

MANDATORY DATA BREACH BILL 2016

The Mandatory Data Breach Bill 2016, was passed by parliament on 13th February 2017. It will now be mandatory to notify the Office of the Australian Information Commissioner (OAIC), and the affected individuals, if your organisation has an “eligible” data breach.

Previously, the Privacy Act did not impose an obligation on entities to notify the Australian Information Commissioner (the Commissioner) or any individuals. It only required that agencies and organisations take reasonable steps to maintain the security of the personal information they hold from misuse, interference and loss, and from unauthorised access, modification or disclosure.

The new bill is wide ranging in its application and imposes significant fines for non-compliance.

What is an eligible data breach?

In short, an eligible data breach occurs when, in respect of personal information, credit reporting information, credit eligibility information or tax file number information held by a relevant entity required to comply with the Privacy Act, the following conditions are satisfied:

- there is unauthorised access to, or unauthorised disclosure of, the information and;
- a reasonable person would conclude that the access or disclosure would be likely to result in serious harm to any of the individuals to whom the information relates.

Who will the law apply to?

The law will apply to most Australian Government agencies, all private sector and not-for-profit organisations with an annual turnover of more than \$3 million, all private health service providers and some small businesses.

What happens if you don't comply?

Non-compliance can result in penalties, including fines of up to \$360,000 for individuals and \$1.8 million for organisations.

When will the new law come into effect?

The bill requires that the law will come into effect within one year from the 13/2/17

How can your organisation prepare?

The proposed laws highlight the importance of proactive, effective and timely action in response to a data breach.

Organisations must act proactively to manage their cyber risks to reduce the frequency and severity of a breach.

In conjunction with a full risk assessment and documented procedures, it is recommended you contact your broker to help assess your risk profile and ensure that adequate cover is obtained.

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