



Mr. Jim Longley
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14 FEB 2014

By email: disabilityinclusionbill@facns.nsw.gov.au

Dear Mr Longley, *Jim,*

Re: Review of the consultation draft of the *Disability Inclusion Bill 2014*

I refer to the call for submissions on the draft *Disability Inclusion Bill 2014* (draft Bill) as part of the review of disability law in NSW and thank you for the opportunity to comment. I generally support the objects of the draft Bill.

It is my role as Privacy Commissioner to champion the privacy rights of the people of NSW with respect of both their personal and health information. Under the person-centred disability system proposed by the draft Bill, this right to privacy is critical. The significance of privacy to maintain dignity and control over one's life makes it fundamental to people living with disabilities. It is enshrined in Article 22 of the United Nations Convention on the Rights of Persons with disabilities I am pleased that this right is a general principle in section 4(6) of the draft Bill.

With respect to the draft Bill, I make the following comments:

- Section 4(6) of the draft Bill identifies privacy as a general principle stating that "the right to privacy and confidentiality for people with disability is to be respected". Section 6 of the draft Bill subsequently requires "a person exercising a function under this Act, or providing support or services to people with disability, *should* have regard to the disability principles..." I suggest replacing "should" with "must" to hold persons or those providing support or services to a higher standard.
- The requirement for a disability action plan to be prepared by each government department and local council requires each entity to specify how it will have regard to the disability principles, including the privacy principle in section 4(6) (section 10(3)(a) of the draft Bill). Section 10(3)(b) further requires that government departments and local councils outline their strategies to provide access to information. All individuals seeking access to their own information have an entitlement to access their information under the privacy regime. The mechanism in this Bill that is intended to ensure privacy of personal information

should not serve as a means to deny individuals access to their personal information that is held by government departments or local councils.

It may also be an opportune time for government departments and local councils to update their privacy management plans (PMP) required under section 33 of the *Privacy and Personal Information Protection Act 1998* (PPIP Act), to include the effect, if any of the disability action plan. For example, where an agency identifies that providing teletypewriter services as a mechanism to facilitate the access to information for individuals with a hearing or speech impairment, the agency's PMP should also state that this type of access is available.

I also encourage government departments and local councils to consider a best practice model for handling the personal information of people with decision making disabilities. A person's capacity to make decisions may be impaired by a range of medical conditions or when they cannot communicate their wishes because of a disability, illness, injury or accident. I recommend that government departments and councils develop guidelines or policies that deal with their particular organisational environment, especially if their core business includes providing services to people with decision making disabilities.

- In relation to section 28, which relates to the agreement about financial assistance, any agreement entered into with a non-government organisation should specify mechanisms to ensure compliance with the PPIP Act and *Health Records and Information Privacy Act 2002* (HRIP Act). This may include specifying the organisational training that will be undertaken by that organisation, outlining its complaint handling system to address client privacy grievances and avenues for redress.

The PPIP Act covers NSW public sector agencies and the HRIP Act covers NSW organisations both public and private that deal with health-related information. These entities must comply with the Information Protection Principles and Health Privacy Principles respectively.

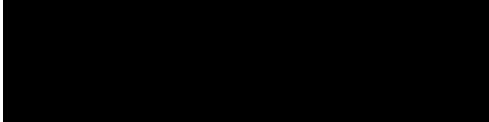
The impact on privacy is particularly important in the context of the provision of disability services and outsourcing these services to the private sector as service delivery providers on behalf of the Government. Any movement of personal and health information of people with a disability from the Department to private sector organisations requires robust privacy protection measures that meet the requirements of the PPIP Act and HRIP Act. In these circumstances, organisations that contract with NSW public sector agencies to deliver services under service and contractual arrangements should comply with the PPIP Act and must comply with the HRIP Act.

The review of the NSW disability law and the draft Bill open for consultation should enhance existing privacy protections for the personal and health information of people living with disabilities.

I understand that my submission will be made publicly available on the ADHC website and I support this. This submission will also be published on the IPC website at www.ipc.nsw.gov.au.

If you have any questions about this submission or wish to discuss the matter further, please contact my office. The contact officer for this matter is Sean McLaughlan, Manager Performance Reporting and Projects, who may be contacted on (02) 8071 7030, or by email at sean.mclaughlan@ipc.nsw.gov.au.

Yours sincerely



Dr Elizabeth Coombs
NSW Privacy Commissioner

14/2/2014