

Bird & Bird

APAC Privacy Law

A year (or so) in review

March 2024

Speakers



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Google

Overview

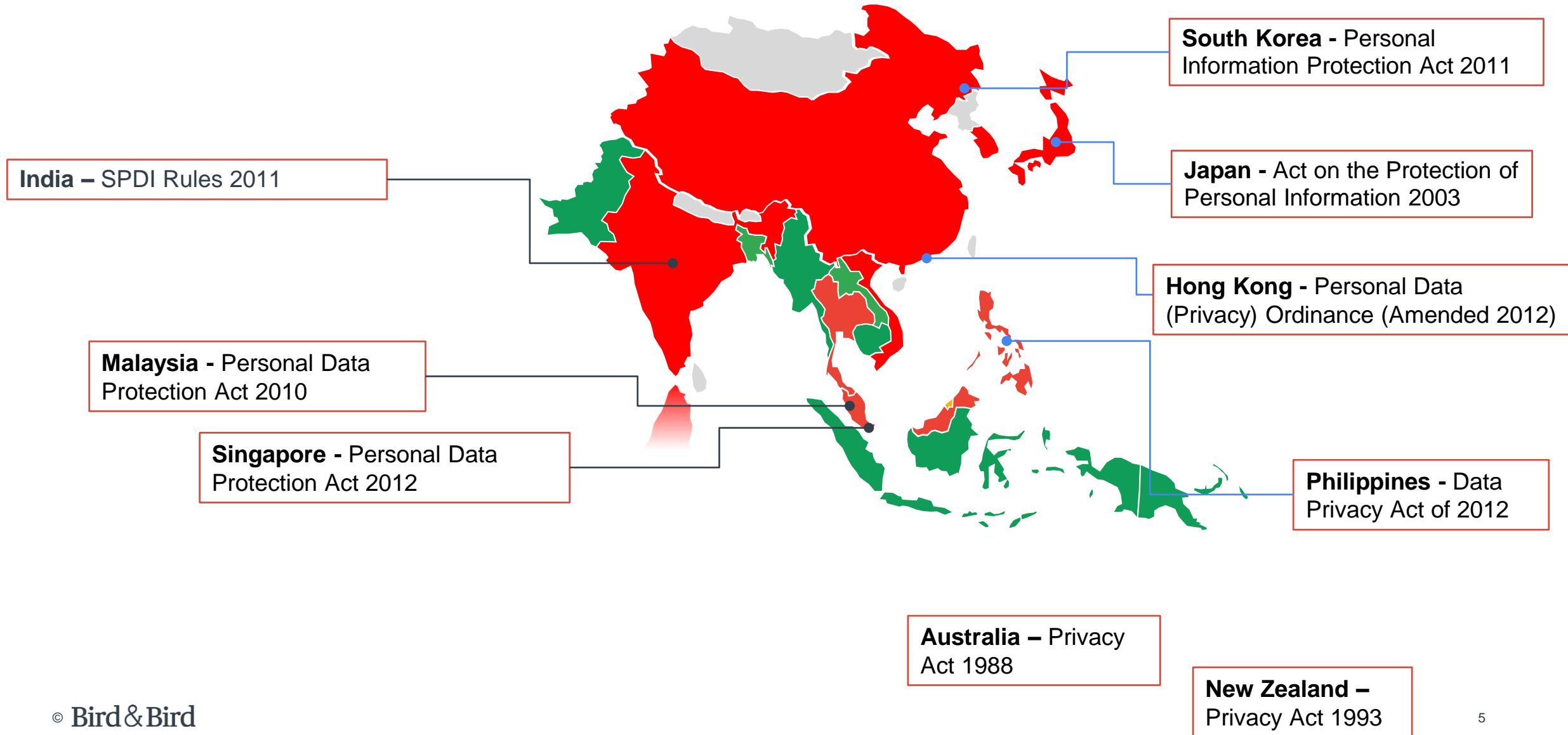
1. APAC Overview
2. Key Themes
3. Practical Takeaways



