

NOTICE TO ALL PERSONS IN AUSTRALIAN IMMIGRATION DETENTION ON 31 JANUARY 2014

This is an important Notice that may affect your rights.

This Notice is available in the following languages at www.immigrationdatabreach.com.au.

Arabic العربية	Azerbaijani (North) Azərbaycan dili (Şimal)	Bengali বাংলা	Burmese မြန်မာ	Chinese Traditional (Cantonese) 繁體中文	Dari دری	Hazaragi هزاره گی
Hindi हिन्दी	Indonesian Bahasa Indonesia	Kurdish (Kurmanji) Kurdî (Kurmancî)	Kurdish (Sorani) کوردی (سۆرانی)	Chinese Simplified (Mandarin) 简体中文	Pashto پښتو	Farsi (Persian) فارسی
Punjabi ਪੰਜਾਬੀ	Sinhalese සිංහල	Sylheti সিলেটি	Tamil தமிழ்	Urdu اردو	Uzbek O'zbekcha	Vietnamese Tiếng Việt

1 What is this Notice about?

Background to the Data Breach

- 1.1 This Notice relates to a data breach that occurred via the website of the Department of Immigration and Border Protection, which is now named the Department of Home Affairs (the **Department**).
- 1.2 On 10 February 2014, a spreadsheet was published on that website that contained the personal information of approximately 9,000 persons. Those persons were in immigration or other places of detention. The spreadsheet should not have been published on the website. It was an accident. The accidental publication of personal information, such as your name and address, is called a Data Breach (the **Data Breach**).
- 1.3 The personal information was removed from the Department's website on 19 February 2014 and from a historical version of the Department's website on 27 February 2014.

The complaint made to the Office of the Australian Information Commissioner

- 1.4 On 30 August 2015, a complaint was made to the Office of the Australian Information Commissioner (**OAIC**) on behalf of all persons affected by the Data Breach. The Australian Information Commissioner investigated the complaint.
- 1.5 On 24 January 2018, the OAIC issued a notice (like this one) to all persons who may have been affected by the Data Breach (the **First Notice**). The First Notice asked for information about the impact of the Data Breach.
- 1.6 On 11 January 2021, the Australian Information Commissioner decided that:
 - (1) As a result of the Data Breach, the Department interfered with the privacy of the persons affected by the Data Breach; and

(2) People affected by the Data Breach are entitled to receive compensation for the loss or damage that they suffered as a result of the Data Breach.

1.7 The Australian Information Commissioner's decision was appealed to the Administrative Appeals Tribunal (**AAT**). On 13 September 2023, the AAT set out a new process by which persons affected by the Data Breach would have their compensation assessed. This process is called the Compensation Assessment Scheme.

The Compensation Assessment Scheme

1.8 In accordance with the AAT's decision, the law firm Norton Rose Fulbright Australia (**NRFA**) has been appointed to independently assess the compensation to be awarded to persons affected by the Data Breach.

1.9 This Notice is the first step in the Compensation Assessment Scheme.

2 What do I need to do?

2.1 If you did not suffer any loss or damage as a result of the Data Breach, you will not be entitled to compensation. You do not need to respond to this Notice.

2.2 If you believe you have suffered loss or damage as a result of the Data Breach, or if you are not sure, and you wish to claim compensation under the Compensation Assessment Scheme, you **must** respond to this Notice by filling in the online form available at this link: www.immigrationdatabreach.com.au (the **Response Form**). Please see paragraph 6 below for examples of loss or damage.

2.3 If you believe you have suffered loss or damage as a result of the Data Breach but do not want to participate in the Compensation Assessment Scheme, you must opt-out in response to this Notice. The Response Form permits you to select the option 'opt-out.' Please see paragraph 3 below for more information about the consequences of opting out of the Compensation Assessment Scheme.

2.4 The information you provide in the form will be sent to NRFA. If you do not have access to a reliable internet connection, you may also fill in a paper copy of the Response Form and provide your responses via post to Compensation Assessment Scheme, Norton Rose Fulbright Australia, Level 6, 60 Martin Place, SYDNEY, NSW 2000. Please request a paper copy of the Response Form by contacting NRFA via email at auscas@nortonrosefulbright.com or phone at (02) 9330 8006.

2.5 You must provide a response to this Notice by **4pm on 10 June 2024** (the **Deadline**). You may request an extension of time to respond, however it is not guaranteed that you will receive an extension.

