



Making privacy core business

**A precursor to the Australian Privacy Act's
anticipated increased penalty regime**

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Google's \$60 million settlement with ACCC

The [Federal Court of Australia](#) recently found Google had inappropriately collected, stored and used consumers' location data. The Court found that Google LLC and Google Australia Pty Ltd had breached the Australian consumer law by representing that the setting titled "Location History" was the only account setting that affected collection, storage and use of location data. In fact, another account setting kept location data by default.

Last month, the [Federal Court of Australia](#) approved a \$60 million settlement between ACCC and Google LLC for the breach. Google Australia Pty Ltd was not fined as it was not responsible for the preparation of the screens which the Court found were misleading. The jurisdictional aspects of to whom penalties can apply under the Privacy Act will soon be tested in the [High Court](#) in another matter brought by Facebook Inc against the OAIC.

Anticipated increased penalty regime

In the [ACCC's media release](#), it is stated: "this is the first public enforcement outcome arising out of the ACCC's Digital Platforms Inquiry", which was the catalyst for the review of the Australian Privacy Act.

One of the proposed changes is for the Privacy Act to adopt the penalty regime in the Australian Consumer Law, namely the greater of:

- (a) \$10 million;
- (b) three times benefit received; or
- (c) 10% of annual turnover (related to the Australian operations).

The ACCC and Google settlement relied on the last option, namely annual turnover. The Court noted that in the relevant period annual turnover ranged between \$2.1 and \$3 billion (paragraph 23 of [judgment](#)).

As such, 10% of \$2.1 billion (the lower range of annual revenue related to the Australian operations) was \$210 million, which was more than three times the actual penalty agreed. However, most of the conduct that was the subject of the breach occurred prior to the increased penalty regime.

In addition to the increased penalty regime, there a number of key areas of business interest in the Privacy Act review as Privcore has [summarised](#).

Assigning greater levels of monetary value to privacy risks

With the recent [Optus data breach](#) potentially affecting almost half of Australia's population and data minimisation yet to be fully realised in many organisations, more privacy impact

assessments are likely to be needed. Privacy risks will have greater levels of monetary value assigned, due to the anticipated increased penalty regime.

OAIC warning

In a recently published [audit report](#), the OAIC also warned Australian government agencies of the need to conduct privacy impact assessments and increase public transparency around their reporting. Australian government agencies are required to undertake privacy impact assessments in many situations as outlined in Privcore's report on '[what makes a great PIA?](#)'.

About Privcore

Privcore's team with 40 years' combined experience helps business and government make privacy core business, so they can deliver services with the trust and confidence of customers and citizens. Privcore conducts privacy impact assessments, privacy health checks or audits, data breach prevention and recovery, privacy by design, builds privacy programs, provides advice, policies and conducts research into privacy and cybersecurity.

Annelies Moens, CIPP/E, CIPT, FIP, FAICD, CMgr FIML, a [Superstar of STEM in 2021-2022](#) and a privacy professional practising since 2001 founded Privcore. She has led and conducted hundreds of privacy consulting deliverables globally. She is a former President of the International Association of Privacy Professionals which she co-founded in Australia and New Zealand in 2008. She has been instrumental in shaping and building the privacy profession in Australia and New Zealand and influencing privacy developments in APEC. She also has extensive privacy regulatory experience and resolved hundreds of privacy complaints whilst working at the Australian privacy regulator.

