Kmart facial recognition for refund fraud

IMPLEMENTED 2020–2022 · RETAIL AND HOSPITALITY · AUSTRALIA · BAND F · PROVED
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Kmart scanned the faces of everyone entering 28 stores and visiting returns counters from 2020 to 2022 to catch refund fraud. In 2025 the Privacy Commissioner found the collection unlawful and disproportionate and ordered Kmart not to repeat it; Kmart sought tribunal review.

ABOUT THIS SYNOPSIS

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NOTICE WORDING LAST UPDATED 16 NOVEMBER 2026

AT A GLANCE

What went wrong: Unlawful or non-compliant use.

AI used: Facial recognition matching store entrants and returns customers against a refund fraud database.

Implemented: 2020–2022. Grade: band F, Failure, Proved.

Headline result, as reported: Privacy Commissioner found Kmart's facial recognition at 28 stores breached the Privacy Act and ordered it not to repeat the practice, September 2025

1 · The case

The facts, as reported by the 4 sources listed at the end. Where a source is silent, the field says "Not reported".

Organisation

Kmart Australia Limited. Australian discount department store chain, owned by Wesfarmers, per Ragtrader. Annual revenue of $9.2 billion in the 2020 financial year, as cited by the Privacy Commissioner. Canvas block: 8. Governance and risk. Also 4. Operations and process, 3. Customers and proposition.

Business challenge

The challenge. Kmart said it faced a growing problem of refund fraud and escalating theft, often with anti-social behaviour or violence against staff and customers. It said refund-related threatening incidents rose 85 per cent between August 2024 and March 2025, per Ragtrader.

Who implemented it

The technology supplier is not reported in the sources opened.

Technology (SEAM pillar E)

SEAM types: T8 Predictive / ML models. Deployment: Not reported. Vendors and products: Not reported.

Where it was built in: Cameras at store entrances and returns counters; biometric templates checked against a database of suspected refund fraudsters, with alerts to staff.

What changed

Before: refund fraud handled through store processes. During 2020 to 2022: faces of every entrant and returns customer at 28 stores checked against a fraud list. After: the system stopped when the investigation began in July 2022, and the Commissioner ordered Kmart not to repeat the practice. [1] [2] [3] [4]

Cost of failure

No financial penalty reported. Kmart was ordered not to repeat the practice, to publish a statement within 30 days, to give a clear statement of its practices on its website and to keep existing biometric data for 12 months then delete it, per the ABC and Clayton Utz. Cost of the system and of the review: Not reported.

What it saved

Not reported. The Commissioner said the number of fraud incidents detected and the value of fraud prevented were small, per the ABC. [1] [2] [3] [4]

Governance and control

The Commissioner found Kmart collected sensitive information without consent (APP 3.3), did not take reasonable steps to notify people (APP 5.1) and left the collection out of its privacy policies (APP 1.3), per Clayton Utz. Less intrusive measures such as proof of purchase, store layout changes and staff training had not been adequately considered. Kmart cooperated with the investigation, per the Commissioner.

S2 · Accountable owner · Not reported
Not reported.

A1 · Safe use · Missing (independent source shows it was absent)
The Commissioner found less intrusive alternatives were not adequately considered and the collection was disproportionate. [1] [3]

A2 · Human in the loop · Claimed
Staff were expected to review matches before deciding on refunds, per Clayton Utz's understanding of the system. [3]

A3 · Monitoring and assurance · Not reported
Not reported.

A4 · Vendor AI · Not reported
Not reported.

A5 · Agent controls · Not reported
No agents described.

A6 · Standards and regulation · Outside scrutiny (a regulator, court, auditor or similar body acted)
The Privacy Commissioner found breaches of APPs 3.3, 5.1 and 1.3 and ordered Kmart not to repeat the practice; Kmart has sought tribunal review. [1] [3] [4]

What worked, what did not, what is unproven

WORKED

– Some fraudulent incidents were detected; the Commissioner described the number and value as small, per the ABC.

