



Thursday, 8 May 2014

Professor Barbara McDonald
Commissioner
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2000

Dear Professor McDonald,

Re: ALRC Inquiry into Serious Invasions of Privacy in the Digital Era

Thank you for the opportunity to comment on the Discussion Paper, *Serious Invasions of Privacy in the Digital Era* (DP80), released by the ALRC on 31 March 2014. I note that the Discussion Paper includes proposals for reform, including for a new Commonwealth Act that would provide for a statutory cause of action for serious invasions of privacy and, in addition, other innovative ways the law might prevent or redress serious invasions of privacy.

Further to our meeting on 15 April 2014, you requested that the Australian Human Rights Commission (the Commission) comment on two sections of the Discussion Paper, namely the guiding principles set out in chapter 2; and issues regarding balancing privacy with other interests in chapter 8.

The Commission's comments on these sections are:

Guiding Principles

The Commission commends the ALRC for ensuring the proposed reforms in the Discussion Paper are guided by nine principles. These guiding principles are consistent with Australia's commitments under the International Covenant on Civil and Political Rights (ICCPR), particularly Article 17, and support the view that privacy is about individual freedoms as established by the common law.

Balancing Privacy with Other Interests

The right to privacy by an individual must be balanced with the exercise of other important rights, freedoms and matters of public interest.

The Commission notes that the need to balance privacy interests with freedom and the public interest is addressed in Proposals 8-1 and 8-2 of the Discussion Paper.

In brief, the Commission supports the requirement under Proposal 8-1 for 'the plaintiff to have the onus to prove that their privacy interest outweighs any competing public interest of the defendant of free speech' (para 8.25). In relation to Proposal 8-2, the Commission also notes that the list is not intended to be exhaustive but rather provide broad guidance to parties and the court to make the cause of action more certain and predictable in scope, which in turn may reduce litigation (para 8.35).

The Commission supports these proposals as they do not infringe on other human rights and strike the appropriate balance between competing rights, particularly the right to freedom of opinion and expression articulated in Article 19 of the ICCPR. However, the Commission suggests that the ALRC consider clarifying the inclusion of Proposal 8-2 '(h) the economic wellbeing of the country'. Depending on how this proposal is interpreted, it is possible that it could be used to dismiss privacy for legitimate private information, commercial or others, or for potentially unjustified and perceived interest for the public that may not amount to legitimate public interest.

I look forward to reading your final report for the inquiry.

Yours sincerely,



Tim Wilson
Human Rights Commissioner

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