



# Privacy Factsheet

## For SWP Approved Employers

This factsheet is intended to assist Approved Employers in the Seasonal Worker Programme (SWP) to comply with the *Privacy Act 1988* (Cth) (Privacy Act), including the Australian Privacy Principles (APPs). Where relevant, this factsheet uses the same terms as those in the Deed of Agreement for the Seasonal Worker Programme (Deed) and those terms have the same meaning as set out in the Deed. Defined terms are capitalised.

The Privacy Act regulates the handling of Personal Information and sets out principles for the management, collection, use and disclosure of Personal Information. All Approved Employers, Welfare and Wellbeing Providers, Host Organisations and Subcontractors You contract with as part of the SWP (collectively referred to as 'Approved Employer/s and Contractor/s' in this Factsheet) must comply with the Privacy Act.

This factsheet does not contain all of Your obligations contained in the Deed. Approved Employers and Contractors must ensure they comply with:

- the Privacy Act; and
- other legislation or laws relevant to the respective jurisdiction(s) in which they operate, including privacy, work health and safety or anti-discrimination obligations that apply under state or territory law.

This factsheet is not legal advice and the Commonwealth accepts no liability for any action purportedly taken in reliance upon it. The factsheet does not reduce the obligation of Approved Employers or Contractors to comply with their relevant legal obligations and, to the extent the factsheet is inconsistent with obligations under the Privacy Act or any other legislation or laws relevant to the respective jurisdictions in which Approved Employers or Contractors operate, the Privacy Act and the other legislation or laws, respectively, will prevail.

This factsheet must be read in conjunction with the Deed and the [Seasonal Worker Programme Guidelines](#)<sup>1</sup>.

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<sup>1</sup> <https://docs.employment.gov.au/documents/seasonal-worker-programme-guidelines-effective-1-january-2020>

## Personal information and sensitive information

'Personal Information' is information or an opinion about an identified individual, or an individual who is reasonably identifiable. In order to be Personal Information, the information or opinion does not need to be true and does not need to be recorded in a material form.

Common examples of Personal Information are an individual's name, signature, address, telephone number, date of birth, bank account details, employment details, and commentary or opinion about an individual. This kind of information may be contained in paper files or computer systems and in documents provided by the individual or on their behalf including labour sending unit shortlists of prospective Seasonal Workers.

'Sensitive information' is a subset or type of Personal Information. Common examples of sensitive information include information about an individual's racial or ethnic origin, information or an opinion about an individual's criminal record and health information about an individual.

Generally speaking, there are additional requirements for collecting, using and disclosing sensitive information. For example, an individual's consent is not required for Approved Employers and Contractors to collect Personal Information but will be required for Approved Employers and Contractors to collect sensitive information.

## Australian Privacy Principles

The APPs are principle-based laws that govern the way Personal Information (including sensitive information) must be handled. The APPs cover:

- the open and transparent management of Personal Information, including having a privacy policy;
- an individual having the option of transacting anonymously or using a pseudonym where practicable;
- the collection of solicited Personal Information and receipt of unsolicited Personal Information, including giving notice about collection;
- how Personal Information can be used and disclosed, including overseas;
- maintaining the quality of Personal Information;
- keeping Personal Information secure; and
- the right for individuals to access and correct their Personal Information.

While the APPs are not prescriptive, each Approved Employer and Contractor needs to consider how the principles apply to its own situation. This means that Approved Employers and Contractors must consider their own situation and implement procedures and policies to ensure compliance with the relevant APPs.

For more information on the APPs, refer to Office of the Australian Information Commissioner's (OAIC) quick reference tool available on the [OAIC's website](https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference/)<sup>2</sup>.

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<sup>2</sup> <https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference/>

## Collection of Personal Information and sensitive information

APP 3 outlines when Approved Employers and Contractors may collect Personal Information, including sensitive information.

The circumstances in which Approved Employers and Contractors can collect Personal Information differ from the circumstances in which Approved Employers and Contractors can collect sensitive information, as follows:

- Approved Employers and Contractors **must not** collect Personal Information unless the information is reasonably necessary for one or more of the Approved Employer's or Contractor's functions or activities.
- Approved Employers and Contractors **must not** collect sensitive information about an individual unless:
  - the individual consents to the collection of the information and the information is reasonably necessary for one or more of the Approved Employer's or Contractor's functions or activities; or
  - an exception applies permitting collection without consent.

