

Submission
No 5

**INQUIRY INTO WORK HEALTH AND SAFETY
AMENDMENT (INFORMATION EXCHANGE) BILL 2020**

Organisation: Australian Privacy Foundation

Date Received: 17 August 2020



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

<http://www.privacy.org.au/About/Contacts.htm>

17 August 2020

Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

By email: law@parliament.nsw.gov.au

RE:

This submission from the Australian Privacy Foundation (the “Foundation”) responds to the *Work Health and Safety Amendment (Information Exchange) Bill NSW 2020* (the Bill).

It is noted that the Australian Privacy Foundation was not invited to respond to the consideration of this Bill and we seek leave as an interested stakeholder to respond in brief on the privacy issues related to the proposed Bill.

We do request that the NSW Government understands and acknowledges that the Foundation is a stakeholder on privacy related issues and we would appreciate being invited to be involved in any inquiry process in future.

General comments

The Foundation is concerned that the drafting of the Bill is overly general and has not adequately considered the impacts on privacy for any affected individuals. Privacy is a

human right and human rights must be considered with all legislation that may affect the human rights of individuals in Australia.

Consistent with a human rights approach, there is no evidence of any Privacy Impact Assessment (PIA) being conducted and this is a major oversight.

Recommendation:

The Committee recommends that a Privacy Impact Assessment is conducted and any recommended amendments are adopted before this Bill proceeds.

Privacy Impact Assessment

A PIA is required to assess the privacy impacts for the proposed legislation. Privacy is about ensuring that people have control over their personal information. Information about health is sensitive personal information. People in NSW would reasonably expect that sensitive personal health information is not exchanged without appropriate safeguards in place.

As this Bill is being pushed through in a “hurry” there has been no consideration of privacy impacts or any plans in place to ensure the sharing of information is appropriate and necessary. An independent PIA is needed to identify privacy issues and propose changes to ensure there are adequate protections. The broad drafting of the Bill indicates that the privacy issues have been not considered at all or inadequately considered.

NSW Privacy Commissioner and the OAIC

There is no indication that there has been a consultation with the NSW Privacy Commissioner or the Federal Privacy Commissioner. Those consultations are necessary and need to occur before the Bill proceeds.

Issues with the Bill that need consideration by the Committee

The Committee should recommend a PIA before the Bill proceeds because:

- There has been no consideration of whether this change is needed for Silicosis cases or in other circumstances. If other data needs to be shared there must be an evidence-based need for sharing that information.
- The sharing must be covered by protocols that are included in the regulations
- Information sharing needs to be founded on informed consent wherever possible
- There must not be blanket exemptions from human rights legislation (in this case Privacy laws). If an exemption is needed it must be narrow in scope.
- Transparency is needed on any shared information protocols.
- A security assessment is needed to ensure that sensitive personal health information remains secure.

The above list is non-exhaustive – there are many other issues. The Foundation submits that the above issues means that this Committee should not “rush” through this legislation with a PIA and consultation.

If you have any questions please do not hesitate to contact Kat Lane.

Yours sincerely

Kat Lane,
Vice-Chair

About the Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions. The APF’s primary activity is analysis of the privacy impact of systems and proposals for new systems.

The APF makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters. Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance. When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.