

# Submission to the Serious Data Breach Notification Consultation

(Consultation closes 4 March 2016 — please send electronic submissions to [privacy.consultation@ag.gov.au](mailto:privacy.consultation@ag.gov.au))

## Your details

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## Publication of submissions

In meeting the Australian Government's commitment to enhancing the accessibility of published material, the Attorney-General's Department will only publish submissions to this website that have been submitted electronically.

Our preference is that submitters complete this template and send it to [privacy.consultation@ag.gov.au](mailto:privacy.consultation@ag.gov.au).

However, if submitters choose to provide a separate document, the following formats are preferred:

- Microsoft Word
- Rich Text Format (RTF)
- txt format.

Please limit individual file size to less than 5MB. The department may create PDF documents from the above formats.

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Would you prefer this submission to remain confidential? **NO**

## Your submission

*Insert your text here and send the completed submission to the Attorney-General's Department, preferably via [privacy.consultation@ag.gov.au](mailto:privacy.consultation@ag.gov.au)*

Thank you for the opportunity to review and provide comments on the draft Privacy Amendment (Notification of Serious Data Breaches) Bill 2015 and accompanying explanatory material.

The Department of Social Services (the Department) has conducted a wide internal consultation process with business areas which will be affected by the proposed amendments and provides the following consolidated comments.

### Inter-agency IT Arrangements

1. The Department notes that it will not be in contravention of the notification scheme if it is authorised to disclose or give access to personal information in accordance with relevant legislation or under contract (for example, in accordance with a valid public interest certificate made under the Department's portfolio legislation). The Department understands the practical effect of the scheme is that it would be required to notify the Information Commissioner (IC) and affected individuals if, for example, a database holding large quantities of personal information is hacked from outside the Department and the data breach results in a serious risk of harm to the individuals whose information has been accessed.

2. The Department notes however that, for certain functions in its sphere of portfolio responsibility, such as payments under the Social Security Law or the provision of Disability Employment Services, among others, which necessitate large databases of this kind, the personal information of individuals who receive these payments and services is not 'held' by the Department in databases or IT systems which it administers or controls. Those systems may be managed entirely by other agencies, such as the Department of Human Services or the Department of Employment, and while the Department may have read-only or download access to that data, it does not control system access, security or maintenance, or manage data upload or modification.

3. Conversely, the Department does manage the IT systems which support many of its own programs, and also provides system administration support to other agencies in the management of their data – examples include the Aged Care Gateway for the Department of Health, and the forthcoming Whole of Government Grants Hub.

4. The Department notes that, in the instance of a systemic or other serious breach of data which leads to unauthorised disclosure of personal information, the agency with responsibility for notification of the breach to the IC and affected individuals should be the agency with technical

control of the system which was breached. That agency alone has the capacity and authority to mitigate against further adverse consequences for individuals insofar as it controls the relevant system. However, the Department acknowledges that the agency with policy responsibility for the relevant payments or services – the ‘owner’ of the data - has primary visibility with affected individuals, and contractual and other relationships with third party service providers and stakeholder organisations, therefore it has a critical role to play in managing communications with affected individuals in terms of timing, content and methodology.

5. In light of this, the Department considers that, should the proposed amendments become law, clear inter-agency arrangements and protocols must be established to ensure that, in the event of a breach where one agency holds or secures in its IT systems the personal information in respect of another agency’s functions and activities, that each agency is aware of and is able to meet its legal obligations within the parameters of its portfolio responsibilities, and can do so in an efficient, effective, economical and ethical manner, in the public interest. The Department would welcome the engagement of the Attorney-General’s Department or, once the scheme comes into effect, Office of the Australian Information Commissioner (OAIC), on these important operational issues, and any guidance they could provide in the form of discussion or materials would be very useful.

#### Contracted service providers

6. The Department also notes that, should the proposed amendments come into force, the new data breach notification scheme may have an impact on third parties with whom the Department has existing contractual relationships, as those entities may also be subject to the requirements of the notification scheme given that they will (in the majority of cases) be required to comply with the *Privacy Act 1988* (the Act) ‘as if they were an agency’ under the Department’s standard contract clauses, in accordance with section 95B of the Act.

7. While the Department does not consider changes to its standard contract clauses will be required as a result of the proposed amendments, nevertheless the Department considers it may be prudent to bring them to the attention of its third party contracted service providers as part of regularly scheduled or ad hoc contract management and programme communications. Contractors would be reminded that they are always able to seek their own legal advice as to the particular impact the changes may have on their business.

#### Agency awareness and resources

8. The Department acknowledges that it will need to make its staff aware of the serious data breach notification scheme should it become law. Particular targets are:

- the areas which directly handle large amounts of personal information including sensitive information, such as the Corporate and Delivery stream, which incorporates the Department’s Human Resources, IT and Legal functions; and
- the areas which administer policy affecting individual members of the public in more indirect ways, through other Commonwealth agencies and third party contracted service providers as described above, and via funding arrangements with other stakeholders such as state and territory governments, not-for-profit and other organisations.

9. The Department aims to deliver training where relevant and update its materials. Again, the Department would very much appreciate the provision of relevant agency resources or any assistance in the development of such resources.