



Privacy and Personal Information Protection Amendment Bill 2021 **NSW RFS comments**

➤ General comment – ‘Head of agency’

It is noted that a large number of the rights and obligations imposed by the provisions of proposed Part 6A are imposed upon the “head of the public sector agency”. While the proposed section 59F(1) provides that the head of the public sector agency may direct or appoint another person to carry out the assessment of the suspected eligible breach, it is not clear whether there is any basis on which any of the other obligations may be delegated by the head of agency to another officer.

The NSW RFS notes that this is not consistent with the mandatory notification scheme under the *Privacy Act 1988* (Cth), which does not make reference to the head of the agency (or equivalent), but simply imposes the relevant obligations upon ‘the entity’.

➤ General comment – lack of clear alignment with IPPs

While the NSW RFS appreciates that the Bill has been drafted with the intention of maintaining consistency with the comparable scheme under the *Privacy Act 1988* (Cth) so far as is practicable, it is noted that the resulting definition of ‘eligible data breach’ does not align with the Information Protection Principles (IPPs) under the Act.

While ‘unauthorised disclosure’ would involve a breach of section 18 of the Act (Disclosure IPP), the concepts of ‘unauthorised access’ and loss of information do not align with IPPs under the Act and may therefore be more difficult for agencies to identify and assess.

➤ General comment – ‘serious harm’

It is noted that the Factsheet for the Bill provides that the IPC will publish guidance and resources to assist NSW public sector agencies to assess whether a breach meets the ‘serious harm’ threshold. The NSW RFS strongly supports this approach. Given the implications of the scheme it is crucial that the threshold can be understood and applied by agencies with relative ease.

➤ Meaning of ‘cyber incident’ and ‘cyber security’

It is noted that the concepts of ‘cyber incident’ (proposed section 59L) and ‘cyber security’ (proposed section 59W) are not defined within the Act. These terms are not currently defined under the Act, and the Bill does not propose to insert any definitions. While it is noted that the IPC may prepare guidelines about the cyber security exemption under proposed section 59W, the NSW RFS considers that there may be benefit in seeking to define these terms in the legislation for better clarity for agencies.