



EMPLOYMENT | MAY 2022

PRIVACY AWARENESS WEEK: IS YOUR PERSONAL INFORMATION PROTECTED?

This week is Privacy Awareness Week, and this year's theme is "*Privacy: The foundation of trust.*" The purpose of Privacy Awareness Week is to, among other things, highlight the importance of protecting personal information – and with a number of key developments in the privacy law space, it is an important reminder of the obligations imposed on many businesses under the *Privacy Act 1998 (Cth)* (Privacy Act).

This article builds on our previous commentary in our [HFW Workplace Relations Update 2022](#), titled "*For the record: what we learned about employee vaccination records during the COVID-19 pandemic.*" In this article, we look at some of the key cases that have emerged in the privacy law space that should be on the radar of corporate employers, either because they relate to employees or they reflect matters which could arise in the employment context.

AAQ and Redimed Pty Ltd

[AAQ and Redimed Pty Ltd \(Privacy\) \[2022\] AICmr 7](#) involved a complaint which arose after an employee applied for a role with their then employer for which attendance at a medical examination, with Redimed (a company that conducts pre-employment medical assessments), was required. The employee requested from Redimed a copy of the report produced as a consequence of the examination, but was told it could not be released and Redimed referred the employee to their employer.

The Office of the Australian Information Commissioner (**OAIC**) found that Redimed interfered with the employee's privacy by initially refusing to provide the employee with access to a medical report commissioned by the employer, and then by only providing a redacted version of that report (though an un-redacted, complete copy was subsequently provided). This was found to be in breach of Australian Privacy Principles (**APP**) 12.1 and 12.5. In addition, the OAIC found that Redimed also failed to provide the employee with a written notice setting out various matters relating to that refusal, including mechanisms available to the employee to make a complaint to the OAIC. Importantly, Redimed was unsuccessful in arguing that various exceptions under the Privacy Act applied to its conduct.

Ultimately, the OAIC made a declaration in relation to Redimed's privacy interference, and, among other things, required it to have an independent review undertaken of its privacy compliance and provide the OAIC with a report produced as a part of that review.

'WG' and AustralianSuper Pty Ltd

In ['WG' and AustralianSuper Pty Ltd \(Privacy\) \[2020\] AICmr 64](#), the OAIC found that AustralianSuper breached the Privacy Act by, among other things, disclosing the complainant's personal information to their former lawyers. The complainant had made a claim for payment under income protection and total and permanent disablement insurance policies they held with AustralianSuper as part of their superannuation arrangements. During the life of that claim, the complainant revoked, by email, the authority of its lawyers to act. However, despite the revocation of that authority, the complainant's personal information was disclosed to their former lawyers by AustralianSuper due to human error.

The OAIC found numerous breaches of the APPs by AustralianSuper related to the disclosure of the complainant's personal information, its failure to take reasonable steps to ensure that it had up-to-date personal information about the complainant, and its failure to take reasonable steps to protect the complainant's personal information from unauthorised use and disclosure.

QF & Others and Spotless Group Limited

In [QF & Others and Spotless Group Limited \(Privacy\) \[2019\] AICmr 20](#), the OAIC found that Spotless Group interfered with employee privacy by disclosing through its subsidiary, a list of then employees of its subsidiary to the Australian Workers' Union (**AWU**). In particular, the OAIC found Spotless Group interfered with the employees' privacy by disclosing the employees' personal information to the AWU (without the employees' knowledge or consent), and by failing to take reasonable steps to protect that information from unauthorised use and disclosure.

In making a declaration, the OAIC required Spotless Group to engage an independent reviewer with privacy expertise to review its privacy compliance framework, issue a written apology to each of the employee complainants, and awarded compensation to each of the employee complainants, which relevantly included a component for aggravated damages.

Other developments

In other developments, the OAIC has also investigated and prosecuted alleged privacy contraventions by large, high-profile companies, including the Commonwealth Bank of Australia and 7-Eleven. This appears to indicate that the OAIC is approaching privacy compliance with a renewed vigour.

Privacy compliance should be on the radar

Good privacy practices can build trust, demonstrate integrity and enhance an employer's reputation. Conversely, inadequate privacy practices can have adverse consequences and be costly, and that cost is likely to become more pronounced if proposals to increase civil penalties for breaches of the Privacy Act are made law. As has always been the case, compliance with privacy obligations should be taken seriously and a periodic review of privacy practices is prudent.

Do you require assistance?

HFW's Workplace Relations Team is well placed to assist you with privacy law-related issues that intersect with the employment relationship. Please contact us if you would like to discuss how we can assist your business.

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