




Tabled  
Minister Ward  
15/11/22  


## PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT BILL 2022

### STATEMENT OF PUBLIC INTEREST

#### **Need: Why is the policy needed based on factual evidence and stakeholder input?**

The Privacy and Personal Information Protection Amendment Bill 2022 (**Bill**) amends the *Privacy and Personal Information Protection Act 1998* (**PPIP Act**) to establish the Mandatory Notification of Data Breach Scheme (**MNDB Scheme**) and implement related reforms. The Bill also expands the PPIP Act to capture NSW State Owned Corporations (**SOCs**) not already captured by the Commonwealth *Privacy Act 1988*.

NSW public sector agencies handle a broad range of personal and health information regarding NSW citizens. Data breaches involving this information can have serious consequences for citizens, including physical, psychological, and financial harm, and also undermine public trust and confidence in services delivered by the NSW Government.

There is currently no requirement for NSW public sector agencies to report data breaches to the Privacy Commissioner and to notify impacted individuals.

Mandatory notification of data breach schemes are considered best practice internationally. They have the potential to decrease the number of data breaches and the potential for harm to impacted individuals, increase the oversight of public data breach management and improve agencies' data handling practices.

#### **Objectives: What is the policy's objective couched in terms of the public interest?**

The reform seeks to promote responsible data handling and establish oversight of the NSW public sector's management of data breaches. It will require NSW public sector agencies in the event of a suspected data breach:

1. To contain the breach and assess the likely severity of harm to impacted individuals;
2. If the agency assesses that the breach is likely to result in serious harm to an individual, to notify the Privacy Commissioner as well as impacted individuals; and
3. Where impacted individuals cannot be identified or where it is not reasonably practicable to notify them, to issue a public notification.

There is a strong public interest in adopting best practice privacy, trust and security standards to protect citizens' personal information.

#### **Options: What alternative policies and mechanisms were considered in advance of the bill?**

Mandating that NSW public sector agencies notify the Privacy Commissioner and impacted individuals in the event of an eligible data breach can only be achieved through legislative amendment.

**Analysis: What were the pros/cons and benefits/costs of each option considered?**

The MNDB Scheme will:

1. Improve agencies' data handling practices and reduce the incidence of breaches likely to result in serious harm;
2. Facilitate prompt notifications to individuals to enable them to protect themselves in the event of an eligible data breach;
3. Provide the IPC with a holistic understanding of data breach management across the NSW public sector; and
4. Minimise gaps in privacy regulation by extending the PPIP Act to capture NSW State-Owned Corporations.

Noting that the MNDB scheme aims to support the integrity of citizens' private data and personal information, there are no discernible drawbacks associated with introducing the scheme. Indeed, not introducing an MNDB Scheme will mean that citizens will not benefit from the protective objectives of the Scheme.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

The Bill will commence on the first anniversary of the date of assent. This will allow adequate time for the IPC, State-Owned Corporations and NSW public sector agencies to prepare for commencement.

The IPC will support agencies' implementation and ongoing compliance with the MNDB Scheme.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

The Government has undertaken extensive consultation during the development of the Bill. In July 2019, submissions were invited from the public in response to an issues paper that sought feedback on whether a mandatory scheme should be implemented in NSW, and if so, how it should operate. In June 2021, public submissions were invited on the draft exposure bill. The feedback received during public consultation informed the final Bill.

Stakeholders, including the Privacy Commissioner, were overwhelmingly supportive of the development and implementation of the MNDB Scheme.