



Australian Government

Australian Law Reform Commission

Media Briefing Note 6 ALRC Privacy Inquiry

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Introducing a mandatory data breach notification scheme

In Australia, the *Privacy Act* currently does not require individuals to be notified when their personal information has been compromised or subject to a security breach—contrary to emerging best practice in a number of comparable countries, where such requirements already have been introduced.

ALRC President, Professor David Weisbrot, noted that “About 40 American states now have data breach notification schemes, contained in legislation or administrative arrangements, mainly arising in response to a series of high-profile data breaches. For example, ChoicePoint, a large US credential verification organisation, accidentally disclosed sensitive material it had collected on 145,000 individuals. In the UK, the personal details of over 25 million child benefit recipients were lost by a government department. And just the other day, police in the US charged 11 people across five countries with stealing and selling 40 million credit and debit card numbers gained by hacking into the wireless computer networks of major retailers.

“People are now very aware of the nefarious activities of computer hackers and the widespread existence of ‘malware’, and there are regular news reports of laptops containing sensitive personal information being lost and other personal records accidentally being exposed or illicitly accessed.

“Given the increasing fear of identity theft and fraud, most customers and users of government services believe they have a right to be informed when the security and privacy of their personal information have been compromised. In our national consultations there was clear support for the introduction of a data breach notification scheme in Australia, with a strong preference for a national approach overseen by the federal Privacy Commissioner.

“Consequently, the ALRC recommends the introduction of a mandatory scheme, requiring notification where a sufficiently serious breach has occurred.”

Professor Les McCrimmon, Commissioner in charge of the Privacy Inquiry, stated “A mandatory data breach notification scheme gives individuals the information and opportunity to protect themselves against fraud and identity theft. It also will provide a strong incentive for agencies and organisations to ensure that they secure their databases in full compliance with the *Privacy Act*.

“In addition, the development of a consistent national model is far preferable to a proliferation of differing state and territory schemes—as has happened in the US.”

The ALRC heard concerns from agencies and organisations about:

- the costs associated with notification, particularly where the relative risk of harm to individuals is small;
- the dangers of ‘notification fatigue’—where individuals receive hundreds of notifications about relatively minor security breaches; and
- the need not to scare people away from using e-commerce and other online services.

Agencies and organisations argued that any scheme should incorporate a reasonable balance, triggered only where there is a real risk of significant harm to individuals, and without imposing unduly prescriptive or costly notification requirements (in terms of form, content, timing and method of notification).

Professor Weisbrot stated that “The ALRC has sought to strike the right balance between individual privacy interests and legitimate concerns about compliance costs and over-regulation by recommending that an agency or organisation only be obliged to notify affected individuals and the Privacy Commissioner when a data breach has occurred that may give rise to *serious harm* to any affected individual.”

For more information about data breach notification requirements, see Chapter 51 of *For Your Information: Australian Privacy Law and Practice* (ALRC 108, 2008).

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The Privacy Report and detailed Briefing Notes on 10 key areas can be found at <www.alrc.gov.au>

Professors Weisbrot and McCrimmon are available for interviews