2.6 All requests for an extension of time must be sent via email to auscas@nortonrosefulbright.com or registered post to Compensation Assessment Scheme, Norton Rose Fulbright Australia, Level 6, 60 Martin Place, SYDNEY, NSW 2000. You may also request an extension of time by contacting NRFA via phone at (02) 9330 8006.

2.7 **If you did not respond to the First Notice and do not respond to the Notice by the Deadline (and do not obtain an extension of time), you will not receive compensation for any loss or damage suffered as a result of the Data Breach.**

3 What does it mean to 'opt-out' of the Compensation Assessment Scheme?

- 3.1 Please be aware that if you receive compensation under the Compensation Assessment Scheme all your legal rights to seek compensation for the Data Breach by other means (including by commencing court proceedings) are **extinguished**.
- 3.2 This is because the Compensation Assessment Scheme is intended to fairly assess your claim and then bring an end to any dispute between you and the Department.
- 3.3 If you wish to pursue your legal rights outside the Compensation Assessment Scheme, you must opt-out of the Compensation Assessment Scheme by responding to this Notice and selecting the 'opt-out' option in the Response Form. Before you decide to opt-out, we encourage you to seek legal advice about that decision, including about the costs and difficulties of other kinds of claims, including whether too much time has passed since the Data Breach for a claim to now be made outside of the Compensation Assessment Scheme.

4 What if I have already provided information in response to the First Notice?

- 4.1 If you provided information in response to the First Notice, this information will be considered when NRFA assesses the compensation you may be entitled to. You do not need to provide the same information again.
- 4.2 If you wish to provide updated or additional information in response to this Notice, it is important that you provide it by the Deadline.

5 What if I did not respond to the First Notice?

- 5.1 You now have a further opportunity to provide important information to NRFA.
- 5.2 However, you need to explain why you did not respond to the First Notice. NRFA will then assess whether you are entitled to participate in the Compensation Assessment Scheme.
- 5.3 Information that may be relevant to why you did not respond to the First Notice may include:
 - (1) Evidence that you did not receive the First Notice;
 - (2) Evidence that your response was not properly received by the OAIC;
 - (3) A written statement explaining that you had a mistaken view that you would not be entitled to compensation;
 - (4) A written statement explaining that you did not understand or did not know how to respond to the First Notice; or
 - (5) A written statement explaining that other circumstances (including medical illness, financial difficulties, or carer responsibilities for family members) prevented you from responding to the First Notice.

6 What kind of loss or damage will I be able to receive compensation for?

6.1 The Compensation Assessment Scheme can compensate you for:

- (1) Economic loss or damage (**Economic Loss**); and
- (2) Non-economic loss or damage (**Non-Economic Loss**).

6.2 The Compensation Assessment Scheme can only compensate you for Economic Loss and Non-Economic Loss that was caused by the Data Breach. The Compensation Assessment Scheme cannot compensate you for other loss or damage that was not caused by the Data Breach.

Economic Loss

6.3 Economic Loss means financial loss you have suffered or incurred, such as money you have spent (out of pocket expenses) or income you have not received (loss of income) that was caused by the Data Breach. This may include:

- (1) Any out of pocket medical expenses you have incurred as a result of the Data Breach. This may include costs associated with:
 - (a) consultations with medical practitioners;
 - (b) medication and treatment; and
 - (c) medical reports;
- (2) Any loss of income from being unable to work as a result of the Data Breach; and
- (3) Any other out of pocket expenses you have incurred as a result of the Data Breach including:
 - (a) costs associated with any previous complaints made to the OAIC or responding to the First Notice as a result of the Data Breach; and
 - (b) costs to protect your identity as a result of the Data Breach.

Non-Economic Loss

6.4 Non-Economic Loss means loss that is of a non-financial nature (i.e. does not include any Economic Loss). Non-Economic Loss may include:

- (1) Feelings of anxiousness, stress, fear, anger, pain and suffering, humiliation or embarrassment;
- (2) Physical and psychological symptoms as a result of the Data Breach, such as loss of sleep or headaches; and
- (3) Medical conditions that were caused or exacerbated by the Data Breach, including anxiety or depression, as diagnosed by a medical practitioner.

7 What kind of information should I provide to NRFA?

7.1 The Response Form will ask you to provide specific pieces of information. You also have the option of providing additional evidence in support of your compensation claim.

7.2 NRFA will consider a variety of evidence when assessing your entitlement to compensation for Economic Loss and Non-Economic Loss.

