



12 May 2014

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Email: privacy@alrc.gov.au

Submission to the Discussion Paper on Serious Invasions of Privacy in the Digital Era

Discussion Paper 80 March 2014

Dear Commissioner,

The Australian Institute of Professional Photography (AIPP), with a history of 50 years in the photographic industry, is Australia's leading membership body for the professional photographic community, with over 3000 Members around Australia. We actively support professional image-makers at all stages of their careers. We are also in regular communication with the broader community of photographers (both amateur and professional) who are not members, and we have strong affiliations with similar professional organizations in Asia, the US and Europe.

We strongly endorse the detailed submission that the Arts Law Centre of Australia have presented and have had several meetings with them on their submission. Following are some general comments outlining our continuing concerns as to the practical consequences of introducing provisions relating to serious invasions of privacy without properly looking at the potential effects on the legitimate and socially beneficial activities of photographers.

As we commented in our previous submission to the issues paper (and we reinforce this point) privacy and surveillance issues, both real and perceived, are a constant and difficult issue for commercial photographers and we have regular correspondence from our members about unnecessary problems that occur in relation to privacy and surveillance issues. Any new legislation in this area has huge potential to impact on the ability of Australian society and culture to be documented in a meaningful way, and would urge the ALRC not to set up unintended consequences with these proposals.

First, for the reasons outlined by the Arts Law Centre, we strongly urge the ALRC to consider ensuring that its recommendations for the way "freedom of expression" is referred to in any legislation does not unintentionally exclude artistic expression.

Second, "surveillance" and "surveillance devices" need to be defined with great precision, so that a commercial photographer is not prevented merely from capturing activity in public.



Third, we are particularly concerned with the proposal 13-3. This proposal has the very real possibility that inoffensive and legitimate commercial imagery being captured could be caught up in some action by an unknown individual walking in the street and happens to walk into the frame of an artistic photograph being made of a building for example.

Fourth, Proposal 13.12 (p197) cannot be left without comment – uniform Commonwealth laws are essential so that individual small photography businesses have some level of certainty about how they can operate anywhere in Australia. Our members are routinely making images in many different areas of the country and non-uniform laws on something as basic as what constitutes a “surveillance device” cannot be left alone for the states to decide.

The AIPP strongly opposes the proposal in 13.2 of any regulation by local councils over any devices installed by private individuals. This will undoubtedly lead to confusion and uncertainty about how privacy law is applied from council area to council area (which we would hope is harmonised federally).

The experience of the professional photography industry with local councils or with non-government organisations getting involved with anything relating to privacy issues is not a happy one. The ham-fisted attempts a couple of years ago of the Surf Life Saving Association of NSW, trying to stop perverted photography at nipper carnivals were a complete debacle and many of our members felt – and feel - threatened in public spaces by merely going about legitimate commercial activity. Different councils within close proximity of eastern beaches in Sydney had wildly different interpretations of what was going on, much of it sensationalist and dangerous – and often whipped up by the red neck media.

In light of this we would again urge the ALRC to consider the legitimate business activity and artistic endeavours of Australia’s photographers. Lets not set up any more laws that create some kind of vigilante kill joy reaction to photography – photography that has helped record and enrich our culture.

We would also urge the ALRC to recommend a robust education campaign to both the general public and photographer practitioners around any changes that are made to legislation. The AIPP would willingly participate in and promote any such campaign.

As we’ve mentioned in previous correspondence we would welcome an invitation to meet with the ALRC and go over some of our concerns prior to the final report being delivered to the Attorney General. Please contact us at the AIPP National Office and we will make a representative available at a convenient time at any location in Australia.

If the ALRC has any queries or requires further clarification of this submission, please don’t hesitate to contact a long term AIPP member and the lead author Christopher Shain via email photo@shain.com.au or the undersigned at the AIPP National Office

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Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Myers', with a long horizontal line underneath it.

PETER MYERS

AIPP EXECUTIVE OFFICER