

# Angelene Falk

Australian Information Commissioner and Privacy Commissioner

**Katherine Sessions**, Assistant Manager – International Strategy and Futures at the eSafety Commission, talks with **Angelene Falk**, Australian Information Commissioner and Privacy Commissioner, about Angelene's career to date and her thoughts on International Women's Day in 2022.

**KATHERINE SESSIONS:** Hi Angelene – thank you so much for speaking with us. How did your career path lead you to the Office of the Australian Information Commissioner?

**ANGELENE FALK:** I come from a family of educators where information was highly prized. When I started in my legal career, I was acutely aware that not everyone had equal access to information, or the ability to have their case heard. As a young industrial and discrimination practitioner I was influenced by the privacy harms that I saw, like revealing HIV status to those who didn't need to know, and that started driving me towards how important information was, both in the ability to access it, and in the ability to protect it.

The right to receive and impart information and ideas, to hold opinions and to be free from arbitrary interference with privacy underpin our democracy including our personal autonomy. When our personal information is misused, it can lead not only to individual harm but to collective societal harm. To my mind the OAIC's work is at the centre of what it means to work in the public interest.

**KATHERINE:** What developments do you see on the horizon in 2022 for the communications and media legal landscape?

**ANGELENE:** This is going to continue to be a dynamic area of the law: implementing the proposals coming out of the Digital Platforms Inquiry and subsequent reports, a major review of the Privacy Act, a number of regulatory matters involving the big tech players and the accelerated shift to a digital economy.

You would have seen our action against Facebook Inc and Facebook Ireland alleging it committed serious and/or repeated interferences with privacy in contravention of Australian law. As the national privacy regulator, we are holding entities operating in Australia to account for breaches of Australian privacy law. And we expect there to be further regulatory efforts targeted at high privacy impact technologies and the online environment.

You'll see continued collaboration between the OAIC and domestic regulators like the ACCC, ACMA, and eSafety, as well as APRA and ASIC alongside international cooperation. The intersection with privacy and consumer protection law, online safety, technology and media will increase as we work in concert to achieve the best outcomes in the public interest.

The full review of the Privacy Act by the Attorney-General's Department is clearly important to the future of privacy. This is a once in a decade opportunity to upgrade a privacy framework that empowers consumers, protects their data and best serves the Australian economy.

Our view is that a strong digital economy needs to be paired with clear responsibility for how personal information is handled, which drove our recommendation for fairness and accountability to be at the centre of the Privacy Act. If we establish a positive duty on organisations to handle personal information fairly and reasonably it will require them to take a proactive approach to meeting their obligations. Ideally, we will have a situation where preventing privacy harms upfront gives greater protection without relying on reactive action by us as regulator.

Separately, the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021, released as an exposure draft last year, proposes to increase the penalties for serious privacy breaches. It aligns them with penalties under consumer law and also provides for the development of an online privacy code to regulate social media and data brokerage services and large online platforms. It will require them to be more transparent about how they handle personal information with more stringent requirements and privacy rules for children.

So the communications and media regulatory developments around privacy are set to be a major focus. They present an opportunity for Australia's data protection frameworks to be world leading.

**KATHERINE:** What's the best work-related advice you've ever received?

**ANGELENE:** When the turbulent seas surround you, go back to your (in my case legislated) purpose. It's your anchor to keep steady as a rock.

**KATHERINE:** The 2022 International Women's Day campaign theme is #BreakTheBias. What does this mean to you and how would you suggest this is implemented in our readers' work and personal lives?

**ANGELENE:** The right to privacy is not gender neutral. There are many ways in which gender bias intersects with privacy regulation and the use of personal information. In using artificial intelligence to make decisions, the gendered features of data sets can lead to a bias against women and to disadvantage others in the community. Online micro targeting based



on gender can lead to exclusion of women from markets and opportunities; profiling of children and young people can result in harmful content being served based on the gendered interests perceived by algorithms.

New technologies can disproportionately impact and lead to privacy harms for women: location tracking devices, facial recognition technology. And sadly, we continue to receive cases of improper disclosure of personal information offline by businesses to ex partners who target women in family disputes and domestic violence.

All of these issues reinforce the need for privacy by design. For all your readers, we need to look at how we can build privacy protections into all new technologies and practices to ensure that we address these biases and remove the risks. We want to prevent harms occurring at the outset.

**KATHERINE:** If there is one thing you would celebrate about International Women's Day in this industry, specifically, what would it be?

**ANGELENE:** If you look at the regulatory network in Australia, there is an extremely strong representation of women in leadership, for example across the ACCC, ACMA, eSafety, ASIC and others. All examples of women doing exceptional work and being recognised for it. And you can also see the very strong representation of women among privacy professionals. I think that should be celebrated, and it presents an evidence base for the many women who work in this area that privacy practice and working for a regulator will support you to realise your career potential in an exciting area of public law and policy, protecting important public interests.

**KATHERINE:** Thanks Angelene. On behalf of our readers, I'm really grateful for these insights. Happy International Women's Day!