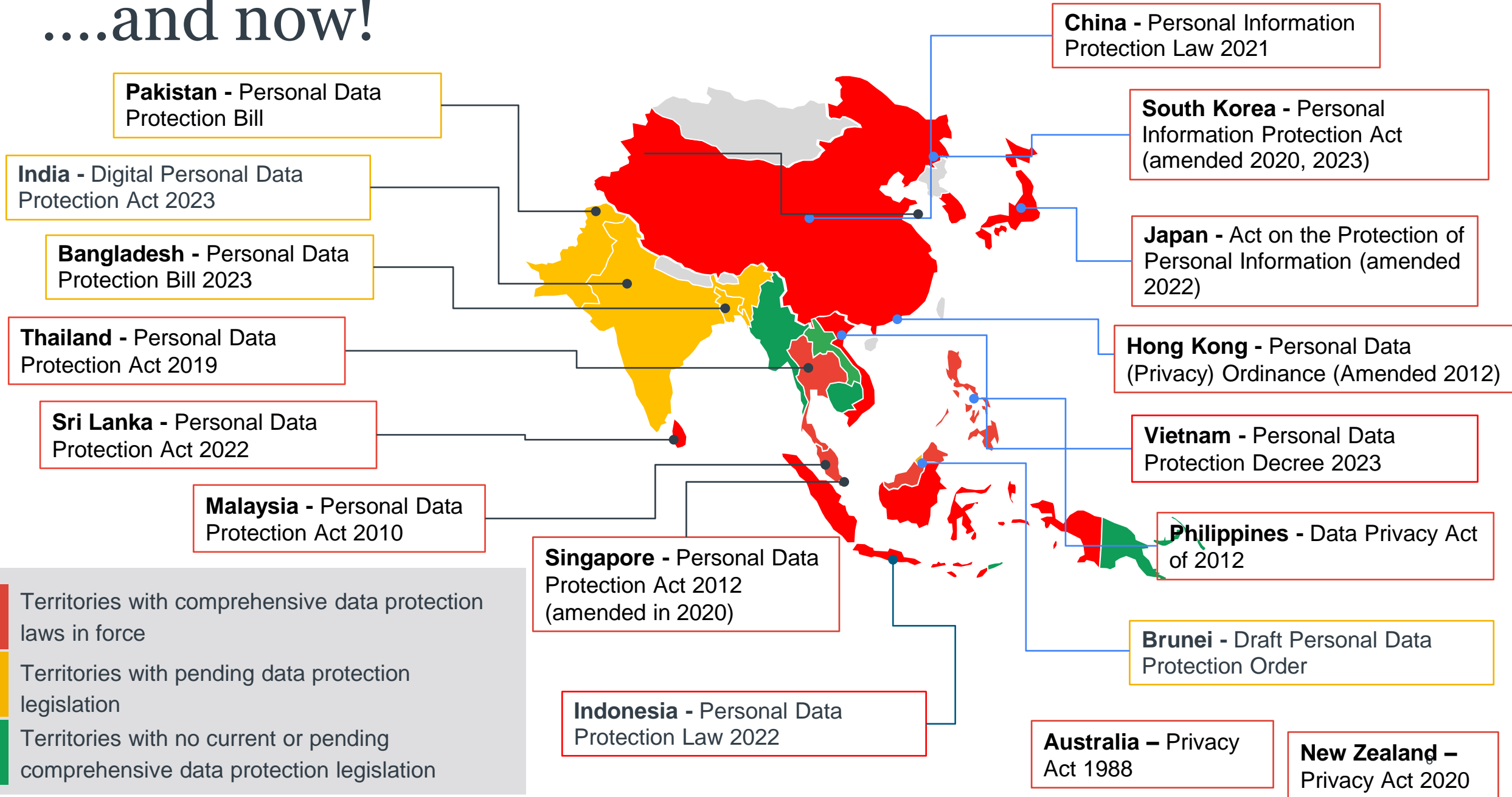
APAC Privacy Heatmap



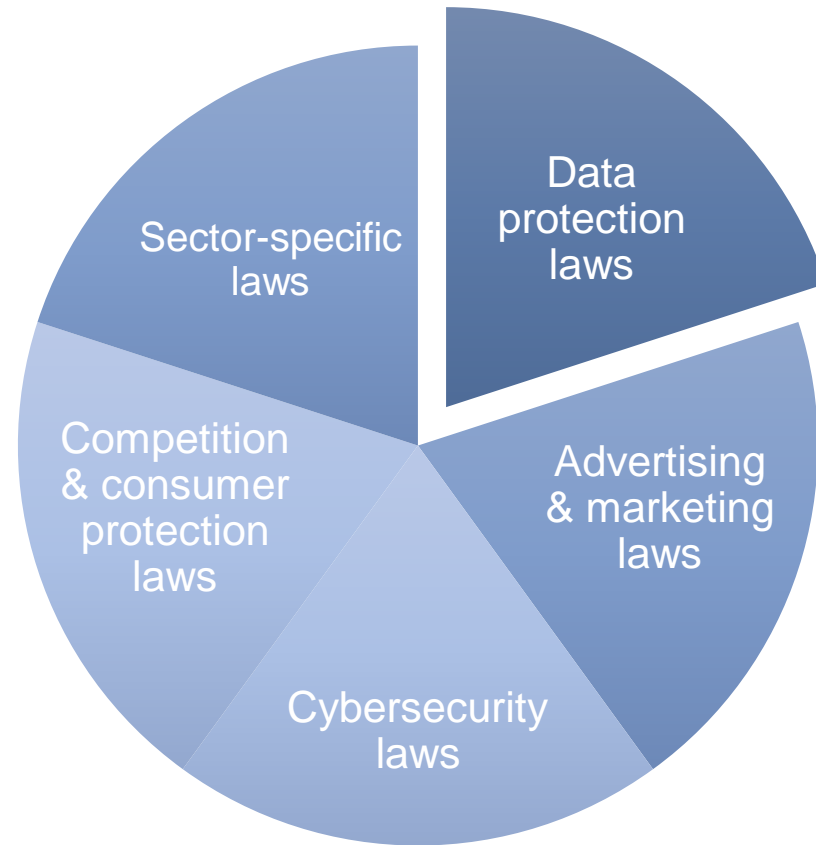
5 years ago...



...and now!



Other laws “encroaching” into privacy space



What's been happening?

A decorative graphic element on the right side of the slide. It consists of a thick white curved line that starts at the bottom left, curves upwards and to the right, then turns downwards and to the left, ending in a small hook-like shape. From the top of this hook, a thick dark teal curved line extends upwards and to the right, following the curve of the white line.

New Laws



Sri Lanka

Personal Data Protection Act 2022 effective from 19 March 2022

Estimated to be fully operational by 18 March 2025



Indonesia

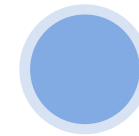
Personal Data Protection Law enacted in October 2022

PDP law has a 2-year grace period for compliance



Vietnam

Personal Data Protection Decree 2023 effective from 1 July 2023



India

Digital Personal Data Protection Act passed in August 2023, to come into effect in 2024