DID NOT

– Proportionality: the Commissioner found the indiscriminate collection of biometric data from every entrant disproportionate to the fraud addressed.

– Consent and notice: customers were not told or asked, per SBS and Clayton Utz.

– Alternatives: less intrusive measures were available but not adequately considered, per Clayton Utz.

UNPROVEN

– The outcome of Kmart's tribunal review.

– Accuracy of the matching and how many customers were wrongly flagged: Not reported.

Timeline

Jun 2020 Kmart starts a facial recognition trial in one store, later extended to 27 more [2]

Jul 2022 Kmart stops using the system when the regulator's investigation begins [1]

Sept 2025 Privacy Commissioner finds Kmart breached the Privacy Act; Kmart says it is reviewing appeal options [1]

Feb 2026 Ragtrader reports Kmart has filed for review at the Administrative Review Tribunal [4]

2 · Grade and SEAM assessment

MarLuc's opinion, made on the evidence above. How cases are graded: marluc.co.uk/case-studies/how-we-rate

Level of change and impact

Claimed: Not applicable. Grade: F, Failure. Proof: Proved. Level of change: Not graded.

No level assessed: band F, a regulator finding of unlawful collection in a retail deployment that had already stopped. The finding is under tribunal review.

Graded F. The Privacy Commissioner found the collection of customers' biometric data unlawful and disproportionate, ordered Kmart not to repeat it and to publish a statement. The system had

The SEAM view and lessons learnt

The system was aimed at a narrow problem, refund fraud, but scanned everyone in the store. That gap between a narrow purpose and indiscriminate collection is what the Commissioner found unlawful. For any mid-sized or larger organisation, the transferable point is to size the data collected to the problem and to record why less intrusive options were rejected before any biometric system goes live.

1. Match the scope of data collection to the size of the problem it addresses.
2. Record why less intrusive options were rejected before deploying biometric AI.
3. Measure what the system actually prevents, so proportionality can be shown.

Evidence

Score 3 of 4. Independent: a regulator determination after a three-year investigation, read through the ABC, SBS and a law firm analysis; the determination itself was not opened.

Evaluation method. Regulator determination following a three-year investigation, reported by the ABC and SBS and analysed by Clayton Utz.

Sources disagree. SBS dates the use from June 2020 to July 2020, while the ABC, Clayton Utz and Kmart's own statement give June 2020 to July 2022. SBS says the decision is under tribunal review; the ABC reported only that Kmart was reviewing its appeal options.

Status. Determination published in September 2025; under review by the Administrative Review Tribunal, per Ragtrader and SBS.

3 · Original sources

Read these in full. To challenge a fact or a grade, use the contact form at marluc.co.uk or the link on https://marluc.co.uk/case-studies/kmart-australia-facial-recognition-refund-fraud

[1] ABC News: Kmart broke privacy laws by using facial recognition technology, commissioner finds
https://www.abc.net.au/news/2025-09-18/kmart-facial-recognition-technology-privacy-commissioner/105785802

[2] SBS News: Unlawful: Kmart's facial recognition tech breached Australians' privacy, watchdog finds
https://www.sbs.com.au/news/article/unlawful-kmarts-facial-recognition-tech-breached-australians-privacy-watchdog-finds/p8vjn5rjw

[3] Clayton Utz: OAIC's Kmart determination highlights facial recognition technology privacy risks
https://www.claytonutz.com/insights/2025/november/from-cameras-to-compliance-oaics-kmart-determination-highlights-facial-recognition-technology-privacy-risks

[4] Ragtrader: Bunnings scores in FRT appeal, Kmart awaits verdict
https://www.ragtrader.com.au/news/bunnings-scores-in-frt-appeal-kmart-awaits-verdict

Kmart Australia Limited website: https://www.kmart.com.au

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VERSION HISTORY