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Financial Reporting & Governance News

Mandatory Data Breach Notification is here — Know Your Responsibilities

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The *Privacy Act 1988* ("Privacy Act") regulates how personal information is handled. The Privacy Act defines personal information as:

"...information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable."

Common examples are an individual's name, signature, address, telephone number, date of birth, medical records, bank account details and commentary or opinion about a person. The Privacy Act also regulates the privacy component of the consumer credit reporting system, tax file numbers, and health and medical research.

On 22nd February 2018, the passage of the *Privacy Amendment (Notifiable Data Breaches) Act 2017* established the Notifiable Data Breaches ("NDB") scheme in Australia. The NDB scheme applies to all agencies and organisations with existing personal information security obligations under the Privacy Act.

The NDB scheme introduced an obligation to notify individuals whose personal information is involved in a data breach that is likely to result in serious harm. This notification must include recommendations about the steps individuals should take in response to the breach. The Australian Information Commissioner (Commissioner) must also be notified of eligible data breaches as soon as practicable.

Who must comply with the NDB scheme?

The NDB scheme applies to agencies and organisations that the Privacy Act requires to take steps to secure certain categories of personal information. This includes Australian Government agencies, businesses and not-for-profit organisations with an annual turnover of $3 million or more, credit reporting bodies, health service providers, and TFN recipients, among others.

Which data breaches require notification?

The NDB scheme only applies to data breaches involving personal information

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that are likely to result in serious harm to any individual affected. These are referred to as 'eligible data breaches'.

Assessing suspected data breaches

If an entity is aware that there are reasonable grounds/information to suspect that there may have been a serious breach, which is likely to result in serious harm to any individual affected, it must complete a reasonable and expeditious assessment into the relevant circumstances within 30 calendar days.

Responding to data breaches — four key steps

An effective data breach response generally follows a four-step process:

1. Contain;
2. Assess;
3. Notify; and
4. Review.

A summary of the key points

- A data breach is an unauthorised access or disclosure of personal information, or loss of personal information.
- Data breaches can have serious consequences, so it is important that entities have robust systems and procedures in place to identify and respond effectively.
- Entities that are regulated by the Privacy Act should be familiar with the requirements of the NDB scheme, which are an extension of their information governance and security obligations.
- A data breach incident may also trigger reporting obligations outside of the Privacy Act.

For detailed information in relation on the Notifiable Data Breaches Scheme please refer to Australian Government Office of the Information Commissioner at www.oaic.gov.au

Need to know

New standard detailed

AASB 2018-1 A*mendments to Australian Accounting Standards – Annual Improvements 2015–2017 Cycle* makes amendments in relation to previously held interests in a joint operation (amending AASB 3 *Business Combinations* and AASB 11 *Joint Arrangements*), income tax consequences of payments on financial instruments classified as equity (AASB 112 *Income Taxes*) and borrowing costs eligible for capitalisation (AASB 123 *Borrowing Costs*).

It is effective for annual periods beginning on or after 1 January next year.

First crowd-sourced funding intermediaries licensed

ASIC has licensed the first crowd-sourced funding ("CSF") intermediaries under the new CSF regime.

Seven companies have been issued with Australian Financial Services ("AFS") licence authorisations to act as intermediaries, enabling them to provide a crowd-sourced funding service.

The granting of the authorisations means that eligible public companies will be able to use the CSF regime to raise capital by making offers of ordinary shares to investors via the on-line platforms of these intermediaries.

The CSF regime is designed to provide start-ups and small-to-medium-sized companies with a new means to access capital. CSF offers are subject to fewer regulatory requirements than other forms of public fundraising.

ASIC Commissioner John Price said that this marked a significant milestone for crowd-sourced funding in Australia.

He said: 'ASIC has been assessing applications as a matter of priority, as suitable intermediaries needed to be licensed before fundraising under the new regime could commence. Intermediaries have an important gatekeeper role which will be key to building and maintaining investor trust in crowd-sourced fundraising, so we are pleased to have now issued the first tranche of authorisations.'

On 29 September 2017, the *Corporations Amendment (Crowd-sourced Funding) Act 2017* and associated regulations came into effect, establishing a regulatory framework.

One of the regime's key objectives is to reduce the regulatory burden on smaller companies associated with raising funds from the public via the issue of ordinary shares.

ASIC has issued guidance to assist companies seeking to raise funds through CSF (Regulatory Guide 261 *Crowd-sourced funding: Guide for public companies*). It has also published a template CSF-offer document.

Accounting and ethical standards operative from 1 January 2018

1 January 2018 is an important milestone – two complex accounting standards, materiality guidance, and onerous NOCLAR ethical rules are now operative.

Many accountants are aware of their existence and have some knowledge about them – implementation is another issue entirely.