Delegated legislation expected to be announced around June 2024

Amendments - By Country

Australia

China

Malaysia

Philippines

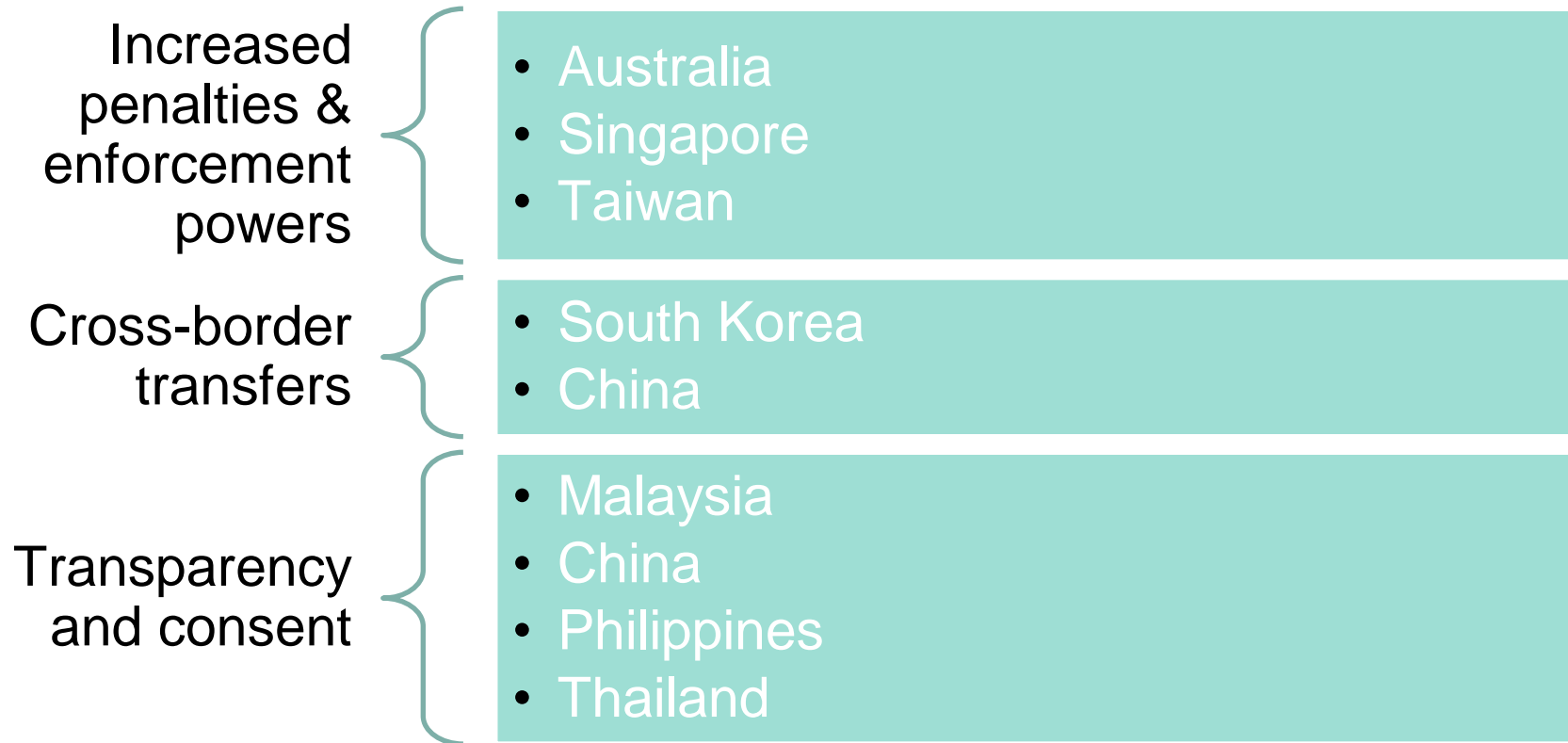
Singapore

South Korea

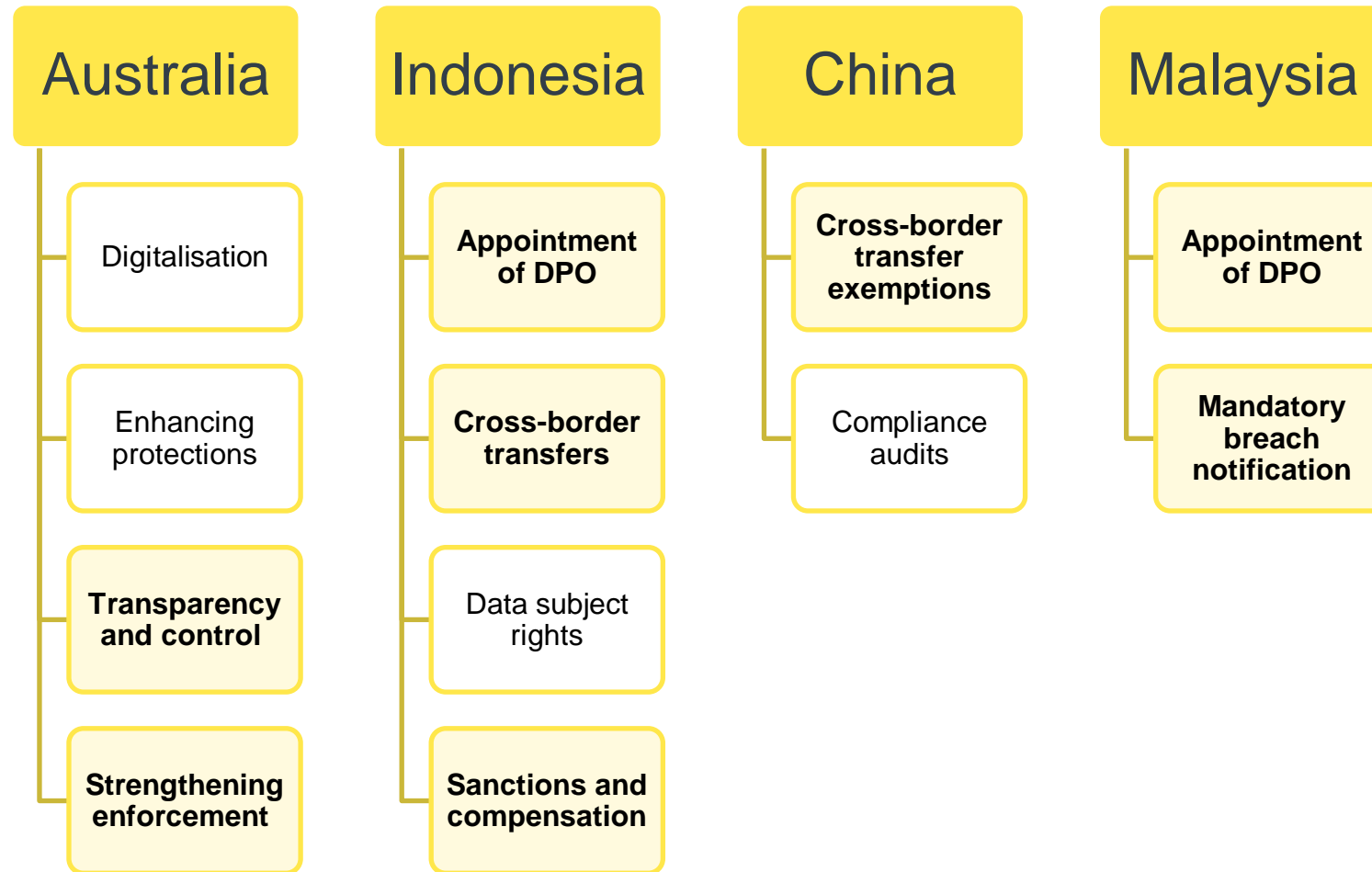
Taiwan

Thailand

Amendments - By Theme



Reforms in progress



What does enforcement
look like in APAC?



Enforcement activities

NPC Takes Firm Stand: Unwavering Commitment to Protect Data Privacy Rights in Wake of PhilHealth Data Breach

Hong Kong: Privacy Commissioner for Personal Data Investigation of Carousell for Unauthorised Scraping of Users' Personal Data

China's cybersecurity watchdog fines academic database 50m yuan over mishandling of personal information

By Global Times
Published: Sep 06, 2023 08:59 PM



OAIC Commences Federal Court Proceedings Against Australian Clinical Labs Limited

The Australian Information Commissioner has filed civil penalty proceedings against Australian Clinical Labs Limited (ACL) due to a data breach affecting millions of Australians. ACL allegedly failed to protect personal information, leaving it vulnerable to cyberattacks. Read more about the case [here](#).

South Korea Imposes Hefty Fines on OpenAI and Meta Platforms for Data Breaches

 BNN Correspondents
25 Sep 2023 03:44 EST



Carousell fined \$58k for data breaches, including one where data of 2.6m users was sold

Top 3 highest financial penalties in the region

1 China

CAC imposed a RMB 8 billion (approx. **USD 1.2 billion**) administrative penalty on Didi Global in 2022 for (amongst others) the illegal and excessive collection of personal data, including photos, geolocation information and identification numbers, etc.

2 South Korea

PIPC fined Google KRW 69.2 billion (approx. **USD 50 million**) and Meta KRW 30.8 billion (approx. **USD 23 million**) in 2022 for violating the PIPA, including the unlawful collection and use of behavioural data for personalised ads.

3 Australia

ACMA imposed a AUD 2.5 million (approx. **USD 1.6 million**) fine on Sportsbet in 2022 for breaching Australian spam laws, including the failure to include an unsubscribe function in its marketing messages to customers.

