



COVIDSafe APP LEGISLATION PASSED

The Privacy Amendment (Public Health Contact Information) Bill 2020 passed both Houses of Parliament on 14 May 2020, becoming the Privacy Amendment (Public Health Contact Information) Act 2020. The Act as passed inserts Schedule 1 into the Privacy Act 1988, creates a list of offences arising from the introduction and operation of the COVIDSafe app and provides for various privacy protections. Here we provide a general summary of the main aspects of the legislation.

What offences are created by the Act?

The Act makes it an offence for:

- A person to collect, use or disclose COVID app data when not permitted by the legislation (s 94D)
- A person to upload or cause to be uploaded data from a communication device to the National COVIDSafe Data Store without consent (s 94E)
- A person to retain COVID app data uploaded from a communication device to the National COVIDSafe Data Store on a database outside Australia or to disclose such data to another person outside Australia, except where that person is employed by a State or Territory health authority and discloses the information for contact tracing purposes (s 94F)
- A person to decrypt encrypted COVID app data stored on a communication device (s 94G)
- A person to require another to download the app, have it in operation on their communication device or require them to consent to uploading data from a device to the National COVIDSafe Data Store (s 94H)
- A person to refuse to enter into contracts, takes adverse action against, refuse another person entry into a premises they would otherwise have the right to enter or is otherwise accessible to the public, refuse to allow another person to



participate in an activity, refuse to receive goods/services from another or insist on paying less for the goods/services or refuses to provide goods unless they receive more monetary consideration, on the basis that the other person has not downloaded the COVIDSafe app, does not have it in operation or has not consented to uploading COVIDapp data to the National COVIDSafe data Store

Obligations under the Act

The Act not only provides numerous offences that can arise from the app's misuse, but also places various obligations on the government regulating the use of collected data. The data store administrator must take all reasonable steps to ensure data is not retained on a device for more than 21 days (s 94K). The data store administrator must take all reasonable steps to delete data from the Data Store as soon as practicable if a COVIDSafe user requests the deletion of registration data (s 94L), and the administrator must not collect COVID app data from a communication device relating to a person who is a former COVIDSafe user (s 94N) on that device. If a person accidentally receives COVID app data they must delete the data and notify the data store administrator as soon as practicable (s 94M). At the end of the COVIDSafe data period, the data store administrator is not to collect any COVID app data or allow the app to be downloaded and is to delete all COVID app data from the National COVIDSafe Data Store as soon as reasonably practicable (s 94P).

Application of general privacy measures

COVID app data relating to an individual is taken to be "personal information" about the individual (s 94Q). Any breach of a requirement under the Act with regard to an individual is to be considered an act or practice interfering with the privacy of the individual (s 94R), and is an "eligible data breach" for the purposes of the Act. The Information Commissioner retains a role of oversight and power to conduct an assessment and investigation of data breaches.

The end of the COVIDSafe data period

The legislation provides that the Health Minister is to determine a day if they are satisfied that use of COVIDSafe is no longer required to prevent or control or is no longer likely to be effective in preventing or controlling the entry, emergence, establishment or spread of COVID-19. The Health Minister is to first consult with relevant parties, namely the Commonwealth Chief Medical Officer or the Australian Health Protection Principal Committee (s 94Y).