



Australian Government

Australian Law Reform Commission

Professor Rosalind Croucher
President

ATTACHMENT ONE

Recommendation concerning data breach notification from the ALRC report, *For Your Information—Australian Privacy Laws and Practice*, Report 108 (May 2008), vol 2, p 1696:

Recommendation 51-1 The Privacy Act should be amended to include a new Part on data breach notification, to provide as follows:

- (a) An agency or organisation is required to notify the Privacy Commissioner and affected individuals when specified personal information has been, or is reasonably believed to have been, acquired by an unauthorised person and the agency, organisation or Privacy Commissioner believes that the unauthorised acquisition may give rise to a real risk of serious harm to any affected individual.
- (b) The definition of ‘specified personal information’ should include both personal information and sensitive personal information, such as information that combines a person’s name and address with a unique identifier, such as a Medicare or account number.
- (c) In determining whether the acquisition may give rise to a real risk of serious harm to any affected individual, the following factors should be taken into account:
 - (i) whether the personal information was encrypted adequately; and
 - (ii) whether the personal information was acquired in good faith by an employee or agent of the agency or organisation where the agency or organisation was otherwise acting for a purpose permitted by the Privacy Act (provided that the personal information is not used or subject to further unauthorised disclosure).
- (d) An agency or organisation is not required to notify an affected individual where the Privacy Commissioner considers that notification would not be in the public interest or in the interests of the affected individual.
- (e) Failure to notify the Privacy Commissioner of a data breach as required by the Act may attract a civil penalty.

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