APAC privacy in trends



APAC privacy in themes

Legal basis

Cross-border transfers

Breach notification

DPO appointment

Children's data

Artificial intelligence

Trends – Legal bases



Legal Bases - Same Words, Different Meanings?

Consent

GDPR

freely given, specific, informed, unambiguous

APAC

Singapore – *informed, express or implied, can be deemed, not conditional*

Australia – *express or inferred, voluntary, current and specific*

Thailand – *freely given, unbundled, not conditional*

South Korea – *informed, express and opt-in; separate consent for certain processing*

Legitimate Interest

necessary for LI of companies, unless overridden by the interests, rights or freedoms of data subject

Singapore – **"legitimate interests"**
outweighs any adverse effect on the individual

India – **"Legitimate use"**:
voluntarily provided for specific purpose e.g. receiving an e-receipt after payment

Philippines – **"legitimate interests"** *necessary, unless overridden by fundamental rights and freedoms protected by Philippine Constitution*

Legal Bases - Same Words, Different Meanings?

GDPR

APAC

**Contractual
Necessity**

necessary for
performance of contract
with data subject

China – *performance
of contract with data
subject; necessary for
HR management*

Thailand – *N.A. for
sensitive personal data*

South Korea –
*necessary to perform
contract and difficult to
obtain consent*

Taiwan –
*contractual or quasi-
contractual
relationship*

Legal Bases for Processing

Location	Consent	Legitimate Interests	Performance of Contract	Vital Interests	Other
GDPR	✓	✓	✓	✓	✓
Australia	✓				
China	✓		✓		✓
Hong Kong	✓				
India	✓				✓
Indonesia	✓	✓	✓	✓	✓
Japan	✓			✓*	✓
Malaysia	✓		✓*	✓*	✓

Legal Bases for Processing

Location	Consent	Legitimate Interests	Performance of Contract	Vital Interests	Other
GDPR	✓	✓	✓	✓	✓
New Zealand	✓				✓
South Korea	✓	✓	✓	✓	✓
Philippines	✓	✓	✓	✓	✓
Singapore	✓	✓*	✓*	✓*	✓
Thailand	✓	✓*	✓*	✓*	✓
Vietnam	✓		✓*		✓

Trends – Cross-border transfers



Cross-Border Data Transfers

GDPR

Overseas transfers of personal data must be covered by adequacy decision, a prescribed data transfer agreement or binding corporate rules, amongst others.

