



**Australian
Privacy
Foundation**

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

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<https://privacy.org.au/about/contacts/>

23 May 2020

The Honourable Peter Gutwein MP
The Premier of Tasmania
peter.gutwein@parliament.tas.gov.au

The Honourable Rebecca White MP
The Leader of the Opposition in Tasmania
rebecca.white@parliament.tas.gov.au

Dear Mr Gutwein, Ms White

Re: COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Tas) s.30

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation, established in 1987. A brief backgrounder is attached.

The APF expresses serious concerns regarding the Tasmanian parliament's passage of the above omnibus emergency Bill in late March 2020 and in particular its disregard for privacy protections.

Omnibus Bills are a device used to sneak through provisions that would be likely to be defeated if tabled for community consideration. And a Bill brought forward with a title that includes 'emergency' provides a second layer of camouflage. This particular bundle of measures was pushed through in a mere 2 days, and suspends the privacy protection that is enshrined in state law and in Australia's commitment to the fundamental international human rights agreements. That suspension is grossly disproportionate.

It is extremely difficult for anyone, whether an MP, a parliamentary support staff-member, or a public interest advocate, to get to grips with the impact of provisions of the kinds included in this statute.

However, one specific provision stands out very prominently.

Section 30, in amending the Emergency Management Act 2006 through insertion of a new s.60A, overrides protections by the Personal Information Protection Act 2004 (PIPA) regarding "the disclosure, collection, exchange or use of [personal] information".

This is the kind of destruction of human rights protections that Australians decry when implemented by dictatorial regimes in Asia, and extremist regimes in, for example, eastern Europe. Yet here it is in a state of Australia.

In addition to the principle that human rights are highly-valued and not for compromise in such a casual manner, there are also serious practical considerations.

The provision is a massive over-reaction to COVID-19. What was required and continues to be required is calm analysis of the scope for contact-tracing, and any other information-sharing in support of public health measures, to be conducted within the existing legal framework.

Tasmania's privacy laws are extremely weak, outdated and lack a cause of action where rights are abused. In contrast to Queensland, Victoria and the ACT (and jurisdictions such as Canada and New Zealand), Tasmania does not have a charter of rights and responsibilities. We therefore very much doubt that current laws represent any significant constraint on contact-tracing in support of public health. The comprehensive suspension of PIPA is neither necessary or proportionate.

Moreover, to the extent that actual difficulties might arise, privacy and other human rights advocates would be strongly motivated to work with the relevant public service officers and Ministerial staff-members in order to quickly establish ways in which both public health and human rights objectives can be achieved.

There is simply no justification for such a serious suspension of human rights in order to privilege administrative convenience regarding public health measures.

The EU, through its human rights laws and the General Data Protection Regulation (GDPR), has far more substantial human rights protections than anywhere in Australia, and particularly Tasmania. Yet they have required no suspension of any aspect of their laws in order to address public health problems. Their respect for rights, and their concern to behave legitimately, has not restricted their response to problems that have been massively greater than what has been endured anywhere in Australia, including in north-western Tasmania.

At federal level in Australia, the Parliament has recognised that the Privacy Act (Cth) has substantial inadequacies. Rather than weakening those laws, it has actually strengthened them in the last few weeks. The purpose of the additional statutory protections was to gain the public's support in relation to installation of the app, by conveying the message that the COVIDsafe scheme is tightly targeted at a specific public health purpose and will not be exploited for other purposes.

A second concern about s.60A is that it does not provide for meaningful judicial oversight regarding the tacit suspension of the PIPA, and may not limit that suspension to the COVID-19 context.

The section defines "relevant" statutes, entities, information and purposes in an extremely broad manner. It is highly unlikely that anyone can identify all of the many contexts to which those terms will some day apply. The Parliament has therefore put on the statute book a provision that can be abused by any government in the future.

The APF calls on you to:

- (1) Promptly rescind s.60A;
- (2) Review the rest of the Act with a view to identifying and either rescinding or adapting all other excessive provisions that have been enacted in knee-jerk haste; and
- (3) Commission a comprehensive review of the PIPA and other laws relating to associated human rights in Tasmania, in order to recommend updating of privacy protections, including effective ways of achieving both general public policy objectives including public health, and the protection of human rights.

Thank you for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roger Clarke', with a long horizontal line extending to the right.

Roger Clarke
Secretary, for the APF Board
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Australian Privacy Foundation

Background Information

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. It 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.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby AC CMG and The Hon Elizabeth Evatt AC, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <https://privacy.org.au/publications/by-date/>
- Media <https://privacy.org.au/home/updates/>
- Current Board Members <https://privacy.org.au/about/contacts/>
- Patron and Advisory Panel <https://privacy.org.au/about/contacts/advisorypanel/>

The following pages provide outlines of some of the campaigns that the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Census (2006) <https://privacy.org.au/campaigns/census2006/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <https://privacy.org.au/campaigns/privacy-media/>
- The MyHR (2012-) <https://privacy.org.au/campaigns/myhr/>
- The Census (2016) <https://privacy.org.au/campaigns/census2016/>