- AASB 15 *Revenue from Customer Contracts* (for profit entities) has a five-step revenue recognition process. Sounds easy but it is not – many judgements are required. There are also substantive disclosure requirements that will be a challenge, as the disclosures are entity specific. No boiler plate disclosures here.
- AASB 9 *Financial Instruments* introduces new requirements for classification, impairment and hedging. Impairment is the major challenge as it is based on forward looking information. Also remember that AASB *7 Financial Instruments: Disclosures* has been updated to reflect the changes from AASB 139 *Financial Instruments: Recognition and Measurement* to AASB 9. Again, the disclosures are significant.

The AASB 15 Practice Statement 2 *Making Materiality Judgements* will help preparers make materiality judgements for these new standards as well as the existing body of standards for PS2 provides entities with the tools to make their financial statements more useful and concise. The guidance also includes examples that are specific to not-for-profit private and public-sector entities.

With these new standard and guidance:

- detailed accounting policy papers need to be prepared and judgements evidenced
- systems modified to produce the required information
- the financial reporting template revised, and
- the board (and other stakeholders) actively engaged.

Preparers have specific responsibilities under APES 110 *Code of Ethics for Professional Accountants* which some may be unfamiliar with:

- Preparation and reporting information (s.320)
- Acting with sufficient expertise (s.330), and
- Financial interests, compensation and incentives linked to financial reporting and decision-making (s.340).

Members of CA ANZ, CPA Australia and IPA have new responsibilities for non-compliance with laws and regulations ("NOCLAR") under APES 110. It is a sleeper issue with significant ramifications that many have not yet understood.

The responsibilities differ depending on whether an accountant is employed by an entity, in a management or governance position, or engaged by an entity to provide professional accounting services.

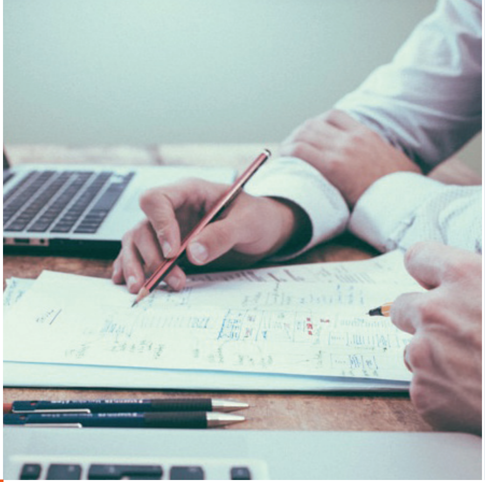
All entities, including NFPs, need to be aware of NOCLAR rules and how they affect an entity's business risks and professional relationships with accounting firms. A NOCLAR policy is highly desirable.

Auditors also have new responsibilities for reporting NOCLAR under Auditing Standard ASA 250 C*onsideration of Laws and Regulations in an Audit of a Financial Report.*

Let's not forget the following accounting standards and interpretation become operative from 1 January 019:

- AASB 15 *Revenue from Customer Contracts* (for not-for-profit entities)
- AASB 16 Leases
- AASB 1058 *Income of Not-for-Profit Entities*, and
- IFRIC 23 *Uncertainty over Income Tax Treatments*.

Don't underestimate the time involved in implementing these rules. Remember that they need to be accommodated within your existing day-to-day responsibilities.



ASIC reports on 2017 AGMs

The Australian Securities and Investments Commission ("ASIC") has published its overview of the 2017 annual general meetings ("AGM") of S&P/ASX 200 (ASX 200) listed companies.

ASIC routinely monitors AGMs to identify emerging trends and corporate-governance issues and to observe the extent to which companies use AGMs to engage their shareholders.

Report 564 *Annual general meeting season* 2017 examines the voting outcomes of resolutions considered at AGMs held by ASX-200 companies in 2017 and highlights emerging corporate-governance issues and trends.

It discusses:

- remuneration reports
- proxy advisers' recommendations
- the extent of shareholder engagement
- board diversity, and
- the effectiveness of AGMs, including ASIC's recommendations about good corporate governance practice

Commissioner John Price said: 'Shareholder engagement is a cornerstone of good corporate governance and annual general meetings are an important opportunity for shareholders to hold their board and, through the board, company management to account for a company's performance. Therefore, ASIC actively monitors the AGM season each year and our observations become an important and on-going resource informing our regulatory work in corporate governance.'

ASIC's observations highlight the need for boards to make the most of AGMs as an opportunity to be transparent, accountable and willing to engage with shareholders to enhance companies' long-term performances and corporate value.

Among the key points were:

- The 2017 AGM season was significantly less tumultuous than the 2016 season, with fewer 'strikes' on remuneration reports
- A strong sense of shareholder input and engagement was evident, directors being held accountable through material 'against' votes on their election
- Proxy advisers continued to scrutinise governance practices and attract and generate significant media and corporate commentary, and
- Shareholders advocated for action on specific environmental, social and governance issues, spotlighting board diversity.

ASIC places great importance on the role AGMs play in providing a forum for shareholders to critically assess a company's business strategies and future prospects and to hold the board and company management accountable for a company's performance.

ASIC's AFSL compliance reminders

AFS licensees and advisers have a professional and legal obligation to comply with the law, ASIC has reminded them.

AFS licensees must:

- Train staff on their professional and ethical obligations: AFS licensees have an obligation to ensure that their staff are adequately trained and understand their professional and ethical obligations. A high standard of adviser professionalism, judgement and integrity is vital to ensure that consumer trust and confidence is maintained in the financial services sector.
- Monitor and supervise their representatives: ASIC expects that licensees will maintain adequate monitoring and supervision arrangements as an integral feature of their risk and compliance frameworks. Part of monitoring and supervising advisers involves licensees' regularly reviewing the conduct of their advisers and performing spot checks of key documentation to ensure that they are appropriately executed.
- Where irregularities are found in key documentation, licensees should conduct the necessary enquiries in a timely manner. This may include contacting the affected clients, remediating clients where appropriate and conducting broader reviews of the relevant adviser's client files.
- Remediate consumers where misconduct is found: AFS licensees must ensure that they address any systemic problems caused by the conduct of their advisers and, where necessary, put processes in place to

remediate their clients for loss in a timely, fair and transparent way.

- ASIC has published guidance on client review and remediation in Regulatory Guide 256 *Client review and remediation conducted by advice licenses.* While the guidance is directed at licensees who provide personal advice to retail clients, the principles set out in the guidance should be applied to other reviews and remediations.

- Identify breaches in a timely manner. ASIC expects licensees to have effective systems in place for identifying, escalating and reporting breaches in a timely manner. Inadequate or late reporting could indicate to the Commission that the licensee has broader compliance and cultural issues and would be a red flag that might lead to closer scrutiny.

Nice to know

APRA releases ADI discussion papers

The Australian Prudential Regulation Authority ("APRA") has released two discussion papers on proposed revisions to the capital framework for authorised deposit-taking institutions ("ADIs").

They are R*evisions to the capital framework for authorised deposit-taking institutions and Leverage ratio requirement for authorised deposit-taking institutions.*

The papers include proposed revisions to the framework resulting from the Basel Committee on Banking Supervision's finalising Basel III reforms in December.

Other changes better align the framework to risks, including on housing lending. APRA is also releasing a discussion paper on implementation of a leverage-ratio requirement.

The key proposed changes to the framework include:

- Lower risk weights for low LVR mortgage loans, and higher risk weights for interest-only loans and loans for investment purposes

- Amendments to the treatment of exposures to small- to medium-sized enterprises ("SMEs"), including those secured by residential property under the standardised and internal ratings-based ("IRB") approaches

- Constraints on IRB ADIs' use of their own parameter estimates for particular exposures and an overall floor on risk-weighted assets relative to the standardised approach, and

- A single replacement methodology for advanced and standardised approaches to operational risk.

The paper outlines a proposal to simplify the framework for small ADIs, which is intended to reduce regulatory burden without compromising prudential soundness.

APRA Chairman Wayne Byres said that, taken together, the proposed changes are designed to lock in the strengthening of ADI capital positions of recent years.

'These changes to the capital framework will ensure the strong capital position of the ADI industry is sustained by better aligning capital requirements with underlying risks.

'However, given the ADI industry is on track to meet the "unquestionably strong" benchmarks set out by APRA last year, today's announcement should not require the industry to hold additional capital overall.'

APRA has also released a discussion paper on implementing a leverage ratio for ADIs, a non-risk-based measure of capital strength that is widely used internationally.

A minimum leverage ratio of 3 per cent was introduced under Basel III and is intended to operate as a backstop to the risk-weighted capital framework. Although the risk-based capital measures remain the primary metric of capital adequacy, APRA has indicated its intention to implement a leverage ratio requirement in Australia. This approach was also recommended in 2014 by the Financial System Inquiry.

APRA is proposing to apply a higher minimum requirement of 4 per cent for IRB ADIs and to implement the leverage ratio as a minimum requirement from July next year.

APRA will later this year release a paper on potential adjustments to the overall design of the capital framework to improve transparency, international comparability and flexibility.

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ACNC Update

The ACNC has:

- Issued a direction to RSL National
- Reported that it is working with RSLs to restore confidence
- Released the National Standard Chart of Accounts environmental scan
- Endorsed the Damn Good Advice on Cyber-safety and Fraud Prevention guide
- Registered 177 new charities, and
- Reported that charity revocations hit a record high in 2017.

Queries

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