

Fact Sheet

Data Breaches

This fact sheet contains information about data breaches, what happens when a data breach occurs and the steps you can take to protect your digital privacy.

There is growing concern in Australia about digital privacy and the risk of data breaches to consumers. A survey in 2020 showed that Australian consumers have an understanding of the importance of protecting their digital privacy but that very different approaches are taken in protecting our data.

What is data?

Data is broadly defined as information that is collected about you or from you either physically or electronically. It can include sensitive data such as your personal, financial and medical information. Sensitive information is commonly targeted in a data breach.

What are the consequences of a data breach?

Both individuals and corporations can be seriously harmed by data breaches.

Individuals affected by data breaches may have their information sold or used without their permission. This information could then be used by criminals to engage in illegal activity such as identity theft, fraud and blackmail. Criminals can also use information exploited during data breaches to access additional accounts of victims by bypassing security clearances and/or changing passwords.

Corporations can also be victims of data breaches. Not only may a corporation's sensitive information be accessed during an attack, but corporations can also suffer from reputational damage within the community as a result of a data breach. Individuals typically

hold corporations to a high standard particularly when trusting them with sensitive, personal information.

What obligations do corporations have with collecting and storing sensitive information?

The collection and storage of data is governed by several laws, including the *Privacy Act 1998* (Cth). Corporations are required to comply with several laws about how information is collected and stored and must also take active measures to consider what personal information they are permitted to keep and how to store data securely.

What happens in the event of a data breach?

If a corporation has reasonable grounds to believe its data has been breached and is likely to result in serious harm, a corporation should minimise the impact of the breach before assessing the risks.

Under the Notifiable Data Breaches Scheme, a corporation is obliged to notify the Office of the Australian Information Commissioner and individuals affected by the breach.

A corporation is legally required to notify affected individuals, however, the form of notification can vary. It may elect to directly notify all affected individuals, only those individuals at risk of serious harm or it may publish a formal statement on its website.

What rights do I have if I am a victim of a data breach?

There are currently no statutory rights for victims of data breaches under the *Privacy Act 1998*.

If, however, you are a victim of a data breach you may lodge a formal complaint with the Office of the Australian Information Commissioner against a corporation for non-compliance. The Commissioner will review your complaint and enable you to seek a claim for compensation.

In certain circumstances, a data breach may also result in a breach of contractual or consumer laws. Before commencing personal proceedings against a corporation, it is recommended you seek tailored legal advice to further understand your rights.

Victims of data breaches may also register interest in a data breach class action investigation.

How can I protect my digital privacy?

It is important that individuals educate themselves on ways in which they can protect their digital privacy.

These may include:

- Understanding what you are consenting to by reading the organisation's privacy policy
- Undertaking regular credit report checks
- Using secured network services and devices
- Installing anti-virus software and ransomware protection

- Watching out for and reporting suspicious messages and links
- Using strong and long multi-character passwords

If you have been requested to provide an organisation with sensitive or personal information and are hesitant in doing so, it is suggested you contact the organisation directly to confirm the organisation is genuine and that your data is required.

Note: The information in this document is general information only and should not be relied on as legal advice. It is current as at 29 March 2023. If you need further assistance, please contact Deakin Law Clinic.



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