



TASMANIA
PREMIER OF TASMANIA

Mr Roger Clarke
Secretary to the Board
Australian Privacy Foundation
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10 AUG 2020

Dear Mr. Clarke

Thank you for your letter of 23 May 2020, concerning section 60A of the *Emergency Management Act 2006* (EM Act), which was instituted as part of the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (COVID-19 Act). I apologise for the delay in providing you with a response.

The health and wellbeing of Tasmanians is my Government's highest priority in facing the significant challenges presented to us by the spread of COVID-19. The collection, sharing and use of relevant information between Tasmanian Government departments is essential to allow the State to effectively respond to and manage the public health risk arising from the spread of COVID-19 in Tasmania.

I can assure you that my Government and all the parties involved in managing this emergency, including the State Controller, Public Health authorities and other relevant Tasmanian Government departments, take the responsibility for maintaining data security, privacy and confidentiality very seriously.

The scope of Section 60A of the EM Act is extremely restricted. The provision means that the *Personal Information Protection Act 2004* (PIP Act) does not apply to a very limited range of information in very limited circumstances during a declared state of emergency. It does not permit the disclosure of information for purposes that are not relevant to the emergency or public health legislation. The scope is not 'extremely broad' as you suggest, rather it is narrowly constructed to meet a specific well-defined purpose.

The intent of section 60A recognises the critical need to speedily collect, use and share information to mount a rapid and effective whole-of-government response. The limited circumstances of section 60A include that it only applies during the state of emergency, and to the disclosure, collection, exchange or use of 'relevant information', for the 'relevant purposes', by a 'relevant body or person'. Each of these terms is defined in a very narrow way, by reference to emergency and public health legislation, to people exercising functions or powers under that legislation, and to information collected for the purposes of that legislation. Due to its limited application to both emergency and public health legislation, it will have even more restrictive application in emergencies that do not involve significant collection of information under public health legislation (for example, bushfires).

However, the PIP Act will apply to that information when the state of emergency concludes, and also to other information collected during the state of emergency in relation to matters not within the scope of section 60A. Further, section 60A does not apply to the operations of all State agencies and all information. The PIP Act continues to apply to any information obtained or shared that does not meet the narrow circumstances described above.

It should also be noted that the secrecy, privacy and confidentiality provisions of other Acts, such as the *Public Health Act 1997*, continue to apply at all times. In a state of emergency involving a pandemic, the Public Health Act in particular provides a framework for collection, use and disclosure of information relating to notifiable diseases such as COVID-19.

The non-application of the PIP Act to certain information during a state of emergency under section 60A only affects 'personal information custodians' who are subject to the PIP Act, such as Government agencies. It does not affect the privacy requirements on other persons and bodies imposed by Commonwealth privacy requirements or other legislation.

In concluding let me assure you that the provisions of the COVID-19 Act were not enacted by the Tasmanian Parliament casually without regard for the rights of Tasmanians; rather it enables State and local government entities to quickly and effectively respond to this unprecedented public health emergency. It builds on the valuable lessons we have learnt from previous emergencies which have had impacts for public health. The protocols put in place will enable effective and timely responses to the current pandemic and any future comparable states of emergency. This will only benefit Tasmania now and in the years to come.

Thank you again for your letter.

Yours sincerely



Peter Gutwein MP
Premier