

Thursday, 14 May 2020

Law Council pleased to see legislation for Tracing app passed

The Law Council of Australia is pleased to see the passage of the Privacy Amendment (Public Health Contact Information) Bill 2020 through Parliament. This will put the regulatory framework governing the operation of the COVIDSafe App on a statutory footing, replacing the Determination made under the *Biosecurity Act 2015* (Cth).

Law Council President, Pauline Wright said she was gratified to see that government had incorporated several amendments as suggested by the Law Council.

“While some issues of concern remain, we were pleased to be able to work with government to achieve an outcome that goes a considerable way towards satisfying our concerns raised on the Exposure Draft Bill,” Ms Wright said.

“This includes a specific oversight role for the Privacy Commissioner and the addition of provisions that will enable the Commissioner to continue investigations where there is overlap with a law enforcement investigation rather than being required to discontinue.”

“We are also pleased that the Privacy Commissioner will be able to continue investigations after the COVIDSafe app and data store have ceased operations, and that legislation has expanded the data that is protected by the Bill,” Ms Wright said.

However, a number of issues of concern remain outstanding and there is a preference to see core parameters for the app prescribed in legislation – such as a requirement for the app to be strictly voluntary in every respect, and not ‘pushed out’ to users’ devices – to remove any risk that the ‘opt in’ model could be unilaterally changed by the executive government from time-to-time.

“The Law Council is still concerned that there are a number of issues not dealt with in the legislation including an absence of protections for derivative data obtained from COVIDSafe app data, and prohibitions on reverse engineering of de-identified data,” Ms Wright said.

“We also support the call for the government to make the app available in languages other than English to ensure its accessibility to all people in the Australian community.”

“It important that the legislation and its practical application, and the operation of the app and data store, are kept under ongoing Parliamentary scrutiny, despite the urgent passage of this legislation.”

“The Law Council looks forward to engaging with the Senate Select Committee on COVID-19 on the COVIDSafe app and its governing legislation, and other matters arising in the course of the response to the COVID-19 pandemic. We also look forward to the government reaching an executive agreement with the US to minimise the potential for data to be accessible under warrant or subpoena via the US CLOUD Act,” Ms Wright said.

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