



New South Wales

# Privacy and Personal Information Protection Amendment (Notification of Serious Violations of Privacy by Public Sector Agencies) Bill 2017

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to require a public sector agency that has caused a serious violation of the privacy of an individual by contravening an information protection principle or privacy code of practice, or disclosing personal information kept in a public register, to notify the individual concerned, and the Privacy Commissioner, of the contravention or disclosure.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1      **Amendment of Privacy and Personal Information Protection Act 1998 No 133**

**Schedule 1** inserts the following provisions into the *Privacy and Personal Information Protection Act 1998*:

## Part 6A Notification of serious violations of privacy

### Division 1 Preliminary

**Proposed section 59A** defines when a public sector agency has caused a serious violation of an individual's privacy.

**Proposed section 59B** lists the matters that must be taken into consideration by a public sector agency, or by the Privacy Commissioner, when determining whether or not the agency has caused a serious violation of privacy.

#### **Division 2 Notification of serious violations of privacy**

**Proposed section 59C** requires public sector agencies to notify individuals about any serious violations of their privacy caused by the agencies.

**Proposed section 59D** requires public sector agencies to notify the Privacy Commissioner about any serious violations of privacy they have caused.

**Proposed section 59E** requires public sector agencies to make an assessment of any suspected serious violation of privacy they have caused.

#### **Division 3 Privacy Commissioner may require notification**

**Proposed section 59F** provides for the Privacy Commissioner to direct public sector agencies to notify serious violations of privacy they have caused.

**Proposed section 59G** requires a public sector agency to comply with any such direction from the Privacy Commissioner.

#### **Division 4 Exemptions**

**Proposed section 59H** provides for the Privacy Commissioner to declare a violation of privacy to be exempt from the operation of the proposed Part.

**Proposed section 59I** exempts public sector agencies that have taken remedial action from the operation of the proposed Part.

**Proposed section 59J** exempts law enforcement agencies from the operation of the proposed Part, in some circumstances.

**Proposed section 59K** exempts public sector agencies from the operation of the proposed Part in relation to a disclosure that is prohibited by other legislation.



New South Wales

# Privacy and Personal Information Protection Amendment (Notification of Serious Violations of Privacy by Public Sector Agencies) Bill 2017

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Privacy and Personal Information Protection Act 1998 No 133</b>	<b>3</b>



New South Wales

# Privacy and Personal Information Protection Amendment (Notification of Serious Violations of Privacy by Public Sector Agencies) Bill 2017

No. , 2017

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## **A Bill for**

An Act to amend the *Privacy and Personal Information Protection Act 1998* to require public sector agencies that cause a serious violation of an individual's privacy to notify the individual and the Privacy Commissioner.

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**The Legislature of New South Wales enacts:**

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**1 Name of Act**

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This Act is the *Privacy and Personal Information Protection Amendment (Notification of Serious Violations of Privacy by Public Sector Agencies) Act 2017*.

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**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Privacy and Personal Information Protection Act 1998 No 133</b>	1
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<b>Part 6A</b>		3
Insert after Part 6:		4
<b>Part 6A</b>	<b>Notification of serious violations of privacy</b>	5
<b>Division 1</b>	<b>Preliminary</b>	6
<b>59A</b>	<b>Meaning of “causes a serious violation of an individual’s privacy”</b>	7
	For the purposes of this Part, a public sector agency <i>causes a serious violation of an individual’s privacy</i> if:	8
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	(a) the agency contravenes an information protection principle or privacy code of practice that applies to the agency, or discloses personal information kept in a public register, and	10
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	(b) a reasonable person would conclude that the contravention or disclosure has resulted, or would be likely to result in, a serious violation of, or interference with, the privacy of an individual to whom the information relates.	13
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<b>59B</b>	<b>Matters to be considered in determining if privacy has been violated in serious manner</b>	17
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	The following matters are to be taken into consideration by a public sector agency, or by the Privacy Commissioner, for the purposes of determining whether an act or omission has resulted, or is likely to result in, a serious violation of, or interference with, the privacy of an individual:	19
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	(a) the kind of information involved,	23
	(b) the sensitivity of the information,	24
	(c) the persons, or the kinds of persons, who have obtained, or who could obtain, the information,	25
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	(d) whether the information is protected by one or more security measures, and, if it is protected, the likelihood that any of those security measures could be overcome,	27
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	(e) in the case of a security technology or methodology designed to make the information unintelligible or meaningless to persons who are not authorised to obtain the information that was used in relation to the information—the likelihood that other persons have obtained, or could obtain, information or knowledge required to circumvent the security technology or methodology,	30
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	(f) the nature of the harm caused by the violation of, or interference with, the privacy of the individual,	36
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	(g) any other relevant matters.	38

