

Guidance for customers when checking in with a QR code in Australia

Under the COVID – 19 restrictions, all States and Territories have introduced an emergency directive for track and tracing to manage the ongoing risks posed by the COVID virus, whereby, businesses are required to collect personal information about the customer and visitor who visits the premises via a QR code check-in. This has been implemented to help assist with COVID – 19 contact tracing.

WARNING – Section 94H of the Privacy Act 1988 (Federal) applies to the COVID SAFE APP. It was brought in as a measure to ensure that no one is forced to download the App electronically before access to a service is granted. Whilst the section does not apply directly to QR Codes check-in, the main motivation behind the legislation is the privacy obligations created as a result of using an electronic medium for check-in. In principle, section 94H extrapolates the main principles around using electronic sign-in's. Please see the information enclosed: <https://www.oaic.gov.au/privacy/covid-19/the-covidsafe-app-and-my-privacy-rights/>

It is important to note however that the legislation does not apply directly to QR Codes.

Under the privacy Act 1988, businesses are obligated by law to clearly inform the customer/individual about what information they are collecting, that the collection is required by law, the purpose of the collection, who the information will be disclosed to and the consequences of failing to provide the information. This can be done by displaying a prominent notice on the premises and/or website and reiterating the information when you talk to the customer.

In most states the current directives allow for individuals to check in via two options.

- 1. Electronic QR Code Check -In or Downloading an App made by the state specifically for QR code check-ins**
- 2. Manual Check-In**

We have developed this template so that individuals or customers are informed of the current track and tracing (QR Check – Ins) directives for each state and in particular for those who wish to manually Check-In because they don't have the means for checking in electronically or because they don't trust that their data will be held safe and securely.

For Individuals or customers who wish to check in manually, the following Privacy Act 1988 – See Part 4 – Integrity of personal information, clause 10 and 11, pg 349 laws apply to Businesses whose annual turnover is more than 3 Million dollars; or see The Principle Guidelines Chapter 11, Security of Personal Information, for a breakdown of the law.

So basically, when checking in manually businesses who have a turnover of more than 3 million dollars are bound by the following guidelines for individuals/customers who wish to manually check in. These guidelines apply to all states and territories.

The following guidance is designed to assist businesses that are required to collect contact information by Orders or Directions:

1. You should only collect the personal information required under the Direction or Order.

You are not permitted to collect any additional personal information for contact tracing purposes.

2. You should notify individuals before you collect the personal information.

You must clearly inform an individual of the matters set out in APP 5, including what information you are collecting, that the collection is required by law, the purposes of collection, who the information will be disclosed to and the consequences of failing to provide the information. You can do this by displaying a prominent notice on your premises and website, and reiterating the information when you talk to your customer or client.

3. You should securely store this information once you have collected it.

Do not place the names and phone numbers or other details in a book or on a notepad or computer screen where customers may see it. You should restrict access to the information to only those staff in your business who need to see it and ensure that the information is secured and protected at all times. It may be best to record the personal information you collect for contact tracing purposes in a separate record (rather than recording all details in your booking system, for example). This will ensure that you can keep the information secure and destroy it once it is no longer needed. You should also be mindful of your [NDB scheme obligations](#).

4. You should only provide this information to relevant health authorities who undertake contact tracing activities, when requested to do so.

Contact tracing is undertaken exclusively by State and Territory health authorities, and you should only disclose the information to health authorities when they request it for contact tracing purposes.

5. You should destroy this information once it is no longer reasonably necessary for the purpose of contact tracing.

You should destroy the information once you are no longer required to keep it. If there is no set period for which you must retain the information under the Order or Direction, you should destroy it after a reasonable period of time.

It has come to our attention that most medium to large businesses with a turnover of more than 3 million dollars are not complying with the Privacy Act 1988 insofar as securing the privacy of your information correctly. For example; if you are checking into a JB Hi Fi store and choose to check in manually and the process for manual checking in involves a notepad with the ability to see everyone else's check in details then this is a BREACH OF PRIVACY. These businesses are acting unlawfully and MUST be reprimanded. Unfortunately, these businesses will only be investigated by reporting them. We encourage each individual to report Businesses breaching the Privacy Law Act 1988 by filing your complaint with the [Office of the Australian Information Commissioner \(OAIC\)](#), before making a complaint we

suggest you take photos of the offence made by the business to use as evidence, including the name and location of the store. Once the complaint has been lodged the person making the complaint can elect not to resolve the problem or breach and have a free conciliation hearing held by OAIC with the Business in question and can elect to be compensated in one way or another.

Under the Privacy Act 1988, there are no civil penalty provisions for breaching the Privacy Act 1988, which is why we encourage the individual to [report](#) the Breach to OAIC and elect to seek a compensation. You can simply state my data has been breached, I want a conciliation hearing and I want X amount of money.

It is every business obligation to have your information protected.

Under Section 6D, page 40 of the Privacy Act 1988, for [small businesses](#) (that isn't a health provider) whose annual turnover is less than 3 million dollars, by law, are not bound by the Privacy Act 1988 laws unless they have opted in when registering their business. This means the small business is not bound by the provisions of the Privacy Act 1988 laws and at the very most only have to implement a best practice solution, so if they are collecting personal information on a notepad with everyone's private information visible to see, the best you can do is inform them that you want to have your details secured privately and ask them for an alternative, safe manual check in option. However, if a small business has opted in then they are bound by the Privacy Act Laws.

Listed below, are the current state directives for checking in electronically or manually in Australia. If the directive in your state is inconsistent with the Privacy Act 1988, we say that the Federal Law takes precedent over the state laws insofar as the inconsistency.

[ACT Public Health \(Check In Requirements\) Emergency Direction 2021 \(No 2\)](#)

[WA Emergency Management Act 2005 \(WA\) Section 72A Contact Register Directions \(No 3\)](#)

[VIC Workplace Directions \(No 39\) Public Health and Wellbeing Act 2008 \(Vic\) Section 200](#)

[VIC Media Release for Checking In](#)

[SA Emergency Management \(Activities—General No 3\) \(COVID-19\) Direction 2021](#)

[NSW Public Health \(COVID-19 Gathering Restrictions\) Order \(No 2\) 2021](#)

[QLD Restrictions on Businesses, Activities and Undertakings Direction \(No. 23\)](#)