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DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

Australia's mandatory breach notification regime imminent

A notification duty will apply, from February 2018, to all private sector and not-for-profit organisations with an annual turnover of more than A\$3 million. By **Elizabeth Coombs** and **Sean McLaughlan**.

From 22 February 2018, Australian Federal Government agencies and private businesses (including not-for-profit organisations) with an annual turnover of A\$3 million or more, or that trade in personal information, will be required to comply with the Notifiable Data

Breaches (NDB) scheme.¹ The protection of personal information is familiar territory internationally but not as familiar in Australia where the right to privacy is not recognised in the Constitution, not enshrined in a

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Questioning 'adequacy'— Japan

An EU adequacy decision for Japan is expected in 2018.

Graham Greenleaf analyses what the remaining challenges are.

Assessments by the European Commission of whether non-EU countries provide an "adequate" level of data protection so as to enable a positive EU decision¹ under Article 25 of the 1995 Data Protection Directive ("adequacy decisions") usually receive little discussion while the process is underway. It is often not

until the near-final stage of decision-making, when the Article 29 Working Party (A29WP) of Data Protection Commissioners gives an Opinion on whether it supports a positive assessment by the Commission, that it even becomes public knowledge that an assessment is

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PUBLISHER**Stewart H Dresner**

stewart.dresner@privacylaws.com

EDITOR**Laura Linkomies**

laura.linkomies@privacylaws.com

DEPUTY EDITOR**Tom Cooper**

tom.cooper@privacylaws.com

ASIA-PACIFIC EDITOR**Professor Graham Greenleaf**

graham@austlii.edu.au

REPORT SUBSCRIPTIONS**K'an Thomas**

kan.thomas@privacylaws.com

CONTRIBUTORS**Henry Chang**

University of Hong Kong, Hong Kong

Elizabeth Coombs and Sean McLaughlan

Australia

Matteo Colombo

ASSO DPO, Italy

Scott Livingston

Simone IP Services, Hong Kong

Merrill Dresner

PL&B Correspondent

Patricia Gelabert

PL&B Correspondent

Published byPrivacy Laws & Business, 2nd Floor,
Monument House, 215 Marsh Road, Pinner,
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“ comment ”

Adequacy is a fluid concept

As we were going to print, the EU Article 29 DP Working Party published a working document on its adequacy referential. This document will be continuously reviewed and if necessary updated in the coming years, based on the practical experience gained through the application of the GDPR. The EU Commission is now actively negotiating with South Korea and Japan, the latter of which is expected to receive an adequacy determination in 2018 (p.1). Next it might be the United Kingdom's turn – a different situation altogether but perhaps not any easier, given the direction of travel in the UK.

Australia's mandatory data breach notification regime will be in force from February (p.1), and China has adopted a new Personal Information Standard (p.25). Other Asian developments include practical experience with mediation both in South Korea and Hong Kong. We have been very fortunate to speak to both countries' regulators when in Hong Kong (p.20 and p.22).

With regard to the EU GDPR, only Germany and Austria have so far adopted implementing laws. Italy's DPA has issued guidance whilst waiting for a GDPR implementing Bill (p.12), and Finland's working group is still considering several issues (p.13). In Spain, there is a data protection bill but many changes are expected (p.14).

Meanwhile the EU DPAs have threatened legal action to come next May unless the EU-US Privacy Shield is improved (p.17). The other 11 adequacy agreements are also being reviewed – the EU is asking for clarifications on their privacy safeguards. This assessment applies, for example, to Guernsey, which has just adopted a new law (p.21).

Something that throws the principle of defining a data controller back to the drawing board is blockchain. Read on p.18 about the other data protection issues which are related to Distributed Ledger Technology, of which the most prominent example is Bitcoin, the crypto currency.

Laura Linkomies, Editor

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