<b>Division 2</b>	<b>Notification of serious violations of privacy</b>	1
<b>59C</b>	<b>Public sector agencies must notify individuals about any serious violations of their privacy</b>	2 3
(1)	A public sector agency must take reasonable steps to notify an individual if the public sector agency has reasonable grounds to believe that it has caused a serious violation of the individual's privacy.	4 5 6
(2)	The notice must include the following information:	7
(a)	the name and contact details of the public sector agency,	8
(b)	a description of the serious violation of privacy,	9
(c)	the kind of information concerned,	10
(d)	recommendations about the steps that the individual should take in response to the serious violation of privacy,	11 12
(e)	if the public sector agency has reasonable grounds to believe that one or more other public sector agencies contributed to the violation of privacy—the name and contact details of each such public sector agency.	13 14 15 16
(3)	If the public sector agency normally communicates with a particular individual using a particular method, the notice may be given using that method.	17 18 19
(4)	If it is not practicable for the public sector agency to notify each of the individuals who are directly affected by the serious violation of privacy, the agency must publish a copy of the notice on the agency's website (if any) and take reasonable steps to publicise the contents of the notice.	20 21 22 23
(5)	The notice must be given as soon as practicable and, in any case, not more than 15 days after the public sector agency first became aware of the circumstances that gave rise to the serious violation of privacy.	24 25 26
<b>59D</b>	<b>Public sector agencies must notify Privacy Commissioner about serious violations of privacy</b>	27 28
(1)	A public sector agency must notify the Privacy Commissioner if the public sector agency has reasonable grounds to believe that it has caused a serious violation of an individual's privacy.	29 30 31
(2)	The notice given to the Privacy Commissioner must be in writing and must include the following information:	32 33
(a)	the name and contact details of the public sector agency,	34
(b)	a description of the serious violation of privacy,	35
(c)	the kind of information concerned,	36
(d)	recommendations about the steps that individuals should take in response to the serious violation of privacy,	37 38
(e)	if the public sector agency has reasonable grounds to believe that one or more other public sector agencies contributed to the violation of privacy—the name and contact details of each such public sector agency.	39 40 41 42
(3)	The notice must be given as soon as practicable and, in any case, not more than 15 days after the public sector agency first became aware of the circumstances that gave rise to the serious violation of privacy.	43 44 45