Australia, Japan, Malaysia, New Zealand, Philippines Singapore, Indonesia, Thailand

Data transfer permitted if at there is at least an equivalent standard of protection in recipient country, other jurisdiction-specific bases

South Korea

Legal basis (e.g. consent) and notification in certain situations

India

Cross-border transfers of personal data permitted, except to blacklisted countries (not determined yet)

Vietnam

Consent + submission of overseas transfer impact assessment

Hong Kong

No specific requirements

China

Consent + self assessment + security assessment / certification / standard contract clauses + impact assessment

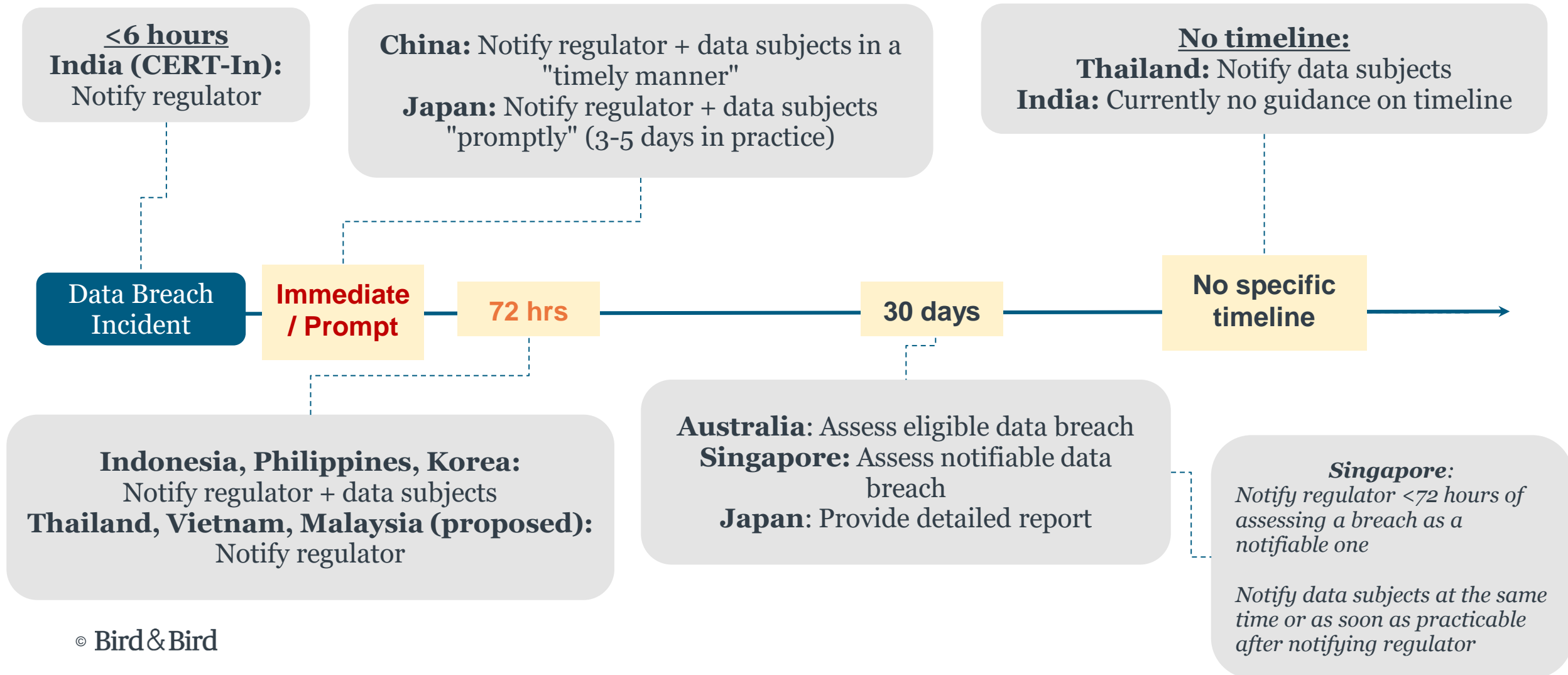
Trends – Data Breach Notification



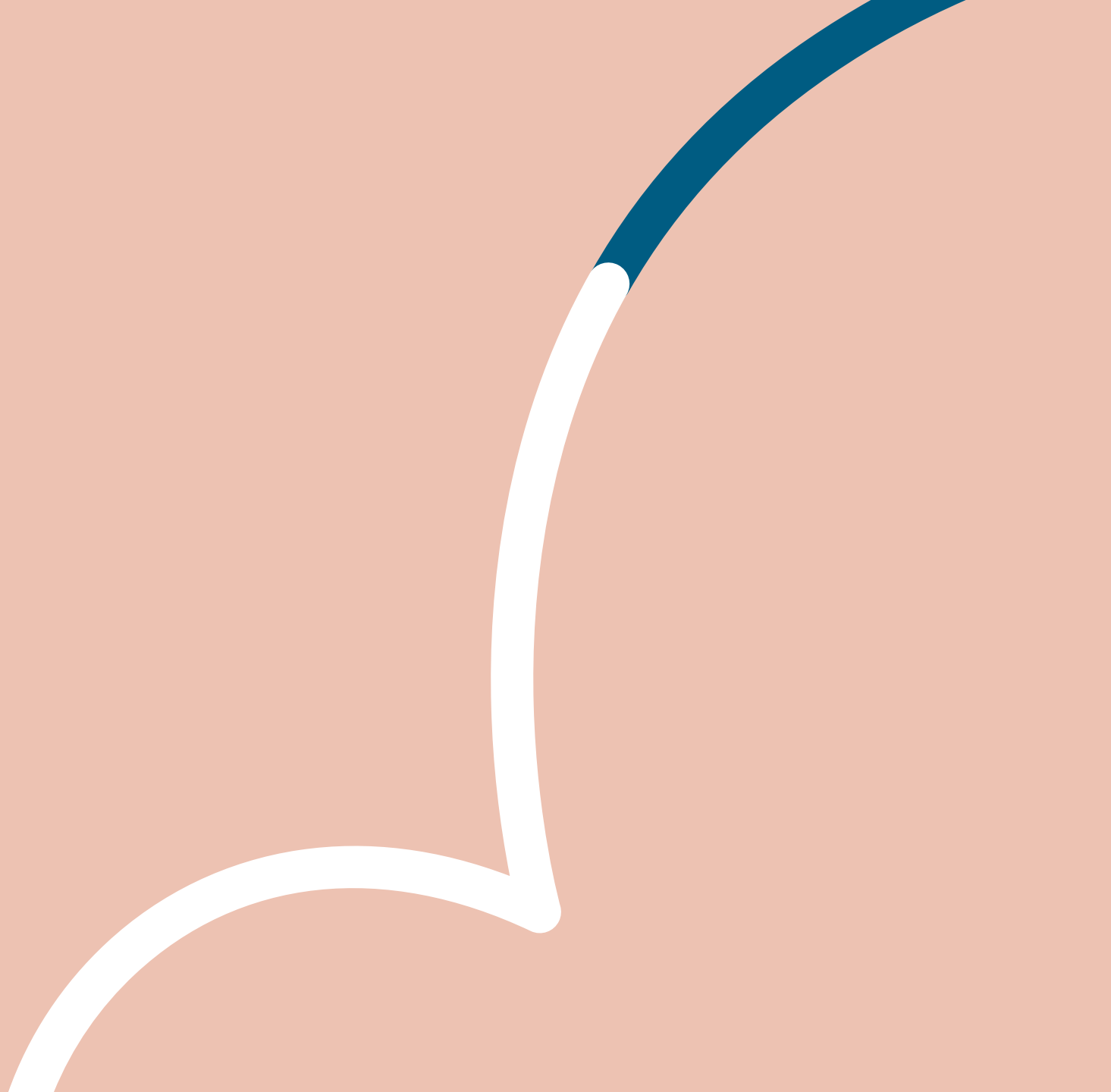
Data breach triggers

Australia	<ul style="list-style-type: none">• Unauthorised access or disclosure likely to result in serious harm
India	<ul style="list-style-type: none">• All data breaches compromising confidentiality, integrity or availability
