

4 March 2016

Senator the Hon George Brandis QC
Attorney-General
Attorney-General's Department
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BARTON, ACT 2600
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Dear Minister

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

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to comment on the exposure draft of the *Privacy Amendment (Notification of Serious Data Breaches) Bill 2015* (the draft Bill).

We set out below some general comments about the draft Bill and its relevance in the telecommunications sector, having regard to the personal information collected by telecommunications providers. We also offer some comments about the importance of providing clear guidance to businesses about when and how they would be required to report serious data breaches.

General comments

The draft Bill is based on the recommendation of the Australian Law Reform Commission (ALRC) in its 2008 report [For your information: Australian Privacy Law and Practice](#), to introduce a mandatory data breach notification scheme that would apply to data breaches which create a 'real risk of serious harm' to affected individuals. Serious harm includes the risk of real physical, psychological, emotional, reputational, economic and financial harm. One of the primary purposes of a notification scheme is to enable affected individuals to take remedial steps to reduce the impact of a data breach.

Telecommunications providers who are subject to the *Privacy Act 1988* and/or the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* may hold a variety of personal information about their customers. This information may be collected for a range of reasons, including:

- to assess a consumer's eligibility for a service
- to form an agreement between the telecommunications provider and consumer for the provision and ongoing supply of a service

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- to facilitate authorisation processes for account holders or other representatives to discuss service related issues, and
- to facilitate payment arrangements.

Given that information collected for the above purposes will feature personal information such as the consumer's home address, date of birth, security password and/or financial information, unauthorised access to or disclosure/loss of such information could result in a real risk of serious harm to the affected individual. In such circumstances, it is critical that individuals are both made aware of the unauthorised access or disclosure/loss and also given an opportunity to take remedial steps to avoid any adverse consequences. The rationale for the mandatory notification scheme in the Discussion Paper as being one which should serve to facilitate both the notification of individuals and the opportunity for affected individuals to take steps to limit potential risks is, in the TIO's view, an important one.

Guidance for businesses

One of the aims of the draft Bill is to balance the need to protect individual privacy without placing an unreasonable regulatory burden on business. Given the diverse size and range of businesses operating in Australia, including within the telecommunications sector, it will be important for clear guidance and support to be provided to businesses to enable them to meet the proposed requirements in reporting serious data breaches to the Office of the Australian Information Commissioner (OAIC).

In this respect, the TIO notes the importance of:

- guidance about what may constitute a serious data breach
- clarity around the scope of obligations (particularly which entities are required to report serious data breaches), and
- clear processes and methods for reporting serious data breaches (for example, if appropriate, establishing a dedicated communications channel for reporting serious data breaches).

Guidance around these key matters will enable businesses to identify and respond to serious data breaches in the most efficient and effective way.

We trust these comments will be of assistance to the Attorney General's Department.

If you require further information from the TIO, please contact the TIO's Policy, Research & Systemic Issues manager, Ms Shobini Mahendra, on 03 8600 8700.

Yours sincerely



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