiety, there is no evidence of any substantial consequences for the complainant, psychological, medical or otherwise.

⁴³ [2012] AICmr 33.

⁴⁴ *'A', Complainant and the Secretary, Department of Defence* [1993] PrivCmr ACD 1 (22 December 1993).

⁴⁵ [2011] FMCA 398.

⁴⁶ [2014] AICmr 37.

⁴⁷ [2014] AICmr 118.

71. Having regard to above cases in terms of the anxiety and stress suffered by the complainant, I conclude that the appropriate compensation is the sum of \$2000.

Aggravated damages

72. The power to award damages in [s 52](#) of the [Privacy Act](#) includes the power to award aggravated damages in addition to general damages.⁴⁸

73. I have previously made reference to two principles which provide useful guidance in determining whether such an award is warranted. Aggravated damages may be awarded where:

(a) the respondent has behaved 'high-handedly, maliciously, insultingly or oppressively'⁴⁹

(b) the 'manner in which a defendant conducts his or her case may exacerbate the hurt and injury suffered by the plaintiff.'⁵⁰

74. I note that NRMA did not respond to the complainant's initial complaint until August 2014, and the delay is likely to have caused the complainant some distress.⁵¹ However I do not consider the way in which NRMA has conducted its case to be high-handed, malicious, insulting or oppressive. It has been conciliatory in its approach and as such I do not consider there is any basis for awarding aggravated damages in this instance.

Determination

75. I declare in accordance with s 52(1)(b)(i)(B) of the Privacy Act that:

- the complainant's complaint is substantiated
- NRMA has breached NPP 2 by improperly disclosing personal information about the complainant to his spouse and daughter.

76. I declare in accordance with s 52(1)(b)(ii) of the Privacy Act that NRMA must:

⁴⁸ *Rummery and Federal Privacy Commissioner and Anor* [2004] AATA 1221, [32].

⁴⁹ *Hall v A & A Sheiban Pty Ltd* [1989] FCA 72, [75].

⁵⁰ *'D' v Wentworthville Leagues Club* [2001] AICmr 9, [50]; *'S' v Veda Advantage Information Services and Solutions Limited* [2012] AICmr 33, [93]; *'BO v AeroCare Pty Ltd* [2014] AICmr 37, [57]; *'HW' v Freelancer International Pty Limited* [2015] AICmr 86, [379].

⁵¹ NRMA's letter to the complainant, 7 August 2014.

- issue a written apology to the complainant within six weeks of this determination, acknowledging its interference with the complainant's privacy.

I also recommend that:

- NRMA review its staff training procedures in respect of its policies dealing with enquiries made by family members who have not been specifically authorised by the individual.

77. I declare in accordance with s 52(1)(b)(iii) that the complainant is entitled to \$2000 for the non-economic loss suffered as a result of NRMA's interference with his privacy.

Timothy Pilgrim
Acting Australian Information Commissioner
27 June 2016

Review rights

A party may apply under s 96 of the *Privacy Act 1988* to have a decision under s 52(1) or (1A) to make a determination reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm a privacy determination. An application to the AAT must be made within 28 days after the day on which the person is given the privacy determination (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

A party may also apply under [s 5](#) of the *Administrative Decisions (Judicial Review) Act 1977* to have the determination reviewed by the Federal Circuit Court or the Federal Court of Australia. The Court may refer the matter back to the OAIC for further consideration if it finds the Information Commissioner's decision was wrong in law or the Information Commissioner's powers were not exercised properly. An application to the Court must be lodged within 28 days of the date of the determination. An application fee may be payable when lodging an application to the Court. Further information is available on the Court's website (<http://www.federalcourt.gov.au/>) or by contacting your nearest District Registry.