Japan	<ul style="list-style-type: none">• Sensitive personal information• May cause financial damage• Wrongful purpose (e.g. cyber-attack)• 1,000 data subjects
Philippines	<ul style="list-style-type: none">• Sensitive personal data or other information which may be used to enable identity fraud + acquired by an unauthorized person + real risk of serious harm.
Singapore	<ul style="list-style-type: none">• Significant harm• Significant scale (500+)
South Korea	<ul style="list-style-type: none">• Lost control or unauthorised access to personal data

Data Breach Notification Timeline



Trends – DPOs



DPO / Registration Requirements

India (DPDP Act) – DPO required if notified as a significant data fiduciary by the regulator, no registration requirement

Thailand – DPO required in certain circumstances, no registration requirement

Singapore – DPO always required, no registration requirement

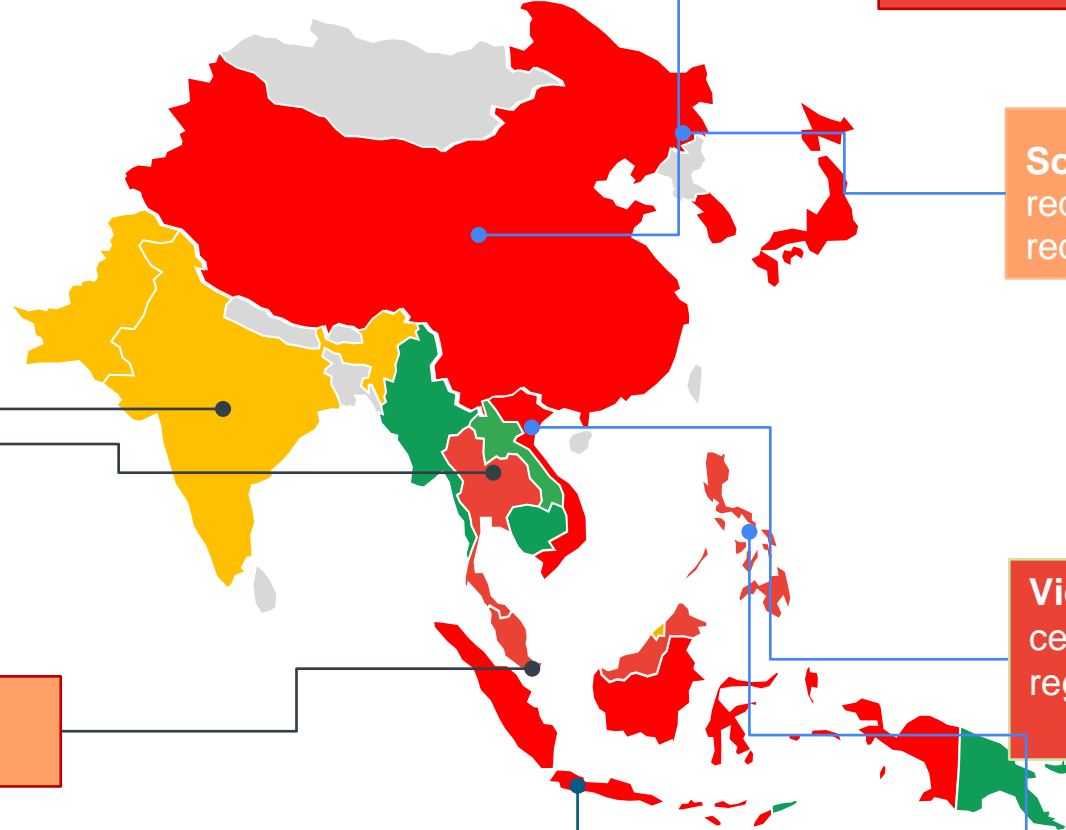
Indonesia – DPO required in certain circumstances, no registration requirement

