

# 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:

- a. Download COVIDSafe to a communication device; or
- b. Have COVIDSafe in operation on a communication device; or
- c. 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:

- a. Refuses to enter into, or continue, a contract or arrangement with another person (including a contract of employment); or
- b. Takes adverse action (within the meaning of the *Fair Work Act 2009*) against another person; or
- c. Refuses to allow another person to enter:
  - i. Premises that are otherwise accessible to the public; or
  - ii. Premises that the other person has a right to enter; or
- d. Refuses to allow another person to participate in an activity; or
- e. Refuses to receive goods or services from another person, or insists on providing less monetary consideration for the goods or services; or
- f. 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:

- (g) has not downloaded COVIDSafe to a communication device; or
- (h) does not have COVIDSafe in operation on a communication device; or
- (i) 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:

- a. Subsection (2) is a workplace law for the purposes of the *Fair Work Act 2009*. And
- b. 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 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.

There are no exceptions!

## Penalty Unit

[A Penalty Unit is equal to \\$222 as of July 1, 2020.](#) 300 Penalty Units = \$66,600

**Reference:** *Privacy Act 1988* (Cth) s.94H(2)(b).