

Ai GROUP SUBMISSION

Exposure Draft
Privacy Amendment (Notification of
Serious Data Breaches) Bill 2015

**Submission to the Australian
Government**

8 March 2016

Ai
GROUP

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

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Introduction

The Australian Industry Group (**Ai Group**) makes this submission on the *Exposure Draft – Privacy Amendment (Notification of Serious Data Breaches) Bill 2015* (the **Draft Bill**).

Ai Group understands the reasons why the Bill has been drafted but we are not convinced of the need for the Bill given that:

- There are existing privacy protections in place which deal with serious data breaches;
- The legislative amendments, as drafted, could be difficult to implement;
- The legislative amendments could impose an unreasonable compliance burden on businesses.

If the Bill is proceeded with despite Ai Group's concerns, the following points are important.

Commencement date

The proposed delayed commencement date for the mandatory data breach notification scheme is welcome as it would give businesses more time to prepare, including introducing the necessary changes to systems and processes.

'Ought reasonably to be aware'

The concept of "ought reasonably to be aware" in s.26WC(1) of the Bill is too uncertain and should be removed. Notification should only be required where the entity is aware that there has been a serious data breach.

Current exemptions

Proposed s.26WB specifies that the obligations arising with respect to *serious data breaches* under proposed Part IIIC of the *Privacy Act 1988* (Cth) (the **Act**) apply only to an 'APP entity' that is required under section 15 of the Act not to do an act, or engage in a practice, that breaches Australian Privacy Principle 11.1 in relation to the personal information.

On this basis, it is our understanding that *small business operators* as defined by the Act will be exempt from proposed Part IIIC.

Also, Australian Privacy Principle 11.1 excludes *employee business records*. On this basis, it is our understanding that Part IIIC would not apply with respect to *employee business records*.

Ai Group would oppose any proposal for *small business operators* or *employee business records* to be captured by the Draft Bill.