



Fair Work Commission
Australia's national workplace relations tribunal

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Section 94H of the Privacy Act 1988

94H Requiring the use of COVIDSafe

1. A person commits an offence if the person requires another person to:
 1. download COVIDSafe to a communication device; or
 2. have COVIDSafe in operation on a communication device; or
 3. consent to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

2. A person commits an offence if the person:
 1. refuses to enter into, or continue, a contract or arrangement with another person (including a contract of employment); or
 2. takes adverse action (within the meaning of the *Fair Work Act 2009*) against another person; or
 3. refuses to allow another person to enter:
 1. premises that are otherwise accessible to the public; or
 2. premises that the other person has a right to enter; or
 4. refuses to allow another person to participate in an activity; or
 5. refuses to receive goods or services from another person, or insists on providing less monetary consideration for the goods or services; or
 6. refuses to provide goods or services to another person, or insists on receiving more monetary consideration for the goods or services;
on the ground that, or on grounds that include the ground that, the other person:
 7. has not downloaded COVIDSafe to a communication device; or
 8. does not have COVIDSafe in operation on a communication device; or
 9. has not consented to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

3. To avoid doubt:
 1. subsection (2) is a workplace law for the purposes of the *Fair Work Act 2009*; and
 2. the benefit that the other person derives because of an obligation of the person under subsection (2) is a workplace right within the meaning of Part 3-1 of that Act.

What is the protection?

An employer must not take adverse action^{[1] [1]} against an employee or prospective employee, on the grounds that they:

- have not downloaded COVIDSafe to a communication device

- do not have COVIDSafe in operation on a communication device, or
- have not consented to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Example

An employer must not dismiss an employee or refuse to employ a person because they haven't downloaded COVIDSafe.

Are there exceptions?

There are no exceptions.

Reference

[1] [2] *Privacy Act 1988* (Cth) s.94H(2)(b).

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