China - DPO required in certain circumstances and registration required

South Korea – DPO always required, no registration requirement

Vietnam - DPO required in certain circumstances, and registration required

Philippines - DPO always required, and registration required in certain circumstances



Trends – Children's Data



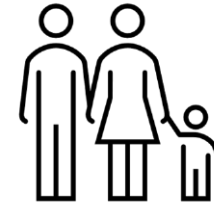
Children's Data



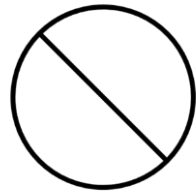
Age threshold



Age verification



Parental consent



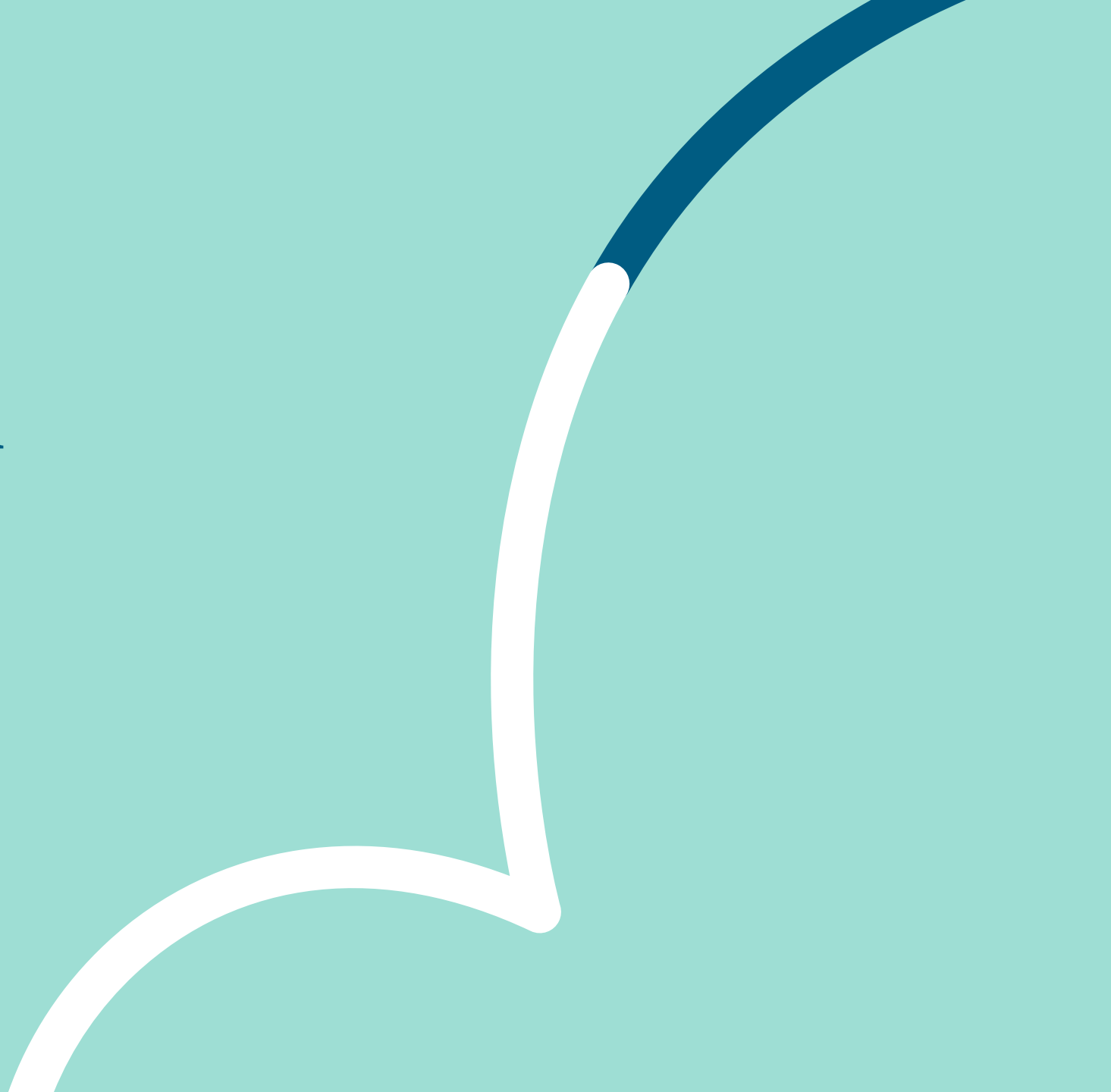
Prohibited processing



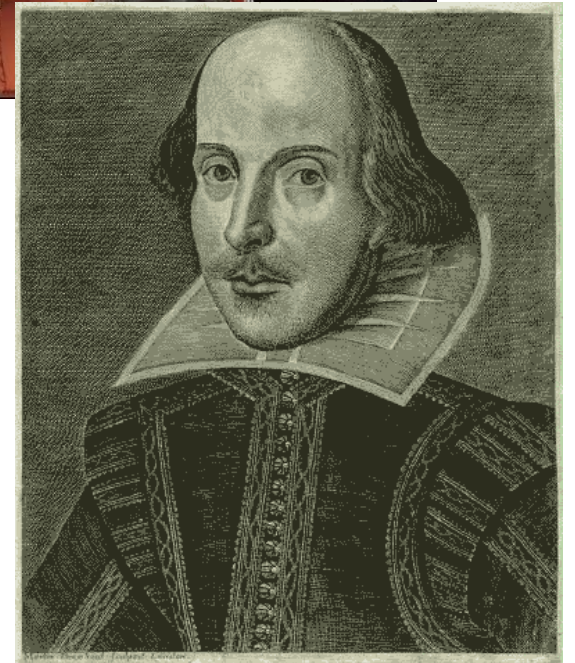
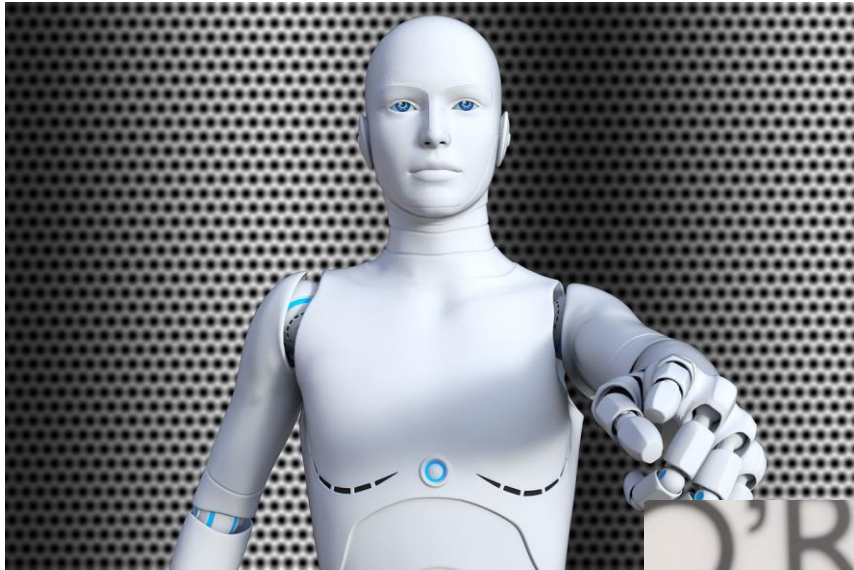
Transparency requirements

Best Interests of the Child

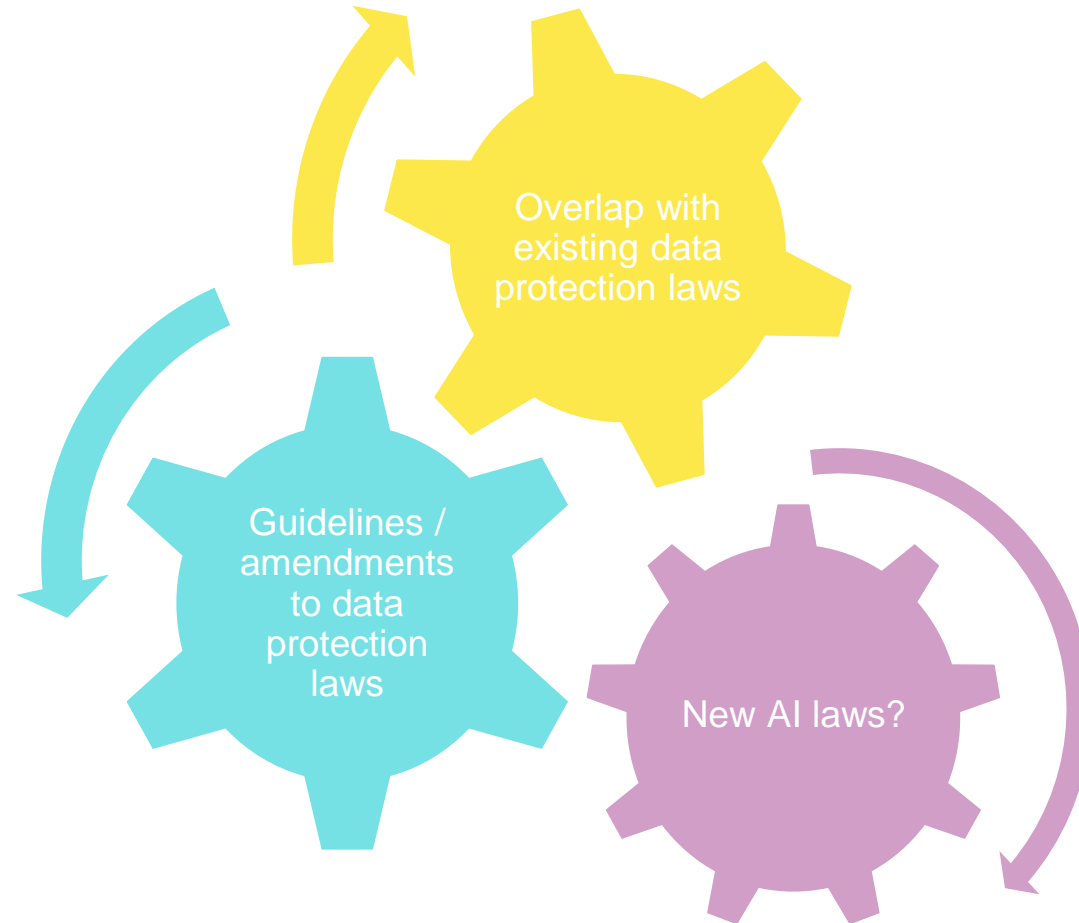
Trends – Artificial Intelligence



What is it?



Artificial Intelligence



Where is APAC privacy
going?

A decorative graphic on the right side of the slide consists of two thick, curved lines. The lower line is white and curves upwards from the bottom left towards the center. The upper line is dark teal and curves downwards from the top right towards the center, meeting the white line.

Top 5 Takeaways

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- 1. APAC is often talked about as a bloc, but there are many differences in the privacy laws.
 - 2. It is hard to find a "one size fits all" solution for APAC, a risk-based approach is most realistic.
 - 3. APAC regulators are becoming more active in enforcing privacy laws, and the consequences for non-compliance can be significant
 - 4. Don't assume that "APAC is OK" simply because a legal review has been done for the GDPR.
 - 5. There will be plenty of privacy related job opportunities in the region ;)



Thank you

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