

# USA MARKET INSIGHT

## CALIFORNIA CONSUMER PRIVACY ACT

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### WHAT THE CALIFORNIA CONSUMER PRIVACY ACT MEANS FOR AUSTRALIAN BUSINESSES DOING BUSINESS IN CALIFORNIA

The California Consumer Privacy Act (CCPA), enacted in 2018, came into force on January 1, 2020, creating new consumer rights for California residents relating to the access to, deletion of and sharing of personal information that is collected by businesses.

If you are an Australian business doing business in California, or planning to do business in California, you will need to consider whether your business is covered by the CCPA.

#### What businesses are covered by the CCPA?

The CCPA applies to for-profit companies doing business in California that:

- I. have more than US\$25 million in annual gross revenue;
- II. share or sell data from more than 50,000 California consumers, households or devices per year; or
- III. derive more than 50% of revenue from the sale of California residents' data.

Importantly, while there is a requirement for the company to be doing business in California, there is no requirement for the business to have a physical presence in the state of California which means Australian businesses could be covered if the requirements above are met.

The CCPA does not apply to businesses or information that are covered by US federal requirements such as the Health Insurance Portability and Accountability Act or the Gramm-Leach-Bailey Act provided certain conditions are met.

#### What new rights does the CCPA create for California consumers?

The CCPA grants five new rights to California consumers regarding their personal information. These new rights are:

1. the right to know what categories of personal information are being collected, the source of that information, how it is being used and with whom it is disclosed;
2. the right to request and receive a copy of their personal information held during the 12 months preceding the request;
3. the right to have their information deleted;
4. the right to know if their personal information is being sold to third parties and to opt-out or request that their information not be sold; and
5. the right not to be discriminated against if they exercise any of these new rights.



The CCPA defines personal information as any information that is capable of being associated or linked, directly or indirectly, with a particular California resident or household.

A consumer falls within the CCPA if they are a California resident, regardless of whether there is a customer or any other relationship with the business. The CCPA uses the same residency test California uses to determine income tax residency. It therefore does not apply to consumers who are in California temporarily, but does apply to California residents who are outside of California temporarily.

### My business is GDPR compliant, isn't that enough?

Although there are some similarities, there are significant differences between the CCPA and the EU's General Data Protection Regulation (GDPR) that mean compliance with the GDPR will not be sufficient for compliance with the CCPA.

The CCPA covers fewer businesses and a narrower class of consumer than the GDPR, but affords those consumers a broader set of rights.

### California Privacy Act v EU General Data Protection Regulation 1

Selected features	California Consumer Privacy Act, 2018	General Data Protection Regulation, 2018
Data transparency and access*	Yes	Yes
Data deletion*	Yes	Yes
Definition of personal information	Broad	Narrow
Data portability*^	All data	Some data
User opt-out from the sale or sharing of data by firms	Easy	Tedious
Right to be forgotten	No	Yes
Maximum fines	Up to US\$7,500 per individual violation	Up to 4% of global annual revenue, or EUR20m (whichever is greater)
*At consumer request    ^Between services		

### I think my business may be covered by the CCPA, what should I do?

If you are planning on doing business in California and think your business may be covered by the CCPA you should:

- seek legal advice from a lawyer qualified to advise on Californian law;
- review your privacy policy to ensure compliance with the CCPA and update it annually;
- develop systems to enable on-demand disclosures of personal information to verified consumers within 45 days and delete information upon request; and
- include a link on your website homepage that allows California consumers to opt-out of having their personal information sold.

For more information about the CCPA visit <https://oag.ca.gov/privacy>.

**Note:** The information contained in this article is of a general nature and does not constitute legal advice. Whilst care has been taken to ensure this information is accurate, the Commonwealth of Australia represented by the Australian Trade and Investment Commission does not provide warranty or accept liability for any loss arising from reliance on such information.

<sup>1</sup> The Economist, December 18, 2019  
<https://www.economist.com/business/2019/12/18/companies-should-take-californias-new-data-privacy-law-seriously>