# Ashleigh Fehrenbach

## Senior Associate, RPC

Ahead of International Women's Day, **Anjali Nadaradjane**, lawyer at MinterEllison, speaks to **Ashleigh Fehrenbach** about her career path, law reform and whom she looks up to in the legal industry. Ashleigh is a Senior Associate at RPC in London in the IP and Technology team and currently on a secondment at Meta. Prior to working in London, Ashleigh worked at MinterEllison and Addisons in Sydney. She is a board member of CAMLA, co-editor of the CLB and outgoing Chair of the NSW Young Lawyers Communications, Entertainment and Technology Committee. She also likes to run incredibly long distances.

**ANJALI NADARADJANE:** Hi Ashleigh, thanks so much for this. It's great to hear about your journey so far. What does a typical day look like for you?

**ASHLEIGH FEHRENBACH:** I cycle into work, high fiving myself on arrival every day for surviving London in morning peak hour. I've recently started a secondment at Meta (formerly, Facebook), so for the moment it's a lot of calls and meetings with Metamates around the globe, corresponding with external counsel on content complaints and disputes, along with constantly looking up a seemingly never-ending list of acronyms on Meta's Wiki page. Online content regulation is going through a real transformation throughout Europe and the UK, as well as Australia of course. In short, it's an exciting time to be a lawyer in this space. I've been going into my firm (RPC)'s office regularly, which has been great. The pandemic demonstrated what is possible with virtual work environments. However, it also made me value those in-person, daily connections that only happen when you are in the same space as your colleagues. Of course, it helps that I work with a really great team. I finish the day with a run and usually end up reviewing articles for the much beloved Communications Law Bulletin and sounding out ideas for the next edition.

**ANJALI:** Did you always want this job? If so, what did you do to position yourself to get it? If not, how did your career path lead you here?

**ASHLEIGH:** I didn't grow up necessarily wanting to be a lawyer. For a long time, I thought I'd like to be a journalist, looking up to people like Betsy Wade and, closer to home, Leigh Sales. That changed when I studied media law at university, which quickly became my favourite subject. It was then that I realised there was a much broader array of paths to take as a lawyer as opposed to only corporate law, which I felt I wouldn't thrive at. I interviewed with boutique Sydney firm, Addisons. I was asked if I'd like to take on the workstream of a junior IP and disputes solicitor who had just moved on - I jumped at the chance. From there I worked for a fantastic partner, Karen Hayne, acting for exciting global brands on both IP advisory and litigation

matters. I completed my summer clerkship and didn't look back. Since then, I've remained in the IP and disputes space, now with an added focus on tech matters and working in London.

That being said, just because you identify a core area of the law that you enjoy early on doesn't mean that you shouldn't say yes to other opportunities along the way. In my third year of being admitted, I was invited to go on exchange at a law firm in Costa Rica. That was one of the most fulfilling and interesting experiences I've had - being surrounded by brilliant multilingual lawyers at a Spanish speaking firm, in a tiny but very exotic country. When my firm at the time, MinterEllison, was selected to work on the Royal Commission into misconduct in the banking, superannuation and financial services industry for a number of clients, I put my hand up to be involved. As a result, I was immersed in a mammoth investigation into the world of financial services (a new sector for me) where I worked with some excellent lawyers from other offices, who became fantastic mentors and friends. Later on, when I was asked to go on a secondment with the consumer legal team at Optus, again I said yes. Working in-house at a large telco was an incredible experience. I worked across a hugely varied workstream, with crossovers on privacy, consumer law, IP, competition, regulatory and general commercial queries. I worked closely with different business teams (importantly - not just with lawyers!). As a result, I came to better understand what it meant to sit in the client's shoes.

Saying yes when those opportunities came my way may have veered me away from doing only IP and disputes work. However, each taught me invaluable lessons and broadened my experiences as a lawyer. I'm grateful for that.

**ANJALI:** What's the best work-related advice you've ever received?

**ASHLEIGH:** Always ask - what problem is the client trying to solve? Sometimes we too readily jump into analysis mode before understanding why someone has had to engage legal advice. Get the context first,



Ashleigh Fehrenbach

then dive into the analysis. Another excellent piece of advice I received was from the first partner I worked for. Not only did she have an incredible memory but a fabulous (sometimes terrifying) eye for detail. She instilled in me the importance of immersing yourself in that detail (especially early on in your career) but making sure you come up for air to see the big picture. This was incredibly important advice throughout my first few years of practice when I was involved in a number of Federal Court disputes with long, complicated histories.

**ANJALI:** If you could have dinner with any woman - living or passed, real or fictional, who would it be and why?

**ASHLEIGH:** My grandmothers. I never had the chance to meet either of them and would love to hear more about their lives, their influences and what it was like growing up in a time when women didn't vote, and were only just starting to attend university and turn their minds to the possibility of being a lawyer. They both would have experienced so much change throughout their lives. I'd also like to find out which of them I can blame for my unruly curly hair.

**ANJALI:** What's the greatest risk you've taken as a professional?

**ASHLEIGH:** Moving jurisdictions in the middle of a pandemic to study is certainly up there. I loved my work and networks in Sydney, but always had an international move (namely London) in the back of my mind from when I was at university. When an offer to study a post-graduate diploma in intellectual property law and practice at Oxford came through the door, I knew it was something I couldn't pass up, despite it perhaps not being the easiest time to pack up and move across the globe.