7.3 Examples of the types of evidence you can submit are as follows:

Evidence to support Economic Loss

- (1) Receipts and other records of out of pocket expenses incurred by you as a result of the Data Breach. For example, this includes receipts for:
 - (a) appointments with medical practitioners as a result of the Data Breach;
 - (b) reports prepared by medical practitioners as a result of the Data Breach;
 - (c) fees you incurred (such as from a legal practitioner) in relation to any previous complaint made to the OAIC about the Data Breach or when you responded to the First Notice as a result of the Data Breach; and
 - (d) other expenses to protect your identity as a result of the Data Breach.
- (2) Payslips, letters from your employer, medical certificates and other documents that evidence any loss of income from being unable to work due to the Data Breach; and
- (3) Signed statutory declarations or statements made by you, your family members or other persons close to you describing any Economic Loss you have suffered as a result of the Data Breach.

Evidence to support Non-Economic Loss

- (1) Signed statutory declarations or statements made by you, your family members or other persons close to you that describe the impact of the Data Breach on you, including how it may have impacted your physical or psychological well-being; and
- (2) Reports, records and certificates from a medical practitioner which describe:
 - (a) any medical conditions you may have suffered that were caused or exacerbated by the Data Breach;
 - (b) any consultations you had with your medical practitioner as a result of the Data Breach; and/or
 - (c) any treatment you received as a result of the Data Breach.

8 Can I respond to this Notice over the phone?

8.1 While your response will be processed more efficiently if you respond via the online form available at www.immigrationdatabreach.com.au, you are entitled to respond to this Notice over the phone.

8.2 Please contact NRFA at (02) 9330 8006.

9 Qualified interpreters

9.1 This Notice is available in multiple languages. Please refer to the link available at the beginning of this document.

- 9.2 You are also entitled to respond to this Notice in your language of choice. Please contact NRFA via email at auscas@nortonrosefulbright.com or phone at (02) 9330 8006 to request the assistance of a qualified interpreter.

10 Am I entitled to financial assistance to allow me to respond to the Notice?

- 10.1 Yes. You are entitled to claim up to \$500 to cover the cost of any assistance provided by a legal practitioner to you when preparing your response to the Notice. This financial assistance can be claimed through the Response Form.
- 10.2 You also do not need to pay for translation or interpreter services provided to you by the Scheme Administrator during your participation in the Compensation Assessment Scheme (including receiving translated copies of the Notice and Response Form).

11 Questions and assistance

- 11.1 If you need assistance with responding to this Notice or have any questions, please contact NRFA at (02) 9330 8006 or auscas@nortonrosefulbright.com.

12 Your privacy

- 12.1 Your privacy is important to NRFA. NRFA will handle your personal information in accordance with the *Privacy Act 1988* (Cth), including the Australian Privacy Principles.
- 12.2 Under orders issued by the Administrative Appeals Tribunal, NRFA was appointed by the Department of Finance to independently assess the compensation to be awarded under the Compensation Assessment Scheme. NRFA will collect, use and disclose your information for that purpose. In addition to collecting personal information from you, NRFA may also collect personal information about you from the OAIC and the Department.
- 12.3 If NRFA is not able to collect your personal information, NRFA will not be able to assess your claim for compensation.
- 12.4 When NRFA is assessing your claim, NRFA will need to share your personal information with the Department of Home Affairs and the Department of Finance. This is to help the Departments understand and respond to your claim and our assessment. NRFA may also need to share your personal information with independent advisers such as medical and legal practitioners.
- 12.5 We may share your personal information with our staff and contractors who help us to manage the information technology we use to store your personal information. Some of those staff and contactors may be located outside Australia, such as the UK.
- 12.6 NRFA's Privacy Policy contains information about how you may access the personal information that we hold about you and seek the correction of that information. The Privacy Policy also contains information about how you may complain about a breach of the Australian Privacy Principles, and how NRFA will deal with such a complaint. You can access NRFA's Privacy Policy on its [website](https://www.nortonrosefulbright.com/en-au/global-statements/privacy-notice) at this location: <https://www.nortonrosefulbright.com/en-au/global-statements/privacy-notice>.
- 12.7 The privacy policies of the Department of Home Affairs and the Department of Finance contain the same kinds of information:
- Department of Home Affairs: <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>

- Department of Finance: <https://www.finance.gov.au/about-us/privacy-policy-summary>
- 12.8 If you have any questions about the personal information we collect and how we will handle your information, including any correction of personal information you have submitted, please contact Norton Rose Fulbright Australia at auscas@nortonrosefulbright.com or (02) 9330 8006.