

92. Australian Sex Party

Name of organisation: The Australian Sex Party

Proposal 4.1:

The Australian Sex Party strongly supports all individuals' right to privacy. Therefore we support a statutory cause of action for breach of privacy.

Proposal 4-2 :

Agree.

Proposal 5-1 :

Support in principle.

Proposal 5-2 :

The new tort should include negligent invasions of privacy for the following reasons:

- Negligent invasions of privacy are likely to be as damaging to a plaintiff;
- Entities should be encouraged to prevent negligent data breaches that result in serious invasions of privacy; and
- Intention and recklessness are difficult to prove, particularly against companies and other legal entities.

In addition we support the rights of plaintiffs to bring a stand-alone action in negligence for serious invasions of privacy that result in economic loss.

The Australian Sex Party does not believe the new tort should attract strict liability.

Proposal 5-3 :

No comment.

Proposal 5-4 :

No comment.

Proposal 6-1 :

Agree.

Proposal 6–2 :

The Australian Sex Party does not agree with the final consideration contained in paragraph nine of proposal 6-2 requiring a plaintiff to manifest a desire not to have his or her privacy invaded, as it is inconsistent with a person's right to privacy.

Proposal 7–1 :

Agree.

Proposal 7–2 :

Agree.

Proposal 8–1 :

The Australian Sex Party does not support the proposed fifth element of action, for the following reasons:

- A person's right to privacy should be independent to any other rights. It follows that a statutory cause of action for breach of privacy should not be conditional upon a plaintiff proving that other rights have not been infringed;
- A plaintiff should not bare the onus of proof or be required to prove a negative;
- A defendant is better placed to plead that his or her right to, for example, freedom of expression, outweighs a plaintiffs right to privacy. A defendant is also better placed to provide evidence that their conduct was in the public interest; and
- Other jurisdictions support public interest defences.

The Australian Sex Party notes that jurisdictions such as New Zealand and Canada, provide for public interest defence. This is consistent with, for example, the *Racial Discrimination Act 1975* (Cth).

Proposal 8–2 :

The Australian Sex Party would support the considerations proposed in 8-2, when considering a public interest defence (as per our response in 8-1).

Proposal 9–1 :

Agree. This is consistent with other tort matters and recognises that tribunals may not have the appropriate expertise.

Question 9-1 :

We consider that only state and territory courts should have jurisdiction to hear an action based on the new tort.

Proposal 9-2 :

Agree.

Proposal 9-3 :

Legal personal representatives should be entitled to continue proceedings on behalf a deceased estate, when proceedings have commenced. This is the case where a plaintiff seeks an account of profits.

Proposal 9-4 :

Agree.

Proposal 9-5 :

Agree.

Proposal 10-1 :

Agree, provided that organisations relying on the defence, act within their powers and are subject to judicial scrutiny if challenged.

Proposal 10-2 :

Agreed, subject to our comments in proposal 10-1.

Proposal 10-3 :

Agree.

Proposal 10-4 :

Agree.

Question 10-1 :

No comment.

Proposal 10-5 :

Agree.

Proposal 10–6 :

Agree.

Question 10–2:

No comment.

Proposal 10–7 :

Agree.

Question 10–3 :

Conditions that ASXP considers are appropriate in order for intermediaries to meet the criteria for a safe harbour scheme include:

- That the internet intermediary had no knowledge that the content could reasonably be an invasion of a person's privacy;
- That the internet intermediary complied with all laws with regard to the content; and
- The intermediary did not obtain a direct financial advantage from the publication of the content.

Also when a plaintiff contacts an internet intermediary with a complaint or request to have the content removed, and no action was taken on behalf of the intermediary, then the safe harbour exemption would not apply.

Proposal 11-1:

Agree.

Proposal 11–2 :

Agree.

Proposal 11–3 :

Agree.

Proposal 11–4 :

Agree, provided such damages are included in an award for or determination of damages.

Proposal 11–5 :

Agreed.

Proposal 11–6 :

No comment.

Proposal 11–7 :

Agree.

Proposal 11–8 :

Agree.

Proposal 11–9 :

Agree.

Proposal 11–10 :

Agree.

Proposal 11–11:

Agree, provided this remedy may be granted in addition to other remedies, as proposed.

Proposal 11–12:

Agree.

Proposal 11–13 :

Agree.

Question 11–1 :

Costs are best determined by the court.

Proposal 12–1 :

Agree. However the Australian Sex Party supports a consistent, national legislative regime for the protection of an individual's right to privacy.

Proposal 12–2 :

Agree, provided that other freedoms and rights are not given undue precedence over an individual's right to privacy.

Proposal 13–1 :

Agree.

Proposal 13-2 :

Agree.

Proposal 13-3 :

Agree.

Proposal 13-4 :

Agree.

Question 13-1 :

The Australian Sex Party supports the Commonwealth legislation covering the field.

Proposal 13-5 :

Agree.

Question 13-2 :

No.

Proposal 14-1 :

Disagree. The Australian Sex Party considers that harrasment laws should be provided in state crimes legislation. Conduct that may not be considered criminal may be addressed by preventative remedies such as intervention orders and available civil remedies.

Proposal 15-1 :

Disagree. The Australian Sex Party considers that the power to make an award for compensation should rest with judicial bodies, not government agencies (regardless of whether they may exercise quasi-judicial power).

Proposal 15-2 :

Agree.

Question 15-1 :

Agree.

Question 15-2 :

Yes, provided that such powers are clearly expressed in legislation and subject to merits review.

Proposal 15-3 :

No comment.

Other comments:

The Australian Sex Party is a libertarian, political response to the needs of Australians in the 21st Century.

We respect the rights of all individuals to live their lives in the ways they choose without infringing the rights of or causing harm to others.

In exercising their rights and freedom individuals should accept responsibility for their choices while being tolerant of the choices made by others.

File 1:

File 2: