Privacy Protection Reform - Upcoming Changes and Tips to Adapt!

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1. Introduction

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Introduction

- A current priority of not-for-profits (**NFPs**) is ‘responding to changes in our operating environment’.
- There is particular concern regarding the rapid development of technology, and how relying on such exposes NFPs to potential privacy breaches.
- This has led to calls for major reform to the *Privacy Act 1988* (Cth) (**Privacy Act**).

2. Privacy Act Reforms – Why?

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Privacy Act Reforms – Why?

- Following a two-year consultation with the community and experts, the Attorney-General's Department released the 'Privacy Act Review Report' **(Review Report**).
- This was delivered to ensure organisations, including NFPs, remain 'fit- for-purpose in the digital age'.
- With the rising concern of security risks and breaches, the Australian Government then delivered the 'Government Response to the Privacy Act Review Report' (**Government Response Report**) in September 2023.

Privacy Act Reforms – Why?

- The Government Response Report outlined those reforms proposed in the Review Report to which the Government has agreed.
- The importance of this response is highlighted through an open letter sent to the Australian Government by more than 20 organisations in October 2023.
- This letter was a clarion call for the introduction of these proposed reforms, to protect everyday Australians from data misuse and invasions of privacy.

When will these reforms take place?

- Although the Government has agreed to many of the proposed reforms, the Government has not provided a time-frame as to when these will be formally introduced and enacted.
- Regardless, this presentation will prepare NFPs for when these proposed reforms eventually are enshrined into the Privacy Act and enforced upon organisations.

Why NFPs?

- Businesses with an annual turnover of $3 million or less are currently exempted from the Privacy Act, known as the **‘small business exemption**’.
- A key proposal of this reform is to remove this small business exemption. The Government has agreed in-principle to this.
- Accordingly, all businesses (including NFPs) currently falling under this exemption will eventually lose the benefit of the exemption.

3. Proposed Reforms & Tools to Adapt

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A. Privacy Policies

- “84% of Australians want more control and transparency over the collection and use of their personal information.” *(Government Response Report, 17)*
  - A key focus of the reform is giving this control over personal information back to individuals!
- This has resulted in a proposed reform to the Privacy Act, which will lead to more mandatory information being required in organisations’ privacy policies. This was agreed to by the Government.
- It is highly recommended that NFPs’ privacy policies include this additional information.

A. Privacy Policies

- The proposed requirement for additional information in all privacy policies includes:
  A. Maximum and minimum retention periods for personal information;
  B. Reasoning as to why an organisation may collect, use and disclose personal information;
  C. An explanation that collection notices will be provided for high privacy risk activities (personal information-handling with a higher risk to individuals); and
  D. An explanation as to how individuals and customers can exercise their rights, including withdrawal of consent.

B. Organisational Accountability

- The Review Report introduces organisational accountability for privacy.
- The three areas we will focus on will be:
  i. Designation of responsibility for privacy;

  ii. Policies & procedures; and

  iii. Cyber security training.

i. Designation of responsibility for privacy

- NFPs are recommended to appoint a senior employee who is to have specific responsibility for the organisation's privacy obligations.
- This can occur in two main ways, depending on the resources of the organisation:
  A. Allocating to an existing employee this title and additional responsibility; or
  B. Hiring and appointing a new employee with this role.

ii. Proposed procedures

- Proposed Reform 1:
  - In circumstances where there are reasonable grounds to believe there has been a data breach in the organisation, there is a proposed reform that will require the organisation to notify the Information Commissioner of such within 72 hours.
  - This is accompanied with the obligation to notify the individuals who may have been affected by this alleged data breach.

- Proposed Reform 2:
  - Organisations will be required to respond to requests from individuals in a certain way, including acknowledgement of receipt of request and provision of a timeframe to respond.
  - Similarly, when a request is refused, organisations will be required to provide an explanation as to why.

ii. Recommended policies

- NFP boards should take the opportunity to establish policies and procedures which reflect these new requirements.
- Clearly setting these out in a policy or procedure which is accessible to all staff can ensure awareness of, and compliance with, such requirements.

