



Employee Data Privacy – Australia

Data Privacy Laws and Regulations

What laws apply to the collection and use of individuals' personal information?

Data privacy laws have become more prominent in recent years. As the amount of personal information available online has grown substantially, there has been an enhanced focus on the processing of personal data, as well as the enforcement of such laws.



The Privacy Act 1988 (Cth) (Privacy Act) and the Australian Privacy Principles (APPs) provide the basic framework for Data Privacy in Australia. Entities which are subject to the Privacy Act must comply with the

APPs when collecting and handling personal information. Australian privacy laws do not distinguish between data processors (3rd party processors) and controllers (employers).

Note that there is an 'employee records exemption' in the Privacy Act. Certain employee records (including: terms and conditions of

employment; training, disciplining and resignation; personal and emergency contact details; performance and conduct; taxation, banking and superannuation affairs; remuneration; leave; or, trade union membership) are exempt if the data is managed by the employer. The employee exemption would **not apply** to any information outside of these categories. If the employee records are disclosed to and collected by a third party, the exemption would also not apply to the processing of the information by the third party.

The Privacy (Tax File Number) Rule 2015 (TFN Rule), the Taxation Administration Act 1953, the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 governs the collection, storage, use, disclosure, security and disposal of an employee's tax file numbers. Note that the 'employee records exemption' does **not** apply to the TFN rule.

Australia joined the APEC Cross Border Privacy Rules System in November 2018.

Health Records

There is also legislation in some States and Territories relating to health records including:

UKG HR COMPLIANCE ASSIST

- Health Records Act 2001 (Victoria) and the Health Privacy Principles in the Act;
 - Health Records and Information Privacy Act 2002 (New South Wales) and the Health Privacy Principles in that Act; and,
 - Health Records (Privacy and Access) Act 1997 (Australian Capital Territory).
- how this information will be handled;
 - how employees can review their information;
 - how employees can request amendments to their health information; and,
 - how to make complaints relating to the employer's handling of any health information.
-



There is no employee records exemption in relation to health information.

Employee health

information should be handled in accordance with legal requirements outlined in each state Act and can only be disclosed to employees on a need-to-know basis. Company policies relating to health information should outline:

The authority responsible for enforcement of the Privacy Act is:

Australian Information Commissioner and their Office of the Australian Information Commissioner (OAIC)

<https://www.oaic.gov.au/>

Last updated July 2022.

DISCLAIMER: The information contained in this document is for general information purposes only and is not intended to be a source for legal, tax, or any other professional advice and should not be relied upon as such. This information is not intended to create, and the receipt of it by the reader does not constitute, an attorney-client relationship. All legal or tax questions or concerns should be directed to your legal counsel or tax consultant. Laws and regulations may change and UKG Inc. ("UKG") cannot guarantee that all the information in this document is accurate, current or complete. UKG MAKES NO REPRESENTATION OR WARRANTIES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE DOCUMENT OR THE INFORMATION OR CONTENT CONTAINED HEREIN AND SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, OR COMPLETENESS OF THIS INFORMATION. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER UKG, NOR ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES, OR AFFILIATES, ARE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OR PROFITS, OR BUSINESS INTERRUPTION), EVEN IF THE UKG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT, ARISING IN ANY WAY OUT OF THE USE OF OR INABILITY TO USE THIS INFORMATION. This document and the content are proprietary and confidential information of UKG. No part of this document or its content may be reproduced in any form, or by any means, or distributed to any third party without the prior written consent of UKG © 2022 UKG Inc. All rights reserved.