



www.libertyvictoria.org.au

Victorian Council for Civil Liberties Inc
Reg No : A0026497L

GPO Box 3161
Melbourne, VIC 3001
t 03 9670 6422
info@libertyvictoria.org.au

PRESIDENT
George Georgiou SC

SENIOR VICE-PRESIDENT
Jessie E Taylor

VICE-PRESIDENTS
Jamie Gardiner
Thomas Kane
Michael Stanton

PAST PRESIDENT
Prof Spencer Zifcak

PATRON
The Hon. Michael Kirby AC CMG

08 March 2016

Commercial and Administrative Law Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email: privacy.consultation@ag.gov.au

Dear Sir/Madam,

LIBERTY VICTORIA SUBMISSION ON PRIVACY AMENDMENT (NOTIFICATION OF SERIOUS DATA BREACHES) BILL 2015

1. Liberty Victoria welcomes the opportunity to make this submission in relation to the *Privacy Amendment (Notification of Serious Data Breaches) Bill 2015* (Bill). Thank you for the extension of time granted to make this submission.
2. Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. We are concerned with the protection and promotion of civil liberties throughout Australia. Liberty Victoria is actively involved in the development of Australia's laws and systems of government. Further information can be found at www.libertyvictoria.org.au.
3. The draft Bill proposes to make amendments to the *Privacy Act 1988* (Privacy Act) to introduce mandatory data breach notification provisions for regulated agencies, organisations and other entities (entities).
4. Liberty supports these proposed amendments and welcomes the introduction of a mandatory data notification scheme, particularly following the introduction of the

mandatory data retention laws last year. The existing voluntary data breach notification arrangements are not sufficient to protect personal information in this digital age.

Amendments to the Privacy Act

5. The proposed amendments provide for the introduction of a mandatory data breach notification scheme and largely adopt recommendations previously put forward. For example, the Australian Law Reform Commission (ALRC), following their 2008 inquiry into the Privacy Act, recommended that mandatory notification provisions for data breaches should be included in the Privacy Act.¹ More recently, the Parliamentary Joint Committee on Intelligence and Security (PJCIS), recommended that a ‘robust mandatory data breach notification scheme be enacted into legislation’ in relation to breaches of mandatory data retention.²
6. The Office of the Australian Information Commissioner (OAIC) has also advocated for the inclusion of mandatory notification provisions and that, in the event of data breach giving rise to a real risk of serious harm, both affected individuals and the Privacy Commissioner be notified.³
7. Liberty shares the view of the ALRC that the proposed mandatory notification provisions are consistent with and strengthen the objects of the Privacy Act in relation to the protection of personal information collected and managed by regulated entities.
8. In particular, Liberty supports the view that mandatory data breach notification provisions, not only serve to protect affected individuals from further misuse of information and harm in the event of a serious data breach,⁴ but are also consistent with the obligations that put in place reasonable security safeguards and take reasonable steps to protect the personal information that they hold from misuse, interference and loss, and from unauthorised access, modification or disclosure.
9. Liberty Victoria also supports the views of the OAIC that notification is a means of maintaining public trust in organisations and agencies that handle personal data.
10. Notification of data breaches also allows affected individuals to take steps to protect themselves and their identity whether it is through changing passwords and account details, or requesting the reissue of identifiers.

¹ Australian Law Reform Commission, For Your Information: Australian Privacy Law and Practice (ALRC Report 108), August 2008, recommendation 51-1.

² Parliamentary Joint Committee on Intelligence and Security, Report of the Inquiry into Potential Reforms of Australia’s National Security Legislation, Canberra, May 2013, recommendation 42.

³ Office of the Australian Information Commissioner, Discussion Paper: Australian Privacy Breach Notification, November 2012, <https://www.oaic.gov.au/engage-with-us/submissions/discussion-paper-australian-privacy-breach-notification>.

⁴ Australian Law Reform Commission, For Your Information: Australian Privacy Law and Practice (ALRC Report 108), August 2008, recommendation 51-1.

Office of the Australian Information Commissioner

11. Liberty Victoria urges the Government to reconsider its plan of abolishing the OAIC. The *Freedom of Information Amendment (New Arrangements) Bill 2014*, which proposes the closure of the OAIC does not enjoy majority support in the Senate and should be withdrawn. The decision to disband the OAIC is also inconsistent with the Turnbull Government's commitment late last year to finalise Australia's membership in the Open Government Partnership.
12. The OAIC needs to be appropriately resourced so that the Privacy Commissioner can provide the necessary guidance to entities about how to respond to a data breach.
13. Last year's budget included funding for privacy functions and (reduced) funding for FOI functions in 2015-16 but nothing beyond that period. We urge the government to properly fund the OAIC in the upcoming budget. The current position at the OAIC of one person fulfilling the role of three statutory officers is untenable and could undermine the effectiveness of the mandatory serious data breach notification scheme

Conclusion

14. The introduction of mandatory data breach notifications is long overdue. The inclusion of the proposed amendments into the Privacy Act support Australian Privacy Principles and are especially important with respect to the open and transparent management of personal information.
15. The absence of mandatory notification provisions in the Privacy Act undermines public confidence and is inconsistent with the open and transparent management of personal information.
16. Thank you for the opportunity to make this submission. If there are questions with regard to this submission, or if we can provide any further information or assistance, please contact Gillian Garner through the Liberty Victoria office on 9670 6422 or info@libertyvictoria.org.au. This is a public submission and is not confidential.

Yours sincerely



George A Georgiou SC
President
Liberty Victoria