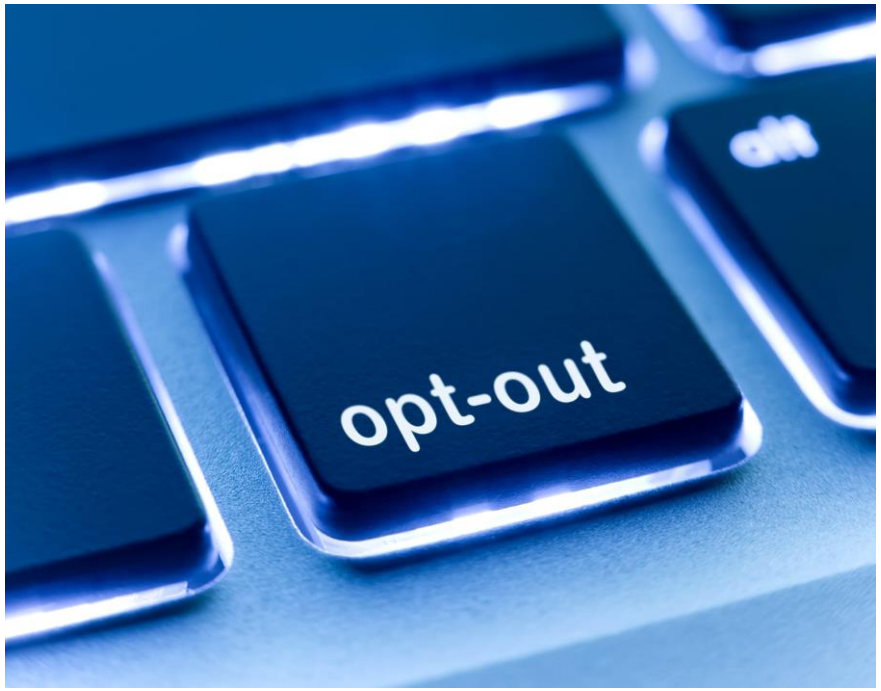
iii. Cyber Security Training

- Studies have demonstrated that only 12% of NFPs provide regular cyber security awareness training to staff. *(Infoxchange, Digital Technology in the Not-For-Profit Sector Report October 2023, 10)*
- Understanding the complex nature of programs, processes and policies associated with cyber security is a key part of ensuring these reforms are effective.
- Therefore, it is important that organisations conduct regular cyber-security training for all staff. This could be conducted at onboarding, and at consistent intervals, for example, annually.
- This will equip staff with the understanding and skillset to recognise potential cyber security breaches, and to take action accordingly.

C. Data Usage

- “Data is crucial to all NFPs, as it allows NFPs to bolster impact and improve service delivery.”
  (Infoxchange, Digital Technology in the Not-For-Profit Sector Report October 2023, 6)
- In the Government Response Report, the Government highlighted the importance of granting individual autonomy over how personal information is collected, used and disclosed.
- Accordingly, a proposed change which was agreed in-principle by the Government, is the right for individuals to opt-out of data collection for marketing and advertising purposes.

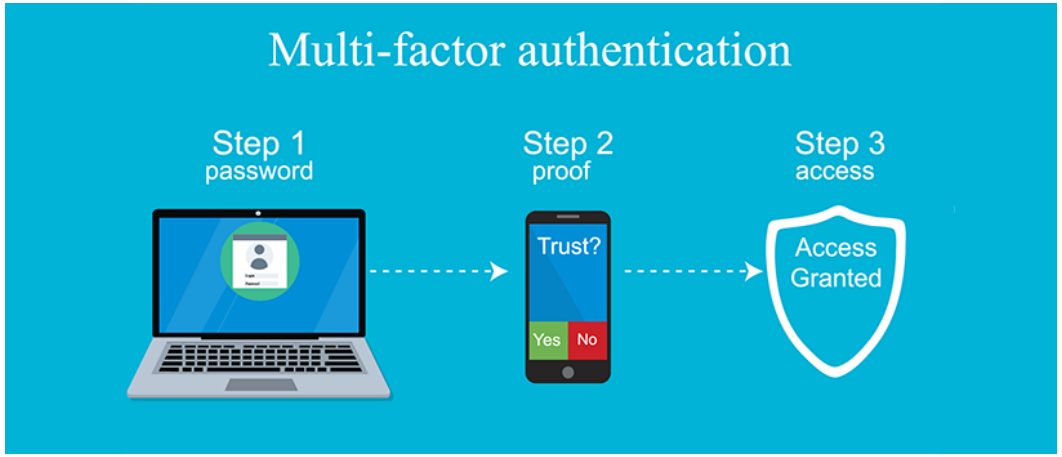
C. Data Usage



- It is, therefore, recommended that NFPs include an opt-out feature for customers on any service that involves data collection, including for existing customers to whom the feature has been unavailable.
- It is also recommended to NFPs that where this opt-out feature appears to individuals, there should also be an accompanying statement advising individuals of their rights and how those rights can be exercised to opt-out of this data collection.
- An additional benefit of this recommendation is that it also aids in increasing individual and customer awareness of privacy rights – a core focus of the reforms.

C. Data Usage

- A key focus on the reforms is to protect and appropriately manage data.
- Therefore, it is recommended that with any software programs used that contain personal information and data, NFPs implement multi factor authentication to gain access.
- This provides a safeguard and extra level of safety for organisations.
- This is critical, as failure to protect and manage data may soon be punishable by civil penalty provisions, which is also a proposed reform agreed to by the Government.



4. CONCLUSION

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CONCLUSION

- Various reforms to the Privacy Act have been agreed to, or agreed-in principle, by the Government.
- We have outlined what we consider to be the main changes proposed by the Government.
- There is merit in considering now what your organisation is going to need to do to remain compliant.

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