***CLA***

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The Executive Director

Australian Law Reform Commission

GPO Box 3708

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Dear Commissioner(s)

Thank you for providing Civil Liberties Australia with the opportunity to comment on the Serious Invasion of Privacy in the Digital Era Issues Paper.

Civil Liberties Australia (CLA) is a national organisation based in Canberra. CLA stands for people’s rights and advocates in favour of policies that advance human rights and civil liberties. CLA is non-party political and independent of other organisations. It is funded by its members and donations, and does not receive funding from other sources. CLA monitors police and security forces, and the actions and inaction of politicians. It reviews proposed legislation to make it better, and keeps watch on government departments and agencies.

As CLA believes that the right to privacy should be protected by Australia law, and that the lack of an effective remedy undermines the value of any ‘right’, CLA supports the adoption of a statutory cause of action for serious invasions of privacy. We believe that enforcement of this action should be ‘just, quick and cheap’[[1]](#footnote-1) and not simply open to the rich and famous.

CLA works in collaboration with a number of other civil society organisations, including the Australian Privacy Foundation (APF). In privacy related matters, such as the subject-matter of this inquiry, we usually support the position of the APF. We understand that they will lodge a submission which will deal more fully with the proposed cause of action.

Our submission chiefly focuses on Question 27 of the Inquiry - *In what other ways might current laws and regulatory frameworks be amended or strengthened to better prevent or redress serious invasions of privacy?* In particular, how can the privacy rights of employees be secured against nosy and intrusive employers.

In 2013 CLA took on an intern from the Australian National University (ANU), to produce a report into whether employees need social media password privacy laws. This report is included as **Attachment A** to our submission and we draw the ALRC’s attention to its conclusion:

Australia’s current law provides no clear, unambiguous prohibition against requests by employers for access to prospective employee’s accounts through password disclosure. The utility and application of existing legislative protections for employee privacy are generally conditional on consent and authorisation, which becomes problematic in an employment context.[[2]](#footnote-2)

And its recommendation, which CLA endorses, that:

Australia needs new federal legislation that protects current and prospective employees from such requests [for employees’ social media passwords] *in the first place*, by expressly prohibiting these violations and providing non-retaliation provisions to ensure that no adverse action can befall an applicant or employee for refusing.[[3]](#footnote-3)

In addition to the specific issue of employee privacy rights, CLA remains interested in the outcome of this inquiry especially as the issue of online privacy has achieved greater prominence with the revelations of mass surveillance by government agencies here and abroad, sometimes in compliance with the law and occasionally in breach of it. This action against all citizens surely constitutes a serious invasion of privacy in the digital era and we would ask the Commission to consider in its inquiry that privacy can be a *collective* right, not just an individual right. Mass surveillance and the destruction of anonymity can undermine fundamental values such as the rule of law, the presumption of innocence and chill free speech of dissidents and whistle-blowers.[[4]](#footnote-4)

As such governments, not just individuals or corporations, should be able to be held tortiously liable for serious invasions of privacy, including where that action involves the transfer for Australian’s personal information between intelligence agencies.

**40 years**

For further background to assist the ALRC review team, we also provide Attachment B, which comprises a computer journal paper reviewing the first report in Australia into the need for privacy legislation.

We note that the review/report dates from 1973, making it about 40 years since a clear and unequivocal need was formally recognised for privacy legislation in Australia.

**Conclusion**

Civil Liberties Australia thanks the Commission for considering our submission. We look forward to engaging further with the Commission over the course of its inquiry.

Yours sincerely

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1. 2.1 *Uniform Civil Procedure Rules 2005* (NSW). [↑](#footnote-ref-1)
2. Attachment A, [77]. [↑](#footnote-ref-2)
3. Attachment A, [81] emphasis in the original. [↑](#footnote-ref-3)
4. See further, Tim Vines, ‘It’s us against the spook world’ (presentation to the Centre for Excellence in Policing and Security symposium on private intelligence gathering), National Press Club, 8 August 2013 < <http://www.cla.asn.au/News/its-us-against-the-spook-world/>> accessed 10 November 2013. [↑](#footnote-ref-4)