<b>59E</b>	<b>Public sector agencies must make an assessment of any suspected serious violation of privacy</b>	1 2
	A public sector agency that has reasonable grounds to believe that it has caused a violation of the privacy of any individual must:	3 4
	(a) carry out a reasonable and expeditious assessment of whether there are reasonable grounds to believe that the relevant circumstances amount to a serious violation of privacy caused by the public sector agency, and	5 6 7
	(b) take all reasonable steps to ensure that the assessment is completed within 30 days after becoming aware of the possible violation.	8 9
<b>Division 3</b>	<b>Privacy Commissioner may require notification</b>	10
<b>59F</b>	<b>Privacy Commissioner may direct public sector agencies to notify serious violations of privacy</b>	11 12
	(1) The Privacy Commissioner may require a public sector agency to provide information if the Privacy Commissioner has reasonable grounds to believe that the public sector agency has caused a serious violation of privacy or contributed to causing such a violation.	13 14 15 16
	(2) The direction may also require the public sector agency to:	17
	(a) take all steps that are reasonable in the circumstances to notify each of the individuals to whom the relevant information relates of the violation of privacy, or	18 19 20
	(b) if it is not practicable for the public sector agency to notify each of the individuals who are at risk from the serious violation of privacy—publish a notice about the violation of privacy on the public sector agency’s website (if any) and take reasonable steps to publicise the contents of the notice.	21 22 23 24 25
	(3) Before giving a direction to a public sector agency under subsection (1), the Privacy Commissioner must invite the public sector agency to make a submission to the Privacy Commissioner in relation to the direction within the period specified in the invitation and must have regard to any submission made in the specified time.	26 27 28 29 30
<b>59G</b>	<b>Public sector agency must comply with Privacy Commissioner’s direction</b>	31
	(1) A public sector agency must comply with a direction under this Division as soon as practicable after the direction is given.	32 33
	(2) The following information must be provided to the Privacy Commissioner or to an individual, or published on a website, as the case may be, to comply with a direction:	34 35 36
	(a) the name and contact details of the public sector agency,	37
	(b) a description of the serious violation of privacy that the Privacy Commissioner has reasonable grounds to believe has been caused,	38 39
	(c) the kind of information concerned,	40
	(d) recommendations about the steps that individuals should take in response to the serious violation of privacy,	41 42
	(e) any other specified information that relates to the serious violation of privacy.	43 44

- (3) If the public sector agency normally communicates with a particular individual using a particular method, the notification to the individual concerned may use that method. 1  
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#### **Division 4 Exemptions** 4

##### **59H Privacy Commissioner may declare a violation of privacy to be exempt** 5

- (1) The Privacy Commissioner may declare that this Part does not apply in relation to a contravention by a public sector agency of an information protection principle or privacy code of practice that applies to the agency, or to a disclosure by a public sector agency of personal information kept in a public register, if the Privacy Commissioner is satisfied that it is reasonable in the circumstances to do so, having regard to the public interest and any other matter that the Privacy Commissioner considers relevant. 6  
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- (2) The Privacy Commissioner may make a declaration under this section: 13
- (a) on the Privacy Commissioner's own initiative, or 14
- (b) on application made to the Privacy Commissioner by the public sector agency concerned. 15  
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- (3) A declaration must be given by written notice to the public sector agency concerned. 17  
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- (4) A public sector agency is not required to comply with this Part in relation to a serious violation of an individual's privacy that is the subject of a declaration under this section. 19  
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##### **59I Exemption if public sector agency has taken certain action** 22

- A contravention of an information protection principle or privacy code of practice, or a disclosure of personal information kept in a public register, by a public sector agency is not a serious violation of, and is taken not to have caused a serious violation of, an individual's privacy if: 23  
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- (a) the public sector agency takes action in relation to the contravention or disclosure before the contravention or disclosure results in significant harm to any of the individuals to whom the information relates, and 27  
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- (b) as a result of that action, a reasonable person would conclude that the contravention or disclosure would not be likely to result in a serious violation of, or interference with, the privacy of an individual to whom the information relates. 30  
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##### **59J Exemption relating to law enforcement** 34

- A public sector agency that is a law enforcement agency is not required to comply with this Part in relation to a contravention of an information protection principle or privacy code of practice that applies to the agency, or a disclosure of personal information kept in a public register, if compliance by the public sector agency would prejudice the agency's law enforcement functions. 35  
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**59K Exemption from disclosure that is prohibited by other legislation**

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A public sector agency is not required to comply with this Part in relation to a  
contravention of an information protection principle or privacy code of  
practice that applies to the agency, or a disclosure of personal information kept  
in a public register, if doing so would involve a disclosure of information that  
is prohibited by or under any other Act.

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