Some examples of exceptions which may permit the collection of sensitive information without consent include:

- the collection of the information is required or authorised by or under an Australian law or a court/tribunal order;
- it is unreasonable or impracticable to obtain the individual's consent to the collection and the Approved Employer or Contractor reasonably believes that the collection is necessary to lessen or prevent a serious threat to the life, health or safety of any individual or to public health or safety; and
- the Approved Employer or Contractor has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the Approved Employer's or Contractor's functions or activities has been, is being or may be engaged in and the Approved Employer or Contractor reasonably believes that the collection is necessary in order for the Approved Employer or Contractor to take appropriate action in relation to the matter.

The above are examples only.

**Approved Employers and Contractors should seek their own independent legal advice before collecting sensitive information without consent.**

## An Approved Employer's or Contractor's activities and functions

An Approved Employer's or Contractor's functions and activities under the SWP are set out in the Deed and supporting material. Approved Employers and Contractors should satisfy themselves that the purpose of collection falls within their functions and activities which may include but are not necessarily limited to:

- employing Seasonal Workers consistent with workplace laws and the Deed;
- assisting to arrange travel for Seasonal Workers including passports, visas and flights;

- arranging accommodation for Seasonal Workers;
- providing relevant Arrival and Departure briefings to Seasonal Workers;
- ensuring welfare and wellbeing support for Seasonal Workers;
- providing Reports to the department as required;
- supporting Seasonal Workers to comply with the obligations of their visa;
- purchasing and maintaining health insurance for Seasonal Workers; and
- meeting relevant visa sponsorship obligations.

## Consent to the collection of sensitive information

In accordance with the Deed, at or before each Seasonal Worker's Arrival Briefing, Approved Employers must seek the Seasonal Worker's express written consent to collect their sensitive information by asking them to sign a [Privacy Notification and Consent Form](#)<sup>3</sup>. Approved Employers must also seek consent from a Seasonal Worker transferring from another Approved Employer by asking them to sign a Privacy Notification and Consent Form. The Approved Employer should advise the Seasonal Worker that they are not required to give consent for the collection of their sensitive information and can withdraw their consent at any time.

Where consent is not provided or is withdrawn, the Approved Employer cannot collect the Seasonal Worker's sensitive information unless an exception applies to permit collection without consent (see above). If a Seasonal Worker does not consent to the collection of their sensitive information or withdraws their consent to the collection of their sensitive information, the Seasonal Worker will still be able to participate in the SWP, however, the lack of such consent may limit the assistance that an Approved Employer can offer to the Seasonal Worker. For example, if a Seasonal Worker does not consent to the collection of sensitive information about their health, they may not receive appropriate welfare and wellbeing support. This must be explained to the Seasonal Worker.

Where a Seasonal Worker withdraws consent to the collection of their sensitive information, the 'Privacy Notification and Consent Form' must not be destroyed except in accordance with applicable laws.

**Approved Employers and Contractors should seek their own independent legal advice prior to destroying a Privacy Notification and Consent Form.**

The withdrawal of the Seasonal Worker's consent to the collection of their sensitive information should be recorded by the Approved Employer.

## Manner of collection

Personal Information, including sensitive information, must only be collected directly from the Seasonal Worker unless it is unreasonable or impracticable to collect the Personal Information directly from the Seasonal Worker.

<sup>3</sup> <https://docs.employment.gov.au/documents/privacy-notification-and-consent-form>

It will generally be unreasonable or impracticable to collect Personal Information directly from the Seasonal Worker where there are language difficulties which prevent the Seasonal Worker from providing their personal information. In these cases, the personal information may generally be collected through an interpreter or translator. Under APP 10, Approved Employers and Contractors are required to take reasonable steps to ensure that the Personal Information they collect is accurate, up-to-date and complete. Approved Employers and Contractors therefore need to take steps to ensure that the interpreter or translator that is used (such as a co-worker) will be providing accurate and complete information from the Seasonal Worker.

The collection of Personal Information by an Approved Employer or a Contractor must be by lawful and fair means only. A fair means of collecting information is one that does not involve intimidation or deception, and is not unreasonably intrusive.

## Collection of unsolicited Personal Information

APP 4 outlines when an Approved Employer or Contractor may collect unsolicited Personal Information. That is, Personal Information that an Approved Employer or Contractor has not asked for.

