

Sunday, 26 April 2020

Tracing app has been released but privacy concerns still exist

All comments to be attributed to Law Council of Australia President, Ms Pauline Wright.

While the Law Council commends the work done by government to deliver on the core design principles we released on Friday, there remain some outstanding concerns over the legislative framework that we hope will be addressed.

Most important is the concern that the Determination instrument underpinning the legality of the app makes no provision for oversight and reporting on its use.

We also consider there to be ambiguities within the Determination surrounding the period that the National COVIDSafe Data Store is operational and when the obligation to delete information will commence. There is also an absence of ongoing obligations after the Determination ceases to be in effect.

The Law Council particularly welcomes the voluntary opt-in nature of the app, the prohibition of the collection, use and disclosure of COVID-19 app data for anything other than the primary purposes of the tracing app, and the explicit prohibition on the coercive use of the app as a condition of employment (current or former), entry to premises or participation in activities.

However, a potential legal ambiguity exists around whether other laws authorising the issuing of law enforcement and intelligence warrants could override the prohibition on access, as provided under the Determination, without an express provision included in the Determination stating that it prevails over all other laws.

Clarity should also extend to the operation of the exemptions under the *Privacy Act 1988*, for example employee records covering an 'act or practice directly related to a current or former employment relationship between the employer and the individual'.

We call on the government to make a firm commitment to introduce legislation on the first sitting day in May that will replace the Determination.

We also urge the government to incorporate into that Bill feedback on the CovidSafe Determination.

The Law Council does not consider that an executive order is the optimum way to make laws, especially laws that determine criminal offences and make provisions for important protections of privacy and security of personal information, so it is critical that legislation be introduced as soon as possible.

As an executive instrument, the Determination is inherently susceptible to unilateral executive amendment or repeal and must be considered as a strictly interim measure, pending the introduction of legislation in the Parliament to put the regulatory framework on a comprehensive statutory footing.

ENDS

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