The data breach response flowchart

The following flowchart summarises the general steps that entities may need to take in a data breach response process.

As each data breach is a unique event that involves different root causes, types of personal information, and risks of harm, the steps and actions required of entities are likely to differ for each incident.

Every data breach needs to be dealt with on a case-by-case basis, with an understanding of:

- the risks posed to affected individuals by that breach and;
- the actions that would be most effective in reducing or removing those risks.

Generally, the actions taken following a data breach should follow four key steps:

Step 1: Contain the data breach to prevent any further compromise of personal information.

Step 2: Assess the data breach by gathering the facts and evaluating the risks, including potential harm to affected individuals and, where possible, taking action to remediate any risk of harm.

Step 3: Notify individuals and the Commissioner if required. If the breach is an 'eligible data breach' under the NDB scheme, it may be mandatory for the entity to notify.

Step 4: Review the incident and consider what actions can be taken to prevent future breaches.

These steps are explained in further detail in Part 3 of this guide, and the steps that are required by the NDB scheme (coloured red) are explained in Part 4.

Maintain information governance and security — APP 1 and 11

Entities have an ongoing obligation to take reasonable steps to handle personal information in accordance with the APPs. This includes protecting personal information from misuse, interference and loss, and from unauthorised access, modification or disclosure.

Suspected or known data breach

A data breach is unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information, that an entity holds.

Contain

An entity's first step should be to **contain** a suspected or known breach where possible. This means taking immediate steps to limit any further access or distribution of the affected personal information, or the possible compromise of other information.

Assess

Entities will need to consider **whether the data breach is likely to result in serious harm** to any of the individuals whose information was involved. If the entity has reasonable grounds to believe this is the case, then it must notify. If it only has grounds to suspect that this is the case, then it must conduct an **assessment** process. As part of the assessment, entities should consider whether **remedial action** is possible.

Organisations can develop their own procedures for conducting an assessment. OAIC suggests a three-stage process:

- **Initiate:** plan the assessment and assign a team or person
- **Investigate:** gather relevant information about the incident to determine what has occurred
- **Evaluate:** make an evidence-based decision about whether serious harm is likely. OAIC recommends that this be documented.

Entities should conduct this assessment expeditiously and, where possible, within 30 days.

If it can't be done within 30 days, document why this is the case.

Take remedial action

Where possible, an entity should take steps to reduce any potential harm to individuals.

This might involve taking action to recover lost information before it is accessed or changing access controls on compromised customer accounts before unauthorised transactions can occur.

If remedial action is successful in making serious harm no longer likely, then notification is not required and entities can progress to the review stage.

NO — **Is serious harm still likely?** — **YES**

Notify

Where **serious harm is likely**, an entity must prepare a statement for the Commissioner (a form is available on the Commissioner's website) that contains:

- the entity's identity and contact details
- a description of the breach
- the kind/s of information concerned
- recommended steps for individuals

Entities must also notify affected individuals, and inform them of the contents of this statement. There are three options for notifying:

- **Option 1:** Notify all individuals
- **Option 2:** Notify only those individuals at risk of serious harm

If neither of these options are practicable:

- **Option 3:** publish the statement on the entity's website and publicise it

Entities can provide further information in their notification, such as an apology and an explanation of what they are doing about the breach.

In some limited circumstances, an exception to the obligation to notify the Commissioner or individuals may apply.

Review

Review the incident and take action to prevent future breaches. This may include:

- Fully investigating the cause of the breach
- Developing a prevention plan
- Conducting audits to ensure the plan is implemented
- Updating security/response plan
- Considering changes to policies and procedures
- Revising staff training practices

Entities should also consider reporting the incident to other relevant bodies, such as:

- police or law enforcement
- ASIC, APRA or the ATO
- The Australian Cyber Security Centre
- professional bodies
- your financial services provider

Entities that operate in multiple jurisdictions may have notification obligations under other breach notification schemes, such as the EU General Data Protection Regulation.