

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

Organisation: Maurice Blackburn Pty Limited

Date Received: 17 August 2020

17 August 2020

Maurice Blackburn Pty Limited
ABN 21 105 657 949
Level 21
380 Latrobe Street
Melbourne VIC 3000

DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

The Hon Wes Fang MLC
Committee Chair
Law and Justice Committee
Upper House Committees
Legislative Council
Parliament of New South Wales

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

Dear Mr Fang,

Thank you for your invitation to provide feedback in relation to the Law and Justice Committee's (the Committee) inquiry into the *Work Health and Safety Amendment (Information Exchange) Bill 2020* (the Bill).

Maurice Blackburn Pty Ltd is a plaintiff law firm with 33 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

Maurice Blackburn notes that the stated objective of the Bill is:

The object of this Bill is to authorise the Secretary of the Ministry of Health to provide information to the regulator established by the Work Health and Safety Act 2011¹.

The Minister, in his second reading speech, described it as follows:

The goal of creating the information-sharing power in this bill is to enable NSW Health to assist work health and safety [WHS] regulators to target their ongoing efforts in education, enforcement, and compliance at the workplaces where they are most needed—that is, at workplaces where workers are contracting silicosis².

¹[https://www.parliament.nsw.gov.au/bill/files/3763/XN%20Work%20Health%20and%20Safety%20Amendment%20\(Information%20Exchange\)%20Bill%202020.pdf](https://www.parliament.nsw.gov.au/bill/files/3763/XN%20Work%20Health%20and%20Safety%20Amendment%20(Information%20Exchange)%20Bill%202020.pdf)

² <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-111123'>; p.2

In general, Maurice Blackburn supports the principle that regulators be able to access any information which is reasonably required to allow them to protect the health and safety of employees, and to properly enforce employers' compliance with occupational health and safety laws. This includes measures which encourage effective information sharing between different arms of government.

However Maurice Blackburn also recognises that the benefits of any laws which allow for the disclosure of personal information, such as a person's medical information, must be weighed against an individual's right to privacy.

Accordingly, Maurice Blackburn submits that the Committee must satisfy itself that the Bill contains sufficient protection to ensure:

1. That the extent of personal information which may be disclosed by the Secretary of NSW Health is only that which is *absolutely necessary* for regulators to perform their proper functions to protect the health and safety of workers; and
2. That personal information is kept secure, and not disclosed to unauthorised parties, or used for authorised purposes.

The need for governments to ensure privacy and to provide strict controls over data sharing are vital for the public to have confidence and trust in the scheme. This has been highlighted by a number of high profile recent developments. We are reminded, for example, of the privacy issues which arose on release of the COVID Safe App. The uptake for that program never achieved the targets set by the government. Privacy is reported as a major reason for people refusing to download the app³.

Obviously, some sort of social licence needs to exist between the data collector/distributor and the consumer in order for them to engage positively in these data sharing projects. The disappointing uptake seems to indicate that a lack of trust will trump the worthiness of the cause.

In response to the poor uptake, the Federal Government needed to provide legislated assurances⁴ that:

- The data was depersonalised/anonymised
- The data would not be used to 'track' individuals
- Breaches of user consent would lead to harsh penalties
- There would be strict, legislated restrictions as to who could access the data
- The data could not be on-sold for other purposes
- There were legislated privacy protections in place.

Strong protections against the improper use of data, including the leaking of data to third parties, are vital for ensuring community support.

Maurice Blackburn notes that the Bill contains *some* safeguards to employee privacy and data rights.

We note the following excerpt from the Minister's second reading speech:

³ See for example <https://theconversation.com/70-of-people-surveyed-said-theyd-download-a-coronavirus-app-only-44-did-why-the-gap-138427>

⁴ See for example <https://www.theguardian.com/australia-news/2020/may/04/government-releases-draft-legislation-for-covidsafe-tracing-app-to-allay-privacy-concerns>

The health secretary is not under any duty to disclose information. The health secretary will have discretion to provide or withhold information and the decision to do so will be based on the secretary's assessment of whether the information in question is necessary for the work health and safety regulators to enforce work health and safety laws in New South Wales⁵.

Maurice Blackburn encourages the Committee to consider whether sufficient direction is offered to the secretary, to determine what information is necessary.

Maurice Blackburn further notes the Minister's statement that:

In the case of silicosis, it is the Government's intention that SafeWork NSW and NSW Health will enter into a memorandum of understanding that will set out the means by which those agencies will share information.

In that memorandum of understanding, SafeWork NSW and NSW Health will make commitments as to how they will share, use and store the information that they receive from health practitioners about diagnoses of silicosis. The memorandum of understanding is being developed by SafeWork NSW and NSW Health in consultation with the Information and Privacy commissioners to ensure that workers' personal information is treated with the respect for their privacy that the Government believes it deserves.⁶

Maurice Blackburn sees this as an appropriate process. We believe it would be useful for SafeWork NSW and NSW Health to consider how the voices of workers can be heard in the development of the memorandum of understanding.

Please do not hesitate to make contact using the contact details below if we can further assist with the Committee's important work.

Yours faithfully,

Jonathan Walsh
Principal Lawyer
Asbestos & Dust Diseases Practice
MAURICE BLACKBURN

Timothy McGinley
Associate
Asbestos & Dust Diseases Practice
MAURICE BLACKBURN

⁵ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-111123'>; p.4

⁶ Ibid; p.4