

**Submission  
No 6**

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

**Organisation:** NSW Council for Civil Liberties

**Date Received:** 17 August 2020

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New South Wales  
Council for Civil Liberties

**NSWCCL SUBMISSION**

**LEGISLATIVE COUNCIL  
STANDING COMMITTEE ON LAW  
AND JUSTICE**

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

**14 August 2020**

**About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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

- 1) The New South Wales Council for Civil Liberties (NSWCCL) welcomes the opportunity to make submissions to the Legislative Council Standing Committee on Law and Justice (Committee) with respect to its Inquiry into the *Work Health and Safety Amendment (Information Exchange) Bill 2020* (Bill).
- 2) The Bill is intended to amend the *Work Health and Safety Act 2011* so that the Secretary of the Ministry of Health may provide information about silicosis diagnosis to the work health and safety regulators without contravening any laws, in particular, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
- 3) NSWCCL opposes the Bill in its current form, supporting the Legislative Review Committee's view that "the information-sharing power is broad and does not limit the Secretary to sharing information about the diagnosis of silicosis".<sup>1</sup>

### **Main issues**

- 4) There are minimal privacy safeguards in the Bill. The Minister stated that a memorandum of understanding is being developed to govern the information sharing between SafeWork NSW and NSW Health relating to silicosis. Though this is being done in consultation with the Information and Privacy Commissioners, sharing of sensitive health information should be rightly set out in the Act, not as part of an MOU, which is not subject to public or parliamentary scrutiny. This issue was also raised by the Legislative Review Committee.

### **Recommendation 1**

NSWCCL recommends a prescriptive approach setting out the privacy safeguards in the legislation, which would ensure adherence to appropriate protocols and transparency. Important administrative processes would therefore not be made outside the primary legislative framework, or without a high level of scrutiny.

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<sup>1</sup> Legislation Review Committee LEGISLATION REVIEW DIGEST NO. 17/57 –4 August 2020  
<https://www.parliament.nsw.gov.au/ladocs/digests/650/Legislation%20Review%20Digest%20No.%2017%20-%204%20August%202020.pdf>

- 5) The Secretary has a wide discretion to disclose any information he or she considers necessary for the WHS regulator to exercise its functions under the Act. This purpose is not limited to silicosis and has the potential for wider applications. The Legislative Review Committee also made this point adding that it “prefers administrative powers such as these to be drafted with sufficient precision so that their scope and content is clear.”
- 6) This is a partial solution to a situation which would be better served through the creation of a register, similar to that already put in place for other lung diseases.

### **Recommendation 2**

NSWCCL considers that any discretion should be limited in scope, clear and precisely drafted.

- 7) The *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* are overridden by the Bill. NSWCCL supports the further removal of exemptions from compliance with privacy protecting legislation, not the bypassing of NSW health privacy laws. Exemption from those laws has the effect of slowly and surreptitiously whittling away privacy protections for citizens.

### **Recommendation 3**

NSWCCL does not support exemption from compliance with the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

This submission was prepared by Michelle Falstein on behalf of the New South Wales Council for Civil Liberties. We hope it is of assistance to the Committee.

Yours sincerely,

Michelle Falstein  
Secretary  
NSW Council for Civil Liberties

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