

Monday, 11 May 2020

Law Council President, Pauline Wright, statement on the release of COVIDSafe source code

The Australian Government's release of the COVIDSafe app source code on the weekend is welcomed by the Law Council of Australia, giving all Australians the chance to satisfy themselves that the app will be used in the way that it is intended.

The public release of the source code is consistent with the Law Council of Australia's core regulatory design principles published on 24 April.

These principles included the release of both the source code and the privacy impact assessment as necessary for the operation of the app to be scrutinised by industry professionals, researchers, academics and community members, so that individuals are in the strongest possible position to provide informed consent to the installation and ongoing operation of the app.

The Law Council will closely monitor the views of experts regarding the details of the source code and any actual or potential privacy and transparency impacts.

The Law Council also understands that a Bill will be introduced to the Parliament on 12 May to place the regulatory framework for the app on a legislative footing and replace the current Determination made under the *Biosecurity Act 2015* (Cth).

While the Exposure Draft Bill contained several welcome improvements to the Biosecurity Determination, the Law Council remains concerned that a number of matters remain outstanding.

These concerns focus on ensuring that comprehensive oversight provisions are provided to the Privacy Commissioner, making the allowance for the prohibitions on the use and disclosure of COVIDSafe app data to have application after the automatic repeal, and applying a gradation to the maximum penalties.

The Law Council has also called on the Australian Government to expedite an executive agreement with the United States Government under the US CLOUD Act to minimise the risk that any data obtained will be able to be accessed by US authorities under the US legislation.

While the Law Council understands the need for the urgent passage of the legislation, we also consider it important that the legislation is subject the normal processes of parliamentary scrutiny including committee review, and ongoing consideration once implemented. Given that the app is likely to be operational for a sustained period, it is important that there is a strong basis for continued public trust and confidence in its operation.

Both a robust legislative framework and transparency in the app's technical specifications are critical to the important national task ahead.

ENDS

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