Where an Approved Employer or Contractor receives unsolicited Personal Information, it must determine whether it would have been permitted to collect the Personal Information under APP 3 (see above). If the Approved Employer or Contractor determines that it could not have collected the Personal Information under APP 3, the Approved Employer or Contractor must, subject to applicable laws, destroy or de-identify the information.

**Approved Employers and Contractors should seek their own independent legal advice prior to destroying unsolicited information.**

If the Approved Employer determines that it could have collected the Personal Information under APP 3, it must handle the information in accordance with the Privacy Act.

## Notifying of the collection of Personal Information

APP 5 requires an Approved Employer or Contractor that collects Personal Information about an individual, such as a Seasonal Worker, to take reasonable steps either to notify the individual of certain matters or to ensure the individual is aware of those matters.

APP 5.2 lists a number of matters that must be notified to the individual such as the identity and contact details of the Department of Education, Skills and Employment (the department), Approved Employer or Contractor, the purposes for which the department, Approved Employer or Contractor is collecting the Personal Information and the main consequences for the individual if all or some of the Personal Information is not collected by the department, Approved Employer or Contractor.

For Seasonal Workers, these matters are set out in the Privacy Notification and Consent Form and must be brought to the Seasonal Worker's attention at or before each Seasonal Worker's Arrival Briefing and before transferring a Seasonal Worker to another Approved Employer in accordance with the Deed.

The purpose of the [Privacy Notification and Consent Form](#)<sup>4</sup> is to:

- notify Seasonal Workers of the matters required under APP 5;
- obtain the Seasonal Worker's consent to the collection of sensitive information, as required by APP 3 (see above for further information); and
- obtain the Seasonal Worker's consent to the disclosure of their Personal Information overseas (see below for further information).

## Use and Disclosure of personal information

APP 6 provides that if an Approved Employer or Contractor holds Personal Information about an individual that was collected for a particular purpose (primary purpose), the Approved Employer or Contractor must not use or disclose the information for another purpose (secondary purpose) unless the individual consents or an exception applies.

The primary purpose is the purpose for which an Approved Employer or Contractor collects Personal Information. That is, the specific function or activity for which the Approved Employer or Contractor collected the Personal Information.

The primary purpose for the collection of a Seasonal Worker's Personal Information is for the purposes of administering the SWP and related purposes, including research and evaluation of the program, as set out in the Privacy Notification and Consent Form. An Approved Employer or Contractor may use and disclose a Seasonal Worker's Personal Information, including sensitive information, for this purpose.

A secondary purpose is any purpose that is not the primary purpose. Approved Employers and Contractors must not use or disclose Personal Information, including sensitive information, for a secondary purpose, unless the individual consents or an exception applies. It should not be assumed that an individual has given consent on the basis alone that they did not object to a proposal to handle Personal Information in a particular way.

Some examples of exceptions which may permit use or disclosure for a secondary purpose without consent include where:

- the individual would reasonably expect the use or disclosure, and the secondary purpose is related to the primary purpose or, in the case of sensitive information, directly related to the primary purpose;
- it is unreasonable or impracticable to obtain the individual's consent to the use or disclosure and the Approved Employer or Contractor reasonably believes that the collection is necessary to lessen or prevent a serious threat to the life, health or safety of any individual or to public health or safety;
- the Approved Employer or Contractor has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the Approved Employer or Contractor's functions or activities has been, is being or may be engaged in and the Approved Employer or Contractor reasonably believes that the use or disclosure is necessary in order for the Approved Employer or Contractor to take appropriate action in relation to the matter; or

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<sup>4</sup> <https://docs.employment.gov.au/documents/privacy-notification-and-consent-form>

- the use or disclosure is required or authorised by or under an Australian law or a court/tribunal order.

**The above are examples only. Approved Employers and Contractors should seek their own independent legal advice before disclosing Personal Information for a secondary purpose without consent.**

## Direct marketing

APP 7 provides that an Approved Employer or Contractor must not use or disclose Personal Information for the purposes of direct marketing unless an exception applies. Prior to undertaking any direct marketing in relation to the SWP, Approved Employers or Contractors must consider whether the proposed marketing is consistent with the Privacy Act.

**Approved Employers and Contractors should obtain their own independent legal advice.**

## Overseas disclosure

APP 8 relates to the cross-border disclosure of Personal Information. That is, the disclosure of Personal Information to other countries.

At or before each Seasonal Worker's Arrival Briefing and before transferring a Seasonal Worker to another Approved Employer, Approved Employers must expressly inform the Seasonal Worker of overseas disclosure arrangements as outlined in the [Privacy Notification and Consent Form](#) and seek the Seasonal Worker's express written consent to the overseas disclosure of their personal information by asking the Seasonal Workers to sign the Form. The Approved Employer should advise the Seasonal Worker that they are not required to give consent for the overseas disclosure of their Personal Information and can withdraw their consent at any

Where consent is not provided or is withdrawn, the Approved Employer cannot disclose the Seasonal Worker's Personal Information overseas unless an exception applies to permit disclosure without consent. If a Seasonal Worker does not consent to the disclosure of their Personal Information overseas the Seasonal Worker may be unable to participate in the SWP.

Where a Seasonal Worker withdraws consent to the disclosure of their Personal Information, the Privacy Notification and Consent Form must not be destroyed except in accordance with applicable laws.

**Approved Employers and Contractors should seek their own independent legal advice prior to destroying a Privacy Notification and Consent Form.**

The withdrawal of the Seasonal Worker's consent to the disclosure of their Personal Information should be recorded by the Approved Employer.

## Access to or correction of Personal Information

Under APP 12, if an Approved Employer or Contractor holds Personal Information about an individual (such as a Seasonal Worker), the entity must, subject to exceptions, on request by the individual, give the individual access to their Personal Information.

APP 12 does not stipulate any formal requirements for making a request, or require that a request to access Personal Information be made in writing or require an individual to state that it is an APP 12 request. Therefore, a verbal request for Personal Information may be a valid request under APP 12.

Under APP 13, if an Approved Employer or Contractor holds Personal Information about an individual (such as a Seasonal Worker) and the individual requests the Approved Employer or Contractor to correct the information, the Approved Employer or Contractor must take such steps as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose which it is held, the information is accurate, up-to-date, complete, relevant and not misleading.

Generally, an Approved Employer or Contractor must process requests for access to Personal Information (see APP 12) and requests for correction of Personal Information (see APP 13). If an Approved Employer or Contractor receives a request under APP 12 or APP 13 from a Seasonal Worker, noting that they are required under the Deed not to do anything that would be a breach of the Privacy Act if done by the department, they must provide a response to the Seasonal Worker within 30 days after the request is made.

## Privacy breaches

An act or practice of an Approved Employer or Contractor that breaches an APP in relation to Personal Information about an individual is an interference with the privacy of the individual. The Information Commissioner has powers to investigate possible interferences with privacy, either following a complaint by an individual or on the Information Commissioner's own initiative. The Information Commissioner also has a range of enforcement powers and other remedies available.

The Privacy Act requires Approved Employers and Contractors to notify affected individuals and the Information Commissioner about eligible data breaches. An eligible data breach occurs when:

- there is unauthorised access to, or disclosure of, Personal Information held by an entity, or information is lost in circumstances where unauthorised access or disclosure is likely to occur;
- this is likely to result in serious harm to any of the individuals to whom the information relates; and
- the entity has been unable to prevent the likely risk of serious harm with remedial action.

Under the Deed, Approved Employers are required to immediately Notify the department of any breaches of the Privacy Act including, but not limited to, any unauthorised access to, or disclosure of, Personal Information, or a loss of Personal Information the Approved Employer holds. This applies to all breach incidents, whether or not they are an eligible data breach for the purposes of the 'Notifiable Data Breach' (NDB) scheme.

Details about the NDB scheme are available from the [OAIC website](https://www.oaic.gov.au/privacy/notifiable-data-breaches/)<sup>5</sup>.

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<sup>5</sup> <https://www.oaic.gov.au/privacy/notifiable-data-breaches/>

## Privacy complaints

An individual who considers that their privacy has been interfered with can contact the department, their Approved Employer, Contactors and/or the OAIC to make a complaint. In the first instance, complaints should be directed to the Seasonal Worker's Approved Employer, where possible.

Details about how to handle privacy complaints are available from the [OAIC website](#)<sup>6</sup>.

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<sup>6</sup> <https://www.oaic.gov.au/privacy/guidance-and-advice/